

***Recognising, Addressing and
Confronting Hate Crime:
Submission to the Commission on the
Future of Policing***

by

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About the HHRG

Located at the University of Limerick, the Hate and Hostility Research Group is the only research group in Ireland dedicated to the study of hate crime. Conducting translational research on hostility towards difference, it is an interdisciplinary group led by Dr Amanda Haynes of the Department of Sociology and Jennifer Schweppe from the School of Law. We work closely with a number of civil society organisation partners to progress policy and legislative change in respect to hate crime in Ireland as well as being affiliated with the International Network for Hate Studies. Both Amanda and Jennifer are considered international experts in the area of hate crime, and have published widely in academic and other venues on the subject. The work of the HHRG in the area of hate crime has been funded by the European Commission, the Irish Research Council and the Irish Council for Civil Liberties.

Introduction

The HHRG was asked by the Commission on the Future of Policing to make a submission to inform its Report to Government in September 2018. This Submission draws on the findings of five separate research projects conducted between 2014 and 2017, and is structured to focus particularly on the early stages of the lifecycle of a hate crime, from the point of reporting the crime on the part of the victim to the prosecution of such crime. Themes arising from the research include the trust of minoritised communities in An Garda Síochána; the understanding among gardaí of the procedures for reporting hate crime; the process by which such crimes are investigated and prosecuted by gardaí; and more generally, the role of ELO/LGBT Officers throughout the process. The broader issue of the prosecutorial function of Gardaí is also addressed in this submission.

The ‘disappearing’ of hate crime

It is important to consider this Report in the context of the wider issue of the ‘disappearing’ of hate crime in the Irish criminal justice process. Our research has consistently shown that crime lives in the shadows of Irish criminal justice, and is systematically disappeared from the criminal justice process. It is worth noting that no single organisation or policy is at fault in this process. It is a system-wide failure to recognise the harms of hate, which results in a ‘disappearing’ of the hate element of crimes in the criminal justice process, and a failure to provide victims with appropriate protection under the law.

About the data: research projects

This Submission draws on the findings of four funded studies and one pro bono research project, all of which address the relationship between minoritised communities and An Garda Síochána broadly, and the issue of hate crime in Ireland in particular:

*Out of the Shadows: Legislating for Hate Crime in Ireland (2015)*¹

- Funder: Irish Council for Civil Liberties
- Research partners: The Working Group on Hate Crime (Doras Luimní, the European Network Against Racism Ireland, the Gay and Lesbian Equality Network, the Immigrant Council of Ireland, Inclusion Ireland, the Irish Council for Civil Liberties, the Irish Refugee Council, the Irish Traveller Movement, NASC, Pavee Point, the Public Interest Law Alliance, Sports Against Racism Ireland, and Transgender Equality Network Ireland).

¹ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, ‘*Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

- AGS relevance: A study exploring the need for, and potential form of, hate crime legislation in Ireland. Included interviews with eleven Gardaí (mostly ELO/LGBT Officers) and 12 victims of hate crime, or their families, seeking to explore their experiences of reporting and recording hate crime, as well as legal practitioners and representatives of civil society organisations.

*Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism (2016)*²

- Funder: Irish Research Council
- Research partners: GLEN, TENI, Inclusion Ireland, ENAR Ireland
- AGS relevance: An original analysis of three third party hate crime reporting mechanisms, including an analysis of reports from victims regarding their experiences of reporting hate crime to An Garda Síochána, and reasons for non-reporting.

*STAD: Stop Transphobia and Discrimination 2014-2016 (2017)*³

- Funder: Pro bono
- Research partner: Transgender Equality Network Ireland
- AGS relevance: An original analysis of TENI's third party hate crime reporting mechanism across three years including an analysis of reports from victims regarding their experiences of reporting hate crime to An Garda Síochána, and reasons for non-reporting.

*Lifecycle of a Hate Crime: National Report for Ireland (2017)*⁴

- Funder: European Union DG Justice
- Research partners: The Irish Council for Civil Liberties, the University of Sussex (England); In Iusticia (Czech Republic); the Latvian Centre for Human Rights (Latvia); Umeå Universitet (Sweden).
- AGS relevance: Interviewed 18 Gardaí (mostly those prosecuting hate crime), regarding their experiences of recording, investigating and prosecuting hate crime and 17 victims of hate crime, including in relation to their experiences of reporting to An Garda Síochána.

² Jennifer Scheppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016).

³ Transgender Equality Network Ireland, *STAD: Stop Transphobia and Discrimination Report 2014-2016* (TENI 2017).

⁴ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána (forthcoming)⁵Funder: Irish Research Council

- Research partner: TENI
- AGS relevance: The purpose of the research was to document the trans community in Ireland's experiences with and attitudes towards the police. The findings are based on a tripartite methodology, including an analysis of secondary data on transphobic crime victimisation and reporting; group and individual interviews with 23 members of the trans community; and an online survey of trans persons completed by 61 respondents.

⁵ Amanda Haynes and Jennifer Schweppe, *Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána* (TENI, forthcoming)

What is a hate crime?

Internationally, it is accepted that a hate crime is an offence which is known to the criminal law and which is committed in a context which includes hostility towards difference. The OSCE describe hate crimes as:

“... criminal acts committed with a bias motive. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime”, therefore, describes a type of crime, rather than a specific offence within a penal code. A person may commit a hate crime in a country where there is no specific criminal sanction on account of bias or prejudice. The term describes a concept, rather than a legal definition.”⁶

There is currently no legislation in Ireland which requires a court to take a hate element into account when determining the appropriate sanction to impose in a given case. While the Prohibition of Incitement to Hatred Act 1989 criminalises incitement to hatred, it is a hate speech provision and purposefully narrow in its scope and thus not suited to addressing the daily criminal manifestations of bias faced by people in Ireland. In this regard, as Perry observes,⁷ Ireland is almost unique in Western democracies in not having legislation which targets the hate element of a crime.

Who are the victims of hate crime

While the vast majority of western democracies have dedicated hate crime legislation, either by way of aggravated offences or aggravated sentencing provisions, there is little consistency in the range of victim characteristics protected by such legislation. The most commonly named characteristics are race (often interpreted to include ethnicity), religion, and increasingly, sexual orientation. More recently, gender identity and gender expression (ie, protecting individuals who identify as transgender, non-binary, but not intersex) and disability have been included in a number of jurisdictions.

In an Irish context, we have three difference sources to draw upon in determining those characteristics which have been deemed worthy of explicit protection in this regard: the Prohibition of Incitement to Hatred Act 1989;⁸ the Criminal Justice (Victims of Crime)

⁶ Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights, *Hate Crime Laws: A Practical Guide* (OSCE/ODIHR 2009) 16.

⁷ Barbara Perry, ‘Legislating Hate in Ireland: The View from Here’ in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan 2017).

⁸ This Act prohibits expressions of hatred, including the dissemination of graphic or textual materials, which have the intention of provoking hatred against ‘... a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation’ (sic).

Act 2017;⁹ and the Garda PULSE discriminatory motive markers.¹⁰ When we look at these collectively, we can establish a list of characteristics recognised by the State as requiring particular attention and protection in the context of criminal victimisation. This list includes:

- Age
- Disability, including the health of the victim and any communications difficulties they might have
- Ethnicity, including ethnic origin
- Gender
- Gender identity and gender expression
- Membership of the Traveller and Roma communities
- “Race”, including colour, nationality or national origin
- Religion
- Sectarian identity¹¹
- Sexual orientation

In considering the multiple ways in which a hate crime can manifest, these characteristics should be given consideration.

Impacts of hate crime

It is accepted internationally that hate crime is likely to have a more significant impact on its victims than non-hate motivated offences.¹² Indeed, this is recognised at EU level through the Framework Decision: in its Report on the implementation of the Framework Decision, the Commission states that one of the reasons for requiring racist and xenophobic motivations to be taken into account is the impact of this type of crime on “individuals, groups, and society at large.”¹³

Direct impacts can range from physical injury to emotional and psychological harm.

⁹ Section 15 of the Act provides that the following characteristics should be taken into account when carrying out a victim assessment: ‘the personal characteristics of the victim, including his or her age, gender, gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, communications difficulties, relationship to, or dependence on, the alleged offender and any previous experience of crime’.

¹⁰ This list includes: gender, anti-disability, ageism, transphobia, homophobia, anti-Semitism, sectarian, anti-Muslim, racism, anti-Roma, and anti-Traveller.

¹¹ Primarily relating to the ethno-national conflict in Northern Ireland.

¹² See e.g. Paul Iganski, *Hate Crime and the City* (Policy Press 2008); Jennifer Paterson, Mark A. Walters, Rupert Brown, and Harriet Fearn, *The Sussex Hate Crime Project: Final Report* (University of Sussex 2018).

¹³ European Commission, ‘Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law’ [COM(2014) 27 final of 27.1.2014’ (2014) 3.4. <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0027>>

“I was working with a mother last year whose son was abused by [a] neighbour physically, verbally, they suffered property damage – spray paint on the house. The child tried to kill himself twice. He poured detergent over his skin because he thought it would make him white.” (Civil Society Organisation Employee)¹⁴

There is a qualitative difference to the impact of hate crime as compared to non-hate motivated incidents. For instance, data from the Crime Survey for England and Wales showed that victims of hate crime were more likely than victims of crime overall to say they were emotionally affected by the incident (92% and 81% respectively),¹⁵ while 36% of hate crime victims stated they were “very much” affected compared with just 13% for non-hate crime victims. The data also showed that twice as many hate crime victims suffer a loss of confidence or feelings of vulnerability after the incident compared with victims of non-hate crime (39% vs. 17%). Hate crime victims were also more than “twice as likely to experience fear, difficulty sleeping, anxiety or panic attacks or depression compared with victims of overall CSEW crime”.¹⁶ Over the course of our studies, victims in Ireland have echoed these findings:

“The very last one that happened, we couldn't sleep. Like, my husband was ... our security guard. He would sleep during the day, and in the night when we sleep, he would stay down here.” (Victim)¹⁷

“As old as I am, I know how depressed I am. You see me ... sometimes you feel like driving through the wall and say what is this for.” (Victim)¹⁸

“For me that was my safe haven, that was the only place I could go and feel safe and being targeted like that just ... broke me completely.” (Victim)¹⁹

“[The perpetrator] chose me ... attacking me because of my race has a big and deeper meaning, because I'm never going to change my race or who I am.” (Victim)²⁰

¹⁴ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, *'Out of the Shadows' Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

¹⁵ Corcoran, H., Lader, D., & Smith, K. *Hate Crime, England and Wales, 2014/2015*, (Home Office, UK 2015) 22.

¹⁶ Ibid. Other studies have shown that these impacts can also last longer than victims of equivalent offences which were not motivated by hate. See e.g. Herek, G. M., Gillis, J. R., & Cogan, J. C. 'Psychological sequelae of hate-crime victimization among Lesbian, Gay and Bisexual adults' (1999) 67 *Journal of Consulting and Clinical Psychology*, 945.

¹⁷ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

Hate crime not only impacts on its direct victims: the targeting of victims on the basis of their membership of a particular community “communicates to all members of that group that they are equally at risk and do not belong.”²¹ As such, the terrorising effect of hate crime goes beyond the individual to generate fear and anxiety among the broader community of which the victim is part; what the EUFRA refers to as the “resonating nature of hate crime”,²² or what Perry and Alvi have referred to as the “in terrorem” effect of hate crime.²³ In a 2014 Report²⁴ we spoke to members of civil society organisations who recognised this effect in the communities for which they advocate:

“So we speak about people living a life of fear. That’s certainly been our experience. Fear is the common word used with an intellectual disability or to explain their experience of abuse or assault or indeed to explain their fear of participating in mainstream events. We would organise quite a lot of events for people with an intellectual disability to attend. On a broad range of areas. And people with an intellectual disability would attend in pairs, in groups, they will plan their attendance and the question is why. We ask people. And it’s safety. So people with an intellectual disability are afraid of things. What are they afraid of? They are afraid of being targeted. They’re afraid of being robbed. They’re afraid of being assaulted.” (Jim Winters, Policy Officer, Inclusion Ireland)

“I think people are afraid, people are frightened you know that they could be the next victim, that they could be assaulted, that they could be beaten up... worried about their family and friends ... I think it sends a tremor through the community.” (Martin Collins, CEO, Pavee Point)

Hate crimes then can be perceived as “symbolic crimes” that communicate Otherness and operate as an exclusionary practice.²⁵ They have the effect of regulating marginalised social groups. Indeed, the targeted community must be counted as secondary victims of the offender.²⁶

²¹ Amanda Haynes and Jennifer Schweppe, ‘LGB and T? The Specificity of Anti-Transgender Hate Crime’ in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave Macmillan 2017), 130.

²² European Union Agency for Fundamental Rights, ‘Making Hate Crime Visible in the European Union: Acknowledging Victims’ Rights’ (2012) http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf accessed 1 July 2014, 18.

²³ Barbara Perry and Shahid Alvi, ‘We are all Vulnerable’: The In Terrorem Effects of Hate Crimes’ (2012) 18 *International Review of Victimology* 57.

²⁴ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, ‘Out of the Shadows’ *Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

²⁵ Barbara Perry, ‘Where do we go from here? Researching Hate Crime’ (2003a) *Internet Journal of Criminology*, 9
<<http://www.internetjournalofcriminology.com/Where%20Do%20We%20Go%20From%20Here.%20Researching%20Hate%20Crime.pdf>> accessed 1 July 2014.

²⁶ Neil Chakraborti and Jon Garland, *Hate Crime: Impact, Causes and Responses* (Sage 2009); Nathan Hall, *Hate Crime* (2nd edn, Routledge 2013); Jack McDevitt, Jennifer Balboni, Luis Garcia and Joann Gu, ‘Consequences for Victims: A Comparison of Bias and Non-bias Motivated Assaults’ (2001) 45(4) *American Behavioural Scientist* 697.

Relationships between An Garda Síochána and minoritised communities

Access to justice is a fundamental human right protected by a multiplicity of international agreements and conventions. In order to guarantee access, minoritised communities must be provided with both procedural and substantive supports to ensure their rights are protected.²⁷ However, these supports operate on the presumption that the communities in question trust the system to act in their best interests. For minoritised communities this is not always the case. In England and Wales, the approach of the criminal justice system to hate crime was reorganised and in some ways reconceptualised due to a recognition of the existence of prejudice within the criminal justice system, and an acknowledgment of the effect that this could have on access to justice.²⁸

There have been some studies done on relationships between minoritised communities and the police or legal system in Ireland, which without exception demonstrate lower levels of trust in those institutions on the part of such communities than the majority population.²⁹

Our research supports these findings. We were provided with an analysis from the European Social Survey is a cross-national representative survey of attitudes and behaviours which has been conducted in Ireland since 2002.³⁰ In 2012, 2014 and 2016, all participants were asked to rate their trust on a scale of 1-10 in four key state institutions: the parliament; the legal system; the police; and politicians. All participants were also asked whether they were a member of a group that was discriminated against (referred to here as “the minoritised population”). When the results for questions relating to group identity and trust were cross-tabulated, the minoritised population expressed consistently lower levels of trust in all four institutions.

When asked to indicate their levels of trust in the legal system on a scale of 0 to 10, with 10 equating to complete trust, for individuals from the majority population the mean score was between 5.29 and 5.5 across the three years (see Figure 1). Average scores for the minoritised population’s response to the same question ranged from 4.24 to 4.61 across the same period. Results for trust in the police (see Figure 2) were higher, but again a gap remains between the majority (ranging from scores of 6.69 in 2012 to 6.23

²⁷ Deborah Rhode, *Access to Justice* (Oxford University Press 2004). We define a minoritised community as “a social group with a shared characteristic whose position in society is characterised by relative disadvantage which may be economic, cultural, or political. This position is produced by power imbalances, and maintained by, existing structural inequalities in society.”

²⁸ Neil Chakraborti and Jon Garland, *Hate Crime: Impact, Causes and Responses* (2nd edn, Sage 2015).

²⁹ Aogán Mulcahy and Eoin O’Mahony, *Policing and Social Marginalisation in Ireland*, Working Paper 05/02 Dublin: (Combat Poverty Agency 2005) 5; Amanda Haynes and Jennifer Schweppe, *Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána* (TENI, forthcoming);

³⁰ Analysis of the ESS data was provided to us by the postdoctoral researcher associated to the European Social Survey for Ireland, Dr Amy Erbe Healy.

in 2016) and the minoritised population (ranging from scores of 5.67 in 2012 to 5 in 2016).³¹

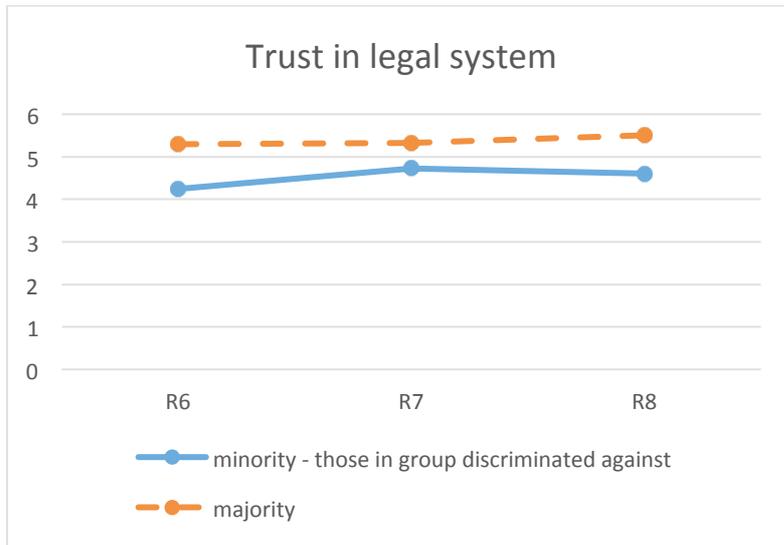


Figure 1: ESS - Trust in the Legal System

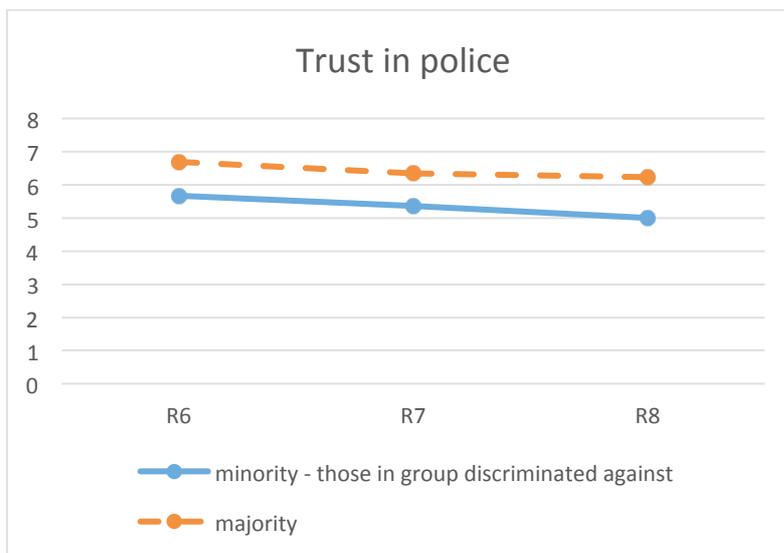


Figure 2: ESS - Trust in police

Another potential means of determining whether minoritised communities are exercising their rights of access to justice comparably to that of the majority community is through an examination of the first point of contact that victims have with the criminal justice process: the point of reporting crime. The Garda Public Attitudes Survey

³¹ Results for trust in the country's parliament for the majority ranged from scores of 3.63 in 2012 to 3.86 in 2014 to 4.51 in 2016; for the minoritised population the scores ranged from 2.91 in 2012 to 3.11 in 2014 to 3.65 in 2016. Results for trust in the country's politicians for the majority ranged from scores of 3.12 in 2012 to 3.37 in 2014 to 3.76 in 2016; for the minoritised population the scores ranged from 2.8 in 2012 to 2.67 in 2014 to 3.1 in 2016.

(GPAS) reveals a very high rate of reporting by victims of crime generally, with 86 per cent of crimes experienced by respondents having been reported to An Garda Síochána in Quarter 2 of 2017.³² A lower rate of reporting is recorded in the Quarterly National Household Survey Crime and Victimization Module.³³ Here, 62 per cent of household crime was stated to have been reported to An Garda Síochána, with 54 per cent of crime against individuals reported.³⁴

When we examine the reporting rates of victims of hate crime specifically, the figures are demonstrably lower. Our analysis of third party reporting mechanisms found that, of the 143 incidents involving hate crimes reported to ENAR Ireland in 2015, only 24 per cent were reported to the gardaí.³⁵ Of the 11 hate crimes reported to GLEN in the same year, only 3 were reported to the gardaí, representing 27 per cent.³⁶ For members of the trans community, the figures give cause for concern: in 2014, 25 per cent reported their experiences to the gardaí.³⁷ This dropped to 5 per cent in 2015, with no reports being made to the gardaí in 2016 by those who logged transphobic crimes with TENI.³⁸

In our 2017 research,³⁹ it was suggested by some legal practitioners that members of minoritised communities may have a lack of faith, not just in the police, but in the criminal justice process generally due to the treatment of individual members by actors in that process. Thus, where an individual was discriminated against by one actor in the process because of their ethnicity or racialized identity, that individual – and perhaps their community – may have less faith in the process to assist them when they are a victim to a crime. Thus, instances of discrimination may lead to the further exclusion and marginalisation of commonly targeted groups from the protection of the criminal law.

Legal practitioners interviewed in 2016 and 2017⁴⁰ spoke to bias presenting at all stages in the criminal justice process, from the police, as the first point of contact, to the judge. The vast majority were of the view that minoritised communities faced prejudice and discrimination within the system:

³² An Garda Síochána, *Public Attitudes Survey Bulletin Q2 2017* (An Garda Síochána 2017).

³³ Central Statistics Office, *Crime and Victimization, Quarterly National Household Survey Q3 2015* (Central Statistics Office 2016).

³⁴ *Ibid*, 2.

³⁵ Jennifer Scheppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016) 16.

³⁶ *Ibid* 27.

³⁷ Amanda Haynes and Jennifer Scheppe, *STAD: Stop Transphobia and Discrimination Report 2014-2016* (TENI 2017).

³⁸ *Ibid*

³⁹ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

⁴⁰ *Ibid*

“I think it’s very much in the minority but I have seen it on the bench. And I have seen it by guards. I’ve probably seen it by my own colleagues in defence probably treating people of - foreign nationals - differently. And I think yeah ... I mean there is racism not only against foreign nationals but against members of the Traveller community etc., definitely inherently built within the system.” (Solicitor – Defence)

“I unfortunately have experienced is racism from the bench ...In some courts you’d see it a lot. Actually I think it’s quite a big problem ... That’s my experience and I don’t think I’d be alone in that.” (Solicitor – Defence)⁴¹

This solicitor was of the view that the criminal process as a whole is not designed to cater to the needs of diverse communities and a diversity of victims:

“I think because in general terms the justice system in Ireland is set up to deal with a particularly type of complainant or a particular type of victim. It’s not gender specific. But I think it’s set up to deal with someone who is white, reasonably well to do, not necessarily wealthy but not dirt poor either. Moderately educated and reasonably accepting of authority or compliant with authority figures. And as soon as you step outside too many of those strictures, you’re going to have a bad experience of the Irish justice system. It is not well suited to cater for diversity. There are exceptions. But I think the exceptions are very much down to individual excellence rather than a standard maintained by the system. I would stand over that as a general statement.” (Solicitor – Defence)⁴²

Given the vital importance of the relationship between victims and the criminal justice process, and the significance of such attitudes and behaviours, to the faith that a community might have in the organs of the State set up and designed to protect them, these perspectives are particularly concerning.

“It takes the glean off the harp sitting behind the judge when you’re sitting there watching this charade go on.” (Barrister – Defence)⁴³

The relationship between the trans community and the police

In 2017 in partnership with TENI, we completed an Irish Research Council funded study of Ireland’s trans community’s experiences with and attitudes towards An Garda

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

Síochána.⁴⁴ This research included a survey completed by 61 people. We found that trans community members reported far lower levels of trust in An Garda Síochána than respondents to the Garda Public Attitudes Survey 2016 (GPAS). More than half of respondents (56 per cent) to our survey described their trust in An Garda Síochána as 'low', in contrast to 11 per cent of respondents to GPAS 2016. Less than 10 per cent of respondents to our survey agreed that An Garda Síochána is trans aware, while 69 per cent responded in the negative. Conversely, 36 per cent of respondents held that An Garda Síochána is transphobic and 13 per cent disagreed.

Misgendering occurs when a person is assigned to a gender that they do not identify with, for example by referring to them using inappropriate pronouns. 38 per cent of the 53 survey respondents who had had contact with members of An Garda Síochána since the start of 2013, stated that they had been misgendered by a Garda during this period. Of these, more than half did not correct the Garda. In explaining why they did not correct police misgendering, respondents most commonly cited a fear that "correcting them would have negative consequences for me", followed by the belief that the Garda would not take the correction on board.

Traveller/Ethnic Minority Community Attitudes Survey (TEMCAS)

Research examining the relationship between Traveller or Roma communities and the justice system has focused on particular manifestations of injustice. In an effort to determine the attitudes of some minority communities to An Garda Síochána, a Traveller/Ethnic Minority Community Attitudes Survey was conducted by the Gardaí in 2007. There were 600 respondents to the survey. Members of the Traveller community were shown to be significantly less satisfied with the Service compared to the general public:

| | Very satisfied | Satisfied | Dissatisfied | Very dissatisfied |
|--------------------|----------------|-----------|--------------|-------------------|
| General Population | 14 | 67 | 16 | 3 |
| Travellers | 5 | 47 | 26 | 22 |
| Migrants | 10 | 81 | 5 | 3 |
| Refugees | 25 | 67 | 7 | 1 |

Table 1: Overall Satisfaction with Garda Service by Respondent Category (%)

⁴⁴ Amanda Haynes and Jennifer Scheppe, *Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána* (TENI, forthcoming).

Reporting hate crime

Across all our research projects, we have found that hate crime is underreported, and thus the criminal justice system does not have a full picture of the issue as it exists.

Third party reporting mechanisms in Ireland have documented a range of reasons for underreporting, the most common of which include the belief that the gardaí could or would not do anything, that the gardaí would not take the report seriously, and that the incident was too common or not serious enough an occurrence to report.⁴⁵

Anti-LGB and T crime

TENI and GLEN set up third-party reporting systems for trans and LGB people respectively in 2013 and 2014. GLEN was wound up in 2017. TENI continues to collect data via its Stop Transphobia and Discrimination (STAD) reporting mechanism.

TENI's STAD mechanism recorded 74 transphobic incidents in the Republic during the period 2014-2016. Of those reports, 32 related experiences of non-crime hostile actions including discrimination, harmful digital communications and everyday microaggressions. The remaining 46 reports detailed a total of 57 anti-transgender criminal offences occurring in the Republic between 2014 and 2016.⁴⁶ The offences are set out in the table below.

| Crime classification | 2014 | 2015 | 2016 |
|---|-------------|-------------|------------|
| Total reports to STAD | (20) | (19) | (7) |
| Aggravated sexual assault | 1 | 0 | 0 |
| Assault | 5 | 6 | 7 |
| Assault causing harm | 1 | 0 | 1 |
| Harassment | 3 | 5 | 1 |
| Possession of a knife | 0 | 1 | 0 |
| Production of an article capable of inflicting serious injury | 0 | 0 | 1 |
| Public order | 8 | 6 | 3 |
| Rape | 0 | 0 | 1 |
| Sexual assault | 3 | 1 | 1 |
| Threat to kill or cause serious harm | 1 | 1 | 0 |

Table 2: Criminal Offences reported to TENI 2014-2016⁴⁷

⁴⁵ Jennifer Scheppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016) 17

⁴⁶ Amanda Haynes and Jennifer Scheppe, *STAD: Stop Transphobia and Discrimination Report 2014-2016* (TENI 2017) 22.

⁴⁷ Ibid.

The mechanism probes for the presence of bias indicators. In 38 of 46 reports, transphobic language was identified.⁴⁸

Of the 46 incidents, only six were reported to An Garda Síochána, and the percentage reporting has fallen year by year.⁴⁹ Respondents were asked to provide details of their reasons for not reporting, which were in turn categorised by the HHRG as follows:

| | 2014 | 2015 | 2016 | Total |
|---|------|------|------|-------|
| Total reports to STAD | (20) | (19) | (7) | |
| I did not think the police could or would do anything | 5 | 3 | 0 | 8 |
| I did not think it would be taken seriously | 1 | 6 | 0 | 7 |
| I didn't think it was serious enough to report | 1 | 2 | 1 | 4 |
| I thought it would be too much trouble to report | 1 | 1 | 1 | 3 |
| I have reported incidents previously to the police in Ireland and have had negative experiences | 1 | 1 | 1 | 3 |
| Fear | 2 | 0 | 0 | 2 |
| Perceived as too emotionally demanding | 1 | 0 | 1 | 2 |
| Victim was not 'out'/feared 'outing' themselves | 0 | 1 | 1 | 2 |

Table 3: Reasons for Not Reporting (TENI data)

The most common reason provided for not reporting was the belief that An Garda Síochána could or would not do anything, followed closely by a belief that members of the police service would not take the complaint seriously. In some cases, these statements spoke to a lack of confidence in the ability of gardaí to detect the crime. In other cases, they related to a perception that gardaí would be unwilling to aid a trans victim. In a minority of cases, the victim's sense of futility was based not in perception, but on past experience of reporting. Of the six people who reported their experiences to An Garda Síochána, three classified the response of the gardaí as supportive and three dismissive, with one of these further characterising officers as mocking and insulting:

"... there was zero empathy, he didn't even record it as a case, because he said that I didn't know the perpetrator's name. He said, 'If he knows your name, you must know his', which is ridiculous ... his attitude was more distressing than the crime."
(2014)

Williams and Tregidga found that, in a Welsh context, the likelihood that a trans person will advise others to report their experiences to the police is primarily contingent on their own past experiences of reporting. Although their All Wales Hate Crime Project found that "transgender hate crime victims were more satisfied with police contact than any other protected characteristic"⁵⁰ trans people participating in Nadal et al.'s US-

⁴⁸ Ibid 27.

⁴⁹ Ibid 23.

⁵⁰ Matthew Williams and Jasmine Tregidga, *All Wales Hate Crime Research Project* (Cardiff University 2013) 221

based study were more likely to find that reporting hate crime opened them up to police mistreatment.⁵¹

GLEN began collecting data on homophobic, biphobic and transphobic crimes in December 2014 via their online reporting mechanism 'stophatecrime.ie'. Eleven incidents, each relating to a single criminal offence, were recorded as occurring in or throughout 2015. The offences are set out in the table below.

| Crime classification | 2015 |
|------------------------------|-------------|
| Total reports to GLEN | (11) |
| Assault | 5 |
| Assault causing harm | 1 |
| Criminal damage | 1 |
| Public order | 3 |
| Sexual assault | 1 |

Table 4: Criminal Offences Reported to GLEN 2015⁵²

GLEN asked respondents to log their perception of the offender's motivation. Nine respondents perceived the offender to have been motivated by homophobia, one perceived the offender to have been motivated by both homophobia and transphobia. One further individual responded when questioned as to why they perceived the incident to be homophobic and/or transphobic that there appeared to be no other motivation.

Six of the eleven reports stated that homophobic/transphobic language was used in the commission of the offence. An additional seventh report specifies that the offender expressed a bias against same-sex couples expressing affection towards one another in public. An eighth report described a targeted location which is widely known to be frequented by LGBT people. A ninth report linked the targeting of a private residence to the display of posters supporting equal access to marriage for same-sex persons⁵³.

Only three of the eleven reports states that the offence described was reported to the police. Selecting from a list, respondents described their reasons for not reporting as follows.

<http://orca.cf.ac.uk/60690/13/Time%20for%20JusticeAll%20Wales%20Hate%20Crime%20Project.pdf> accessed 3 October 2017.

⁵¹ Kevin L Nadal, Avy Skolnik and Yinglee Wong, 'Interpersonal and Systemic Microaggressions toward Transgender People: Implications for Counseling' (2012) 6(1) *Journal of LGBT Issues in Counseling* 55.

⁵² Jennifer Schweppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016) 26

⁵³ *Ibid* 27.

| | 2015 |
|--|------|
| Total reports to GLEN | (11) |
| I didn't think there was anything the police could do. | 5 |
| I didn't feel like it was serious enough to report | 5 |
| I didn't think the police would take me seriously | 3 |
| Unsatisfied with previous experience with the police | 1 |
| I am not out/was not out at the time | 1 |
| The police are homophobic and/or transphobic | 1 |

Table 5: Reasons For Not Reporting (GLEN Data)⁵⁴

The individual who felt unable to report the crime to the police because they perceived them to be homophobic/transphobic was the victim of sexual assault.

Racist and religiously aggravated crime

ENAR Ireland invites members of the public to log details of racist and religiously aggravated incidents on its iReport.ie online racist incident reporting system. The system was launched in July 2013 and since then has received 1355 reports.⁵⁵ It is intended to be compatible with the monitoring requirements of the UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the EU Fundamental Rights Agency (FRA), ODIHR, ECRI and other international human rights bodies.⁵⁶ ENAR Ireland collect data on incidents across the continuum of hostility which includes crimes, discrimination and non-crime microaggressions. We present our original analysis of ENAR data for 2015 which relates to criminal offences specifically.

ENAR Ireland received 143 reports relating to incidents occurring in 2015 which bore the characteristics of criminal offences via its iReport third party monitoring system. Of those reports, 133 involved a single criminal offence, seven described two criminal offences, two related to three criminal offences and one described four criminal offences. In summary, iReport received reports of 157 crimes occurring in 2015.

The following table disaggregates the specific criminal offences identified by the HHRG in analyzing this data.

⁵⁴ Ibid 26

⁵⁵ ENAR, *iReport*, (ENAR 2017) <https://www.ireport.ie/about-ireport-ie/> accessed 8 January 2018.

⁵⁶ Shane O' Curry, 'Combating Racist Crime: An NGO Perspective' in Amanda Haynes, Jennifer Schweppe and Seamus Taylor, (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave 2017) 303.

| Crime classification | 2015 |
|---------------------------------|--------------|
| Total reports to iReport | (143) |
| Assault | 25 |
| Assault causing harm | 1 |
| Breaking and entering | 1 |
| Burglary | 1 |
| Communication act | 1 |
| Criminal damage | 37 |
| Demanding money | 0 |
| False imprisonment | 0 |
| Harassment | 24 |
| Making a false report | 1 |
| Possession of a knife | 1 |
| Public order | 58 |
| Robbery | 4 |
| Sexual assault | 0 |
| Threat to kill or injure | 1 |
| Trespass with a knife | 1 |
| Violent disorder | 1 |

Table 6: Criminal offences (ENAR Ireland)⁵⁷

In 2015 the iReport questionnaire prompted respondents only to address the presence of language as a bias indicator. Of 143 reports, a total of 99 identified racist or religiously aggravated language: 16 reported both forms of hostility, 78 reported only the use of racist language and five reported only the use of language against the victim’s religion.⁵⁸

In only 35 of the 143 reports to relating to racist and religiously aggravated crimes occurring in 2015 received by ENAR Ireland, did the respondent state that the crime or crimes had been reported to An Garda Síochána. The reasons provided by the participants were as follows:

⁵⁷ Jennifer Schweppe and Amanda Haynes, *Monitoring Hate Crime in Ireland: Towards a Uniform Reporting Mechanism?* (HHRG 2016) 16.

⁵⁸ Ibid 18.

| | |
|---|----|
| I did not think the police could or would do anything | 42 |
| I did not think it would be taken seriously | 33 |
| The incident was too common an occurrence to report | 23 |
| I didn't think that I would feel comfortable talking to the police about it | 19 |
| I didn't think that what happened was a crime | 16 |
| I didn't think it was serious enough to report | 15 |
| I thought it would be too much trouble to report | 14 |
| Other | 13 |
| I didn't know how or where to report it | 12 |
| I was concerned of reprisals or retribution from the perpetrator(s) | 11 |
| I didn't think I would be believed | 11 |
| I would have had to disclose personal details about myself that I did not wish to make known | 10 |
| I have reported incidents previously to the police in Ireland and have had negative experiences | 9 |
| I felt ashamed or embarrassed | 7 |
| I thought I would be blamed for what had happened | 5 |
| I didn't want to get the person involved in trouble | 3 |
| I have had negative experiences with police in another country I lived in | 2 |

Table 7: Reasons for Not Reporting (ENAR Ireland)⁵⁹

Schweppe, Haynes and Carr⁶⁰ assert that shortfalls in trust between An Garda Síochána and marginalised communities in Ireland can impact the propensity to report. A civil society organisation representative participating in our 2014 research suggested that the gardaí are:

“understaffed and undertrained in these areas, our experience (through client reports) is that they are reluctant to get involved or follow up complaints. In a small number of incidents it was alleged that gardaí themselves were actually racist towards them.”⁶¹

A number of the victims participating in our 2017 research spoke to the relationship between An Garda Síochána and minority communities as an obstacle to reporting:

“Yes. But you have to know there’s a lot of people that experience racism in Ireland, but people are not brave enough to report it. Especially the Gardaí, you have to know the relationship between Gardaí and immigrants are not that great because immigrants feel intimidated to report cases. ... A lot of things have

⁵⁹ Ibid 17.

⁶⁰ Jennifer Schweppe, Amanda Haynes and James Carr, *A Life Free from Fear: Legislating for Hate Crime in Ireland: An NGO Perspective* (CUES 2014).

⁶¹ Ibid 26

happened to a lot of people there and they wouldn't say a word. They just let things go. They are afraid. As well ... they are afraid of jeopardising their residency or afraid of being deported ... cos some were asylum seekers. So ... people are terrified of the guards especially asylum seekers. Terrified. Terrified.” (Victim of a Crime Pre-Victims’ Directive)⁶²

“I know some of them. I know he is going to do the job right. But some of them are just ... it’s like the institution is racist. I’m sorry to use this word but we have to be factual here. It’s like the police institution is ... institutionally racist. I have to tell the truth here. ... People don't have confidence in them. Some people don't want to report anything. They say ‘What am I going to report – policeman will see being beaten, stabbed – he will come and tell you that why did you provoke him instead of him telling the other guy why did you stab him’. People just don't have the confidence in a lot of the police here to be honest.” (Victim of a Crime Pre-Victims’ Directive)⁶³

A third Black African immigrant described communicating this point of view to a high ranking police officer:

“I told the superintendent, I said, stop the Blacks that is going on the road, I said about like six will tell you the same stories. The other four they won't talk. They are afraid.” (Victim of a Crime Pre-victims’ Directive)

While, in our 2017 research, victims across all identity groups addressed themselves to the willingness or capacity of the police to respond effectively to hate crime, this perception of unequal access to justice for minority communities was a particular theme among Black African men and a victim of anti-Roma crime. The Roma participant perceived that, while some members of the police are “ok”, others stereotype Roma:

“We are guilty, like, you know.” (Victim Post-Victims’ Directive)⁶⁴

The participant described experiences within their immediate family of being stopped and searched by police on patrol, required to produce ID and threatened with court proceedings if this was not made available. The participant also asserted that Roma are ethnically profiled at road traffic checkpoints:

“They stop all the times because what’s happened and some Romanian had no insurance with the car, like, you know. We had all the times. Because of them, they stop all the times the Romanian Gypsy, all the times – just for no reason in

⁶² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

⁶³ Ibid

⁶⁴ Ibid

the car at the check point to check for the insurance and tax. Because they're Gypsies." (Victim Post-Victims' Directive)⁶⁵

One individual who chose not to report one of two hate crimes to which they were subject – also a Black African immigrant – stated that they abandoned an attempt to report a hate crime because of their treatment by the police:

"... finally we got inside and the garda said I should shut up he want to hear from [the suspected offender] first." (Victim Post-Victims' Directive) ⁶⁶

Deciding to report

Our 2017 research⁶⁷ drew on interviews which we conducted with 17 self-identified victims of hate crime. As we specifically sought participants with experience of the criminal justice process, all had made a complaint to the police.

Of those 25 cases reported to the police, 19 were reported by the victim, three were reported by witnesses, one by a bystander who came upon the bleeding victim, and two were reported by the owner of a commercial premises which was the scene of the crime. With one exception, the crimes were reported while in progress or in the immediate aftermath, and to access assistance. Those targeted at home invariably discussed reporting in order to prevent further victimisation.

A minority of participants discussed reporting as a means of protecting others from similar harm.

"... it's not possibly about me, it's about the community and it's about the future of the state itself. Because basically what is happening and my experience is, I might be able to stand up for myself and say no I don't want this I want that but there are some thousand and one people that might not be able to speak out, that might not be able to write to the guard to challenge the guard position on their cases and they be the victims of the racist issues both by the guards and other people that are perpetrator of these crimes." (Victim of a Crime Pre-Victims' Directive)⁶⁸

In this wider context, many victims spoke to the societal impact of hate crime:

"You can't just let it go like that. Because then ... it's not only about me, it's about the whole racism thing that's very common in Ireland, and I needed to do

⁶⁵ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

something about it. It's not something I'll just let go of it, I wanted to make an example and to make sure that people live in a free society. I can't just lay back and take it with a pinch of salt. I have to do something about it. And it is my principle to do something. I can't let it go, so I decided to report to the guards and follow up and make sure that the case goes to the court and make sure that I'm there to correct that to make sure that our children don't experience the same thing in future generations." (Victim of a Crime Pre-victims' Directive)

"... the children they deserve something better. And they don't deserve to know hate. And to grow up with hate and to grow up hating someone. Because they will hate. They don't deserve to be abused or to become abusers. It's the society we live in. I told you it's a jungle on the street." (Victim of a Crime Pre-Victims' Directive)⁶⁹

One person held that they themselves had begun to internalise the divisive impacts of hate crime:

"... maybe that's how he's feeling ... the same as me ... maybe it's better if I stick with my own kind." (Victim Pre-Victim's Directive)⁷⁰

A victim of anti-Muslim hate crime asserted that the phenomenon would increase further in the future:

"Everyone has heard of us at least, maybe not dealt with us but at least heard of Muslims. And that's why as I said ... I'm not an analyst, I'm just saying what I think you know. So they should do something about it. Because it's gonna increase. Sounds really bad, but those attacks that happened, those terrorist things, fricken ISIS are all over the place. These attacks are gonna get worse because they're still there you know." (Victim of a Crime Pre-victims' Directive)⁷¹

⁶⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

⁷⁰ Ibid

⁷¹ Ibid

Recording hate crime

Our 2017 research includes a comprehensive analysis of the official recording of hate crime in Ireland.⁷² In addition to analysing official statistics, we investigated the police recording of hate crime in order to inform our interpretation of those statistics, and to understand the communication of the hate element through the system. In this jurisdiction, hate crime is recorded by the police as part of their operational duties and as part of their remit in collecting crime data. Police recorded data is provided by the police to the Central Statistics Office (CSO) who are responsible for assessing the quality of the data, collating statistics, and disseminating information.

It has been noted that Ireland does not have hate crime laws. Despite this, An Garda Síochána surpassed the limits of legislation with respect to recording over a decade ago and have been proactive in facilitating the recording of what they refer to not as hate crime, but as crimes with a discriminatory motive, since 2002. The recording of discriminatory motives occurs at the point at which a garda on operational duties logs a crime onto PULSE, the computer-based national incident recording system.

Recording methodology prior to 2015

Recording commenced in 2002 as a result of Garda HQ Directive No 188/2002, which established that racist motivations were to be captured on PULSE. Recording was later extended to include categories for homophobia, antisemitism, sectarianism and xenophobia. The category of xenophobia quickly became defunct and the Central Statistics Office reports⁷³ that by 2006, no data was being recorded for xenophobic motivations. The category was discontinued from 2007.⁷⁴ This same year the 2002 Directive was replaced with Directive 04/2007 which retained the perception test, but did not expand reference to any category beyond racism.

Racist, xenophobic, homophobic, sectarian, and antisemitic motivations were available to select within the database relating to criminal offences only. Within that database, the categories were included on the incident details screen, as five among an alphabetised list of more than 40 motivations, including corruption, domestic violence, extortion, jealousy, and monetary gain. Taylor notes in a 2010 discussion of how PULSE works:

“There is no mandatory field which must be completed at the recording stage to note whether an incident had a racist aspect. As a result a lot depends upon the victim’s reporting and insistence on identifying the racist aspect, and

⁷² Ibid

⁷³ Email communication with the Central Statistics Office, (2017)

⁷⁴ Central Statistics Office, *Crimes with a Discriminatory Motive: Information Note*, (May 2017).

furthermore a lot depends on Garda discretion as to what is written into the narrative section of the PULSE recording system”.⁷⁵

Until 2015, while a motivation for the offence had to be selected, there was no compulsion on PULSE users to specifically address the question of whether a crime might have had a discriminatory motive specifically.

Police recorded data to 2014

The table below presents Irish official statistics on the numbers of crimes recorded as having a discriminatory motivation for the period 2006-2014.

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------|------|------|------|------|------|------|------|------|------|
| Anti-Semitism | 1 | 1 | 2 | 5 | 12 | 3 | 4 | 2 | 4 |
| Homophobia | 21 | 11 | 9 | 32 | 13 | 21 | 17 | 17 | 13 |
| Racism | 171 | 210 | 165 | 122 | 111 | 132 | 93 | 93 | 93 |
| Sectarian | 6 | 11 | 1 | 2 | 3 | 4 | 3 | 6 | 4 |

Table 8: Discriminatory motivations 2006-2014⁷⁶

As we can see, the number of crimes recorded as having a racist motivation peaked in 2007, with 210 such crimes reported, dropping to a low of 93 such crimes across 2012-2014. Crimes recorded with a homophobic motivation peaked in 2009 with 32 such crimes, falling to only 13 in 2014. The number of crimes recorded with an antisemitic motivation reached a high of 12 in 2010. Figures for sectarian crime peaked in 2007.

It has been widely acknowledged both by members of An Garda Síochána and by civil society organisations that the figures presented here were an underrepresentation of the number of crimes with discriminatory motives occurring in Ireland. Members of An Garda Síochána to whom we spoke in the course of our 2015 research fully accepted that police recorded data represents a significant undercount of hate crime occurring in Ireland.⁷⁷ Gurchand Singh, the Head of Analysis, observed that the official figures:

“... are not a reflection of the trends, extent, depth of hate crime in Ireland... [we cannot] assume that all incidents are reported to us. The challenge is knowing what [the] proportion of incidents reported to us are”⁷⁸

⁷⁵ Seamus Taylor, *Responding to Racist Incidents and Crime: An Issues Paper for the Equality Authority* (Equality Authority 2011) 18.

⁷⁶ Central Statistics Office email communication, 2017.

⁷⁷ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, *‘Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

⁷⁸ Ibid

Recording from 2015: PULSE 6.8

The 2014 Crime Investigation Report recommended that An Garda Síochána ensure that all crimes containing elements of hate or discrimination were flagged on PULSE and the creation of clear modus operandi features on PULSE that allow the accurate recording of the nine strands of the Diversity Strategy.⁷⁹ In November 2015, in anticipation of the Victims' Directive, a new way of recording crimes with a "discriminatory motive" was introduced, which made changes to both the recording categories and the recording process. As part of PULSE 6.8, in November 2015, An Garda Síochána began recording eleven categories of discriminatory motives which were generated in collaboration with the Garda Racial and Intercultural Diversity Office to reflect the police service's strands of diversity: Ageism, anti-disability, anti-Muslim, anti-Roma, antisemitism, anti-Traveller, gender related, homophobia, racism, sectarianism, and transphobia.

This was a significant change, providing for the recognition of hate motivations towards quite a comprehensive range of commonly targeted groups. On a critical note, neither religion, nor a lack of religion or belief, were included as discrete recording categories, therefore there is no marker to identify religiously aggravated crimes that are not antisemitic or anti-Muslim. Nonetheless, the expansion of the range of recording categories under PULSE 6.8 reflects Professor Barbara Perry's assertion that we need to recognise the historically and culturally contingent character of hate crimes.⁸⁰ Thus, the sectarian and anti-Traveller categories would not necessarily be as relevant in other jurisdictions, but allow for the recording of important local manifestations of hate in Ireland.⁸¹

Possibly an equally significant methodological change is that made to the process of recording. PULSE 6.8 has altered the location of the discriminatory motive recording categories within the incident recording system for criminal offences. First, it has introduced a discrete question on discriminatory motives, rather than requiring that the user locate the eleven categories within a general motivations question. Second, the new discrete question on discriminatory motives is located in a dialogue box on the Victim Needs Assessment screen, which requires gardaí to indicate where the victim requires an individual needs assessment as a result of their status as a child, a person with a disability, a person with emotional or mental needs, a repeat victim, a victim of domestic violence, or the presence of a discriminatory motive. The question on discriminatory motives offers the person logging the report a choice of the eleven

⁷⁹ Ibid

⁸⁰ Barbara Perry, *In the Name of Hate* (Routledge 2001).

⁸¹ John O'Connell, J., *Travellers in Ireland: an examination of discrimination and racism: a report from the Irish National Co-ordinating Committee for the European Year against Racism* (Lenus 1997) ; James Carr, *Experiences of Islamophobia: Living with racism in the neoliberal era* (Routledge 2015); Sindy Joyce, Margaret Kennedy, and Amanda Haynes, 'Travellers and Roma in Ireland: Understanding Hate Crime Data through the Lens of Structural Inequality', in Amanda Haynes, Jennifer Scheppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime*, (Palgrave Macmillan 2017) 325-354.

discriminatory motives, plus an option which indicates that no discriminatory motive was present; one of these twelve options must be selected. Further, selecting an indicator of a discriminatory motive on the Incident Details screens automatically populates the discriminatory motives markers on the Victim Needs Assessment screen. Equally, selecting a discriminatory motive on the Victim Needs Assessment screen automatically populates the wider-ranging motives tab on the Incident Details screen.

This change suggests that information on discriminatory motives is sought for the purposes of victim support rather than investigation, a position which is supported by research interviewees who confirm that the selection of the marker shapes neither the investigation nor prosecution of a crime: however, the eleven discriminatory motives are ostensibly more visible under 6.8 than they were previously. The visibility of the question is copper-fastened by its mandatory status: under PULSE 6.8 all users logging incidents by phone with Garda Information Services Centre GISC are asked to complete the Victim Needs Assessment screen and must address the question of whether or not the crime had a discriminatory motive. Given that the *2017 Report of the Expert Group on Crime Statistics*⁸² asserts that every addition of mandatory data involves “legal, administrative and technical implications”, the compulsory nature of the question on discriminatory motives indicates a commitment to fulfilling the State’s obligations under the Victims’ Directive to identify victims of hate crimes in order to provide them with access to appropriate supports.

The number of crimes recorded as having a discriminatory motive increased dramatically following the introduction of this technical innovation: from 114 in 2014 to 308 in 2016:

| | |
|-----------------|-----------------|
| Ageism | 38 |
| Anti-Disability | 12 |
| Anti-Muslim | 13 |
| Anti-Roma | * ⁸³ |
| Antisemitism | * |
| Anti-Traveller | 25 |
| Gender related | 31 |
| Homophobia | 28 |
| Racism | 152 |
| Sectarianism | * |
| Transphobia | * |
| Total | 308 |

Table 9: Discriminatory motivations 2016

⁸² Department of Justice, *Report of the Expert Group on Crime Statistics*, (Justice 2017) 8 <http://justice.ie/en/JELR/Report_of_the_Expert_Group_on_Crime_Statistics_2017.pdf/Files/Report_of_the_Expert_Group_on_Crime_Statistics_2017.pdf>

⁸³ * Indicates that there were between 1-3 crimes recorded in this category, but that the number of cases did not meet the Central Statistics Office’s minimum frequency rules for the purposes of reporting.

Nonetheless, the Central Statistics Office, which uses police recorded data to compile official crime statistics, advises caution in interpreting the data, noting that in 2016 (the first full year for which post-PULSE 6.8 discriminatory motives data is available):

“The overall number of incidents recorded with discrimination motives is quite low and with an increased number of more specific options available, the number of incidents for each motive type tends to be lower than prior to 2016.”

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In interpreting data relating to discriminatory motives, the Central Statistics Office also advises that data users take into account the findings of their 2016 quality review of crime statistics in Ireland,⁸⁵ which was in turn prompted by concerns raised in the 2014 police inspectorate report *Crime Investigation*.⁸⁶ While the increase in the number of recorded crimes with a discriminatory motive in 2016 certainly indicates a higher rate of recorded hate crime, it is likely that underrecording remains a challenge.

Our 2015 research,⁸⁷ found that the point of recording is the first, and potentially the most significant, point at which a hate element can be disappeared from the criminal justice system. Where a hate element is not recorded at the point of reporting, it is unlikely that it will be investigated and prosecuted.

Awareness of recording categories pre-PULSE 6.8

One of the challenges to the reliable recording of crimes with a discriminatory motive is police awareness of the recording categories. Having spoken to ELO/LGBT officers about their awareness of the pre-PULSE 6.8 recording categories in 2015,⁸⁸ in 2017 we spoke both to members of An Garda Síochána and civilians working as call takers (Incident Creation Representatives) in the Garda Information Services Centre who log reports to PULSE on behalf of the police.

In interviews with gardaí conducted in 2012, Clarke found that officers differed in their understanding of recording procedure for racist crime – and that most did not know the definition of racism used by the service, or even that the service was required to record the numbers of racist crimes.⁸⁹ Our 2015 research found that, pre-PULSE 6.8, police

⁸⁴ Central Statistics Office, *Crimes with a Discriminatory Motive: Information Note*, May 2017.

⁸⁵ Central Statistics Office, *Review of the Quality of Crime Statistics 2016* (CSO 2016) <http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2016/reviewofcrime.pdf>

⁸⁶ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014)

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

⁸⁷ Amanda Haynes, Jennifer Scheppe, James Carr, Niamh Carmody, and Shannen Enright, *‘Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

⁸⁸ Ibid

⁸⁹ Helen Clarke, “Recording Racism in Ireland” (Integration Centre 2013) 14

were broadly aware of the racist discriminatory motive. However, while all of the interviewees were aware that it was possible to record a crime as racially motivated using the drop down motivations menu, there was less consistency in awareness of the other available prejudice-related categories. Few garda interviewees mentioned the category of antisemitic motivations. None mentioned sectarian motivations. While there were generally high levels of awareness of the potential for homophobic crime, one ELO/LGBT officer was unaware that it was possible to record a homophobic motivation on PULSE.

“Interviewer: Do you know if you can record a homophobic motivation?”

Interviewee: No. Definitely not.

Interviewer: You can’t?”

Interviewee: Could you flag it as homophobic? ... apart from the narrative? I don’t think you can.”⁹⁰ (Garda)

We raised the question of how bias-related motivations such as transphobia and disablism which are not available through the motivations menu on PULSE might be recorded. Responses varied; some interviewees suggested that they would use the menu entry for homophobia in flagging transphobic motivations:

“Interviewer: What about transphobic now?”

Interviewee: We have to record it under homophobic because there is no other place for it. The workaround at the moment ... is to include transphobia in the narrative.” (Garda)⁹¹

Others suggested that they would just note the motivation in the narrative section of the report. In one case the garda interviewee was unable to say how they might record either a transphobic or a homophobic motivation.

Although the Garda Inspectorate Report *Crime Investigation*⁹² refers to the existence of an organisational definition of both racist and homophobic incidents, An Garda Síochána interviewees referred only to an organisational definition of racist incidents.

“Interviewer: Is there a definition of homophobic crime in An Garda Síochána?”

Interviewee: No.” (Garda)⁹³

<http://www.integrationcentre.ie/getattachment/d70f7539-ce06-403d-98d7-da21f7d46426/Recording-Racism-in-Ireland.aspx>

⁹⁰ Amanda Haynes, Jennifer Scheppe, James Carr, Niamh Carmody, and Shannen Enright, *‘Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

⁹¹ Ibid

⁹² Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014)

⁹³ Amanda Haynes, Jennifer Scheppe, James Carr, Niamh Carmody, and Shannen Enright, *‘Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

While we saw earlier that some ELO/LGBT officers worked on ensuring that transphobic motivations were recorded, others had no understanding of the concept as we can see here from this participant.

“Interviewer: What about transphobic crimes?”

Interviewee: Transphobic crimes? Tell me what a transphobic crime is?”
(Garda)⁹⁴

Although the organisation had the capacity to record homophobic crime for a number of years, An Garda Síochána did not introduce a flag for transphobic discriminatory motives to the computer database used in recording crime, until 2015. More than a year since its introduction, over three quarters of respondents to our survey researching the relationship between the trans community and the police, were not aware of the existence this flag.⁹⁵ This pattern was replicated in the focus group data for the same research where the majority of participants were unfamiliar with its existence. Of the minority of survey respondents (25 per cent) who had been made aware of the marker, most had been alerted to its existence by TENI rather than by An Garda Síochána.

Awareness of recording categories post-PULSE 6.8

Following the introduction of a discrete and mandatory question on discriminatory motives in November 2015 as part of the PULSE 6.8 update, call takers interviewed in 2017 unanimously agreed that they initially listed all eleven discriminatory motives available each time a report was made. Over time, however, this practice faded out they explained, with some call takers prompting officers where they perceived a particular discriminatory motive to be relevant to the incident details, and others asking an open question on whether any discriminatory motives were present in the case:

“I suppose with experience you kind of would list the ones relevant to the category. D'you know because if it was an elderly person ... you would say well it's age related or something like that. So as a call taker you do ... you kind of ... you do tailor it to whatever incident is being created at the time.” (GISC Employee)⁹⁶

“I don't list it anymore. I just ask if there's any discriminatory motives.” (GISC Employee)⁹⁷

⁹⁴ Ibid

⁹⁵ Amanda Haynes and Jennifer Schweppe, *Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána* (TENI, forthcoming).

⁹⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

⁹⁷ Ibid

Gardaí interviewed in our 2017 research⁹⁸, displayed little awareness of the recording categories when we asked them to recall the categories of discriminatory motive available:

“Interviewer: Do you recall what the categories are?”

Interviewee: I don’t ... I can’t recall, no.” (Garda)⁹⁹

“I know there are tick boxes there.” (Garda)¹⁰⁰

“Interviewer: On that, have you noticed a change in the manner in which hate crime, well the discriminatory motive marker, is being used since the introduction of PULSE 6.8?”

Interviewee: Not particularly no.” (Garda)¹⁰¹

“Interviewer: Do you know ... there are a number of motivations in there relating to the hate element – do you know what they are, would you be familiar with them?”

Interviewee: Am ... I think there is racial ... I think it just says racial motivation. I think that’s one or racially motivated ...I can’t think of others...” (Garda)¹⁰²

We then prompted participants by asking if they were aware of the presence of particular discriminatory motives available. Again, participants evidenced very low levels of awareness of specific categories:

“Interviewer: Is there an anti- Traveller motivation that’s possible on PULSE?”

Interviewee: I’ll have to check that and come back to you.” (Garda)

“Interviewer: Were you aware for example that anti-disability is listed as a discriminatory motive?”

Interviewee: No.” (Garda)

Indeed, the only individuals with a comprehensive knowledge of the available recording categories worked primarily with victims and in the Garda Racial and Intercultural Diversity Office.

⁹⁸ Ibid

⁹⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

Training and policy

Awareness of a suitable range of recording categories is valuable but not enough by itself. Our 2015 research,¹⁰³ noted that, with the exception of the brief HQ Directives which govern the recording of discriminatory motives in Ireland, there was no other documentation detailing recording protocols, nor any training on the subject.¹⁰⁴ An Garda Síochána began delivering diversity training to specialist officers since 2002 through the Garda and Racial Intercultural Office (GRIDO) with the assistance of representatives of minority groups¹⁰⁵, but this training is not mainstreamed nor, according to interviewees, does it specifically address the recording of discriminatory motives.

In 2017, we found that training had been provided to alert members of the service to the introduction of new screens and questions in PULSE 6.8, although it appeared that not all members had had access to this training over a year following the rollout of the update:

“In theory they were supposed to know about all the changes that come through. But with all the cutbacks and everything a lot of them weren’t getting their CPD.” (GISC employee)¹⁰⁶

“I can’t think of any specific training.” (Garda)¹⁰⁷

Interviewees unanimously agreed that neither civilian call takers nor police officers had had access to either training or documentation on protocols for recording a discriminatory motive specifically, for example the circumstances under which a discriminatory motive should be recorded (see section below on the perception test), or the definitions of the various constructs referenced in the recording categories to be used.

“I went into [PULSE] recently, the tab for ... an injured party for a person and I just went in and it was all these different tabs. I filled them out ... you're asking me what they are, I don't know. ... Like no doubt I was given an e-mail. But they get lost.” (Garda)¹⁰⁸

¹⁰³ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, *‘Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

¹⁰⁴ Ibid.

¹⁰⁵ Dave McInerney, ‘Policing Racism on the Island of Ireland’ in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime*, (Palgrave Macmillan 2017) 422.

¹⁰⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁰⁷ Ibid

¹⁰⁸ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

In the absence of institutional definitions, both police officers and call takers had to rely on common sense understandings and individualised interpretations of the constructs referenced.

“Interviewer: So you didn't get any training in terms of this is what transphobia is or?”

Interviewee: No. I think it's just taken you'd know yourself which sounds a bit weak really.” (Garda)¹⁰⁹

Consequently, both groups evidenced variation and uncertainty in interpreting recording categories. These issues are exemplified in the following excerpts from interviews with police officers in which they discuss their understanding of the recording category “gender-related”:

“I don't know whether it comes down to transsexual?” (Garda)

“I presume it's LGBT?” (Garda)

“... if you have a female present and there is abuse hurled at her.” (Garda)

“A crime against someone because a suspected offender doesn't like a female or a male.” (Garda)¹¹⁰

In discussing such challenges, a senior officer emphasized that:

“Training is more effective than guidelines” (Garda)¹¹¹

Prior to any such training, however, detailed protocols for the recording of discriminatory motives are required, including agreed definitions of the eleven recording categories.

“Interviewer: Did you get any guidance on what the different discriminatory motives mean?”

Interviewee: Not really. They don't really. It's ageism and that's it. It's just one phrase. Doesn't give specifics as to what that is. Or it could be racially motivated but it doesn't specify anything else, it's just racial. D'you know?” (GISC employee)¹¹²

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

Operationalization of the perception test

The Garda HQ Directive No 04/2007 retained perception as the criterion for recording a racist discriminatory motive. This criterion, was developed initially in England and Wales in the 1999 Macpherson Report,¹¹³ the product of an inquiry set up in the wake of the racist murder of Stephen Lawrence to examine the investigation of racially motivated crimes by London's Metropolitan Police Service (MPS). In the UK, the Macpherson Report "has been identified as the most significant driver for the recognition of targeted victimisation."¹¹⁴ England and Wales' College of Policing, in its 133 page long 2014 *Hate Crime Operational Guidance*, explains the perception test as follows:

"For recording purposes, the perception of the victim, or any other person ... is the defining factor in determining whether an incident is a hate incident, or in recognising the hostility element of a hate crime. The victim does not have to justify or provide evidence of their belief, and police officers or staff should not directly challenge this perception. Evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incident ... If the facts do not identify any recordable crime but the victim perceived it to be a hate crime, the circumstances should be recorded as a non-crime hate incident and not a hate crime."¹¹⁵

As noted above, the Macpherson definition of a hate crime or incident covers any incident which is perceived to be hate motivated "by the victim or any other person."¹¹⁶ This is clearly a remarkably subjective definition – its purpose is to ensure effective and appropriate investigation. In Ireland, Garda HQ Directive No 04/2007 establishes that any incident which is perceived by the victim or any other person – for example the police officer, a witness, or a person acting on behalf of the victim – to have a racist motivation should be recorded as such.

Awareness of the perception test

In our 2015 research¹¹⁷ we had noted low levels of awareness of the relevance of the perception test to the recording of discriminatory motives in Ireland. In 2017¹¹⁸, we found no evidence that awareness of the perception test had been mainstreamed. In this

¹¹³ James C MacPherson, *MacPherson Report on Tradition and Education, Towards a Vision of Our Future* (Department of Indian Affairs and Northern Development, 1991)

¹¹⁴ Gail Mason, JaneMaree Maher, Jude McCulloch, Sharon Pickering, Rebecca Wickes, Carolyn McKay, *Policing Hate Crime: Understanding Communities and Prejudice* (Routledge 2017) 16

¹¹⁵ College of Policing, *Hate Crime Operational Guidance*, (Coventry, 2014) 6

¹¹⁶ William Macpherson, *Inquiry into the matters arising from the death of Stephen Lawrence* (UK Home Office 1999) 45.15-16.

¹¹⁷ Amanda Haynes, Jennifer Schweppe, James Carr, Niamh Carmody, and Shannen Enright, 'Out of the Shadows' *Legislating for Hate Crime in Ireland: Preliminary Findings* (ICCL 2015).

¹¹⁸ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

research, there were mixed understandings of the circumstances in which a discriminatory motive would be selected, with this garda stating that he would require evidence of a racist motive before the box would be ticked:

“Interviewee: So once you're satisfied that the incident ... or that the statement complies with what you believe to be a racially motivated incident well then that's when you tick it.

Interviewer: So the person will say I think it's racially motivated and then ... do you need to verify that? Is that what you're saying to me?

Interviewee: Yeah, it's like an allegation of an assault. You can't put someone down as being a suspected offender in an assault until you know the facts of the case. So that ... that pretty much goes in line with that. Until you're 100% certain or satisfied ... you know it's your opinion as to what you're hearing from that person. You believe its bona fide allegation so you tick it.” (Garda)¹¹⁹

Two gardaí described circumstances in which they would tick the box which approximated implementation of the perception test, but when we asked why they would take this approach, they responded that it was not because of any training, but rather, their own gut instinct.

Only those police officers who worked exclusively with victims and who had additional training on hate crime had any knowledge of the perception test. McInerney emphasises that full training for all officers in applying the Macpherson definition is essential.¹²⁰ One individual who explicitly referred to the perception test had become aware of it through a course outside An Garda Síochána. A second, who undertook a training course delivered to all gardaí in the area, said to us that the trainer themselves was unaware of the circumstances in which an incident would be recorded as racist, and the garda had to instruct and correct the trainer on the perception test:

“Interviewer: So what was the trainer's perception of when you would tick the box for a racist motivation?

Interviewee: If the guard believed it was racist then he'd tick the box ... The lads delivering the course were great and everything ... and said we didn't actually know that, you know. And that training was delivered to all the guards in [the District] and nobody knew what they were talking about.” (Garda)¹²¹

Whatever methodology is adopted, the absence of clear protocols regarding the circumstances under which a discriminatory motive should be recorded impacts the

¹¹⁹ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹²⁰ Dave McInerney, 'Policing Racism on the Island of Ireland', in Amanda Haynes, Jennifer Scheppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime*, (Palgrave Macmillan 2017) 430.

¹²¹ Ibid

reliability of the data collected. It is clear that at present members of An Garda Síochána differ in their belief as to whether it is the victim, or the police officer's perception, which determines recording, and more specifically, whether evidence is required. At present, victims cannot be certain of the protection proposed by the perception test against individual or institutional bias preventing the recording – and likely the investigation - of a hate element.

Victims' perspectives on police recognition

Of the 17 victims to whom we spoke in our 2017 research¹²² only one person demonstrated any familiarity with the manner in which a hate element might be recorded on PULSE via the discriminatory motives marker. Perhaps unsurprisingly therefore, none of the participants discussed having specifically asked for a discriminatory motives marker to be selected. Equally, none were certain whether the crimes they reported had been logged on PULSE as having a discriminatory motive.¹²³

Although none of the participants were able to say definitively whether a crime they reported had been logged on PULSE as having a discriminatory motive, some relayed that a member of the police service had at least named the hate element to the crime. In line with the findings of the Garda Inspectorate Report in 2014¹²⁴ which found that "hate crime" is not a term used by An Garda Síochána, participants overwhelmingly report that gardaí, either individually or as an organisation, identified crimes as associated with specific form of prejudice, e.g. racism, rather than using the term "hate crime" or indeed "discriminatory motive".

Three individuals – one making a report after the commencement of the Victims' Directive, and two making reports before this date – felt certain that An Garda Síochána had acknowledged the crime against them as having a hate element. One of these participants was able to show the interviewer a letter from An Garda Síochána in which

¹²² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹²³ Indeed, the only victim who demonstrated a clear awareness of the possibility of recording a racist element to a crime, was unsure as to whether any crime, or non-crime incident, they reported was recorded as such.

"I don't think they recorded it as race ... there's a criteria where they can classify incidents as racial ... cos I was never asked, do you feel ... I told them I thought it was racist but they never ... even in their questioning and all that ... I didn't think that they were trained to identify racial crime or just crime ... that's my own opinion." (Victim Pre November 2015)

This point was made in relation to a non-crime incident which the person experienced, but which was outside of the scope of the 2017 report. Nonetheless, it is worth mentioning that the participant was not aware that it is not possible to record a discriminatory motive in relation to non-crime incidents in Ireland. Indeed, it may not have been clearly explained to them that the incident they had reported did not meet the threshold for a criminal offence.

¹²⁴ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014)

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

a crime reported, after the commencement of the Victims' Directive, was explicitly described as racist. This was despite the fact that the participant had felt that the responding officers had sought to minimise the racist elements of the crime – perhaps in a misguided effort to comfort them:

“... But then I what I was getting was that you know, it's not all (place) people. Of course I know it's not all of the people in (place) that are racist, there are still good people. But they never actually ... you know made it clear that look, this is a racist case.” (Victim of a crime post Victims' Directive)¹²⁵

This contrasts with the experience of the individual reporting prior to the commencement of the Directive, who was unaware of whether the crime reported was marked as having a discriminatory motive, but who received affirmation of their perception verbally from the Garda who took their statement.

“The specific guard I remember his name very vividly, he said this is the worst racial abuse I've ever seen in my life. That's what he said. It's like his words are ringing in my head. I remember him saying that. He said I've never seen something like this.” (Victim of a crime pre Victims' Directive)¹²⁶

Two recalled that individual police officers had expressly rejected their perception that the crime they reported was associated with a hate element. None of these crimes were reported after November 2015. In one case, police overtly dismissed a participant's assertion that the crime was hate motivated. Relating one conversation, the participant recalls:

“I told him what happened and I kept telling him 'I'm pretty sure it's a racial attack' and he goes 'Why would you say that? There's been loads of antisocial behaviour around the place and you can't be sure it was racially attacked'. I'm like 'How else would you explain me and my other [Black] neighbour being attacked - only us'. He really was trying to show me that it's not ... he just told me it was antisocial behaviour. Plain and simple.” (Victim of a crime pre Victims' Directive)¹²⁷

Both participants describe the impact of disbelief on their trust in the police:

“I felt undermined, I felt I wasn't believed anyway. So ... what's the point really? (Victim of a Crime Pre Victims' Directive)

¹²⁵ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹²⁶ Ibid

¹²⁷ Ibid

“Undermined, really disrespected, really angry with the system. The only person who is supposed to protect me isn’t believing me – where else can I go?” (Victim of a crime pre Victims’ Directive)¹²⁸

The importance of being believed was emphasised by a number of participants, both those who held that the police had accepted their perception of a crime as hate motivated and those who did not.

“Beginning from the guard. I want it from the bottom to be acknowledged that it was a racist attack.” (Victim of a crime pre Victims’ Directive)¹²⁹

It is vitally important, not only that the hate element of a crime is recognised by An Garda Síochána, but also that victims believe that the gardaí take this element of the crime seriously.

Recording non-crime hate incidents

In previous research with Ireland’s trans community¹³⁰ we have noted that the continuum of hostility may be experienced as indivisible - legal distinctions and gradations do not always mirror the severity of the impact experienced by the victim. In some cases, it may be the most recent non-crime incident, in a series of crimes, discrimination and microaggressions, which is the most emotionally and psychologically damaging.

“And then when I go and tell the parents, I’ll be called names and told to get out of this place, I don’t belong here. And my kids were being called names, and being called monkey, and that they look like pooh, and the zoo is missing a monkey, they should go back to the zoo. I remember, I had a lady minding them so she had to walk them to the bus and wait for them at the bus stop and bring them home. They couldn’t even walk to the estate by themselves, my kids could not play outside, and that’s bad for children.” (Victim of a crime pre Victims’ Directive)

“... sometimes we stay in the housing and we didn’t play too much outside or stay too much outside. What can we do? If you are in strange country, we don’t have the power ... we don’t know the rules or that kind of things, because we are

¹²⁸ Ibid

¹²⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹³⁰ Amanda Haynes and Jennifer Schweppe, *STAD: Stop Transphobia and Discrimination Report 2014-2016* (TENI 2017).

Gypsy we don't know too much. We're used to taking this." (Victim of a crime post Victims' Directive)¹³¹

It is important that authorities respond to persistent targeting. It may be that over time everyday hostility reaches the threshold for harassment. Even where the activity does not constitute a criminal offence, the police can play an important role in ensuring that there is a record of all the incidents, crime and non-crime, and in signposting the best channels through which a victim might address the problematic behaviours. In England, the tragic death of Fiona Pilkington and her daughter Francesca highlighted the possible consequences of a failure to respond: in October 2007, Fiona Pilkington doused her car in petrol and set it on fire, killing herself and her 18 year old daughter Francesca. The coroner's court declared a verdict of suicide on Fiona and unlawful killing of Francesca. The jury also commented that both social services and the police had contributed to the deaths after many unanswered calls for help. Fiona had made 33 complaints about their harassment to Leicestershire Police between November 1997 and October 2007. During this time a gang of young people had set fire to the family's fence, thrown eggs and stones at their house, urinated in their garden, and stolen a chequebook. The final complaint recorded by the police from Fiona was that "two girls were jumping over the hedge into her garden and imitating the way that Francesca walked. She was told that no officer could attend, but was advised to close the curtains and ignore the abuse."¹³²

The manuals on hate crime used by the police in England and Wales since 2005 have emphasised the recording both of crimes and of incidents which do not constitute a criminal offence.¹³³ A similar approach is used in Scotland and Northern Ireland. In Ireland, non-crime incidents cannot be recorded as having a discriminatory motive. This represents a loss of intelligence relating to geographic concentrations of hate incidents, and relating to the character of repeat victimisation. In our forthcoming report on our research with the trans community,¹³⁴ we note that repeat victims often experience targeted hostility as a continuum of crime and non-crime incidents, both of which can also manifest within a series of incidents between the same offender and victim. By not recording crimes with a discriminatory motive in non-crime databases, this information is lost.

We further note that the Central Statistics Office quality review of 2016 found that 3 per cent of incidents classified to *Attention and Complaints* should have been classified as a

¹³¹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹³² Carmel Capwell, Sue Ralph and Liz Bonnett, 'The continuing violence towards disabled people', (2015) 15(3) *Journal of Research in Special Educational Needs* 211-221.

¹³³ Neil Chakraborti and Jon Garland, *Hate Crime: Impact, Causes & Responses* (2nd edn, Sage 2015) 119.

¹³⁴ Amanda Haynes and Jennifer Schweppe, *Policing Beyond the Binary: The Relationship between the Trans Community and An Garda Síochána* (TENI, forthcoming).

crime.¹³⁵ As it is not possible to record a discriminatory motive on the non-crime databases on PULSE, corrections to the misclassification of hate incidents will necessarily happen without access to a clear record of the relevant category of discriminatory motive.

Eight of the 17 victims to whom we spoke in our 2017 research¹³⁶, cited multiple experiences of bias related crime. Participants were not only subject to criminal offences however. Many experienced what we refer to as a continuum of hostility, consisting of criminal offences, discrimination and non-crime incidents that we conceptualise as microaggressions.¹³⁷ One participant had experienced a total of three crimes which they reported to the police as bias related, within a six year period. They and another two participants, in addition to criminal offences, had also been subject to non-crime incidents on the part of children living in their estate:

“Knocking, putting eggs and shouting “Romanian, Gypsy”.”¹³⁸

A fourth person continued to be subject to ongoing microaggressions by a neighbour. Three of these four participants had reported these non-crime incidents to the police and the police had attended the scene. Participants sometimes described the responding officer as dismissive however and, in at least one case, a participant asserts that an officer (prior to the commencement of the Victims’ Directive) used foul language, they believe to express their frustration at having being called to attend a non-crime incident. On another occasion, and with a different officer, the same participant received a very different response to the reporting of a non-crime incident.

“That was the lady, she said that it’s unfortunate that the people like this are given everything and they’re allowed to misbehave and commit whatever, and really she felt sorry for me, like people like us are hardworking ... “(Victim of a crime pre Victims’ Directive)¹³⁹

Another participant, who had been distressed by what they perceived as a patrol officer’s dismissive response to their reporting of a criminal offence, felt that they had been taken very seriously by a more senior officer in reporting what we classify as a non-crime incident prior to November 2015.

¹³⁵ Central Statistics Office, *Review of the Quality of Crime Statistics 2016* (CSO 2016) 4 <http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2016/reviewofcrime.pdf>

¹³⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹³⁷ Definition of microaggressions from STAD.

¹³⁸ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹³⁹ Ibid

Emphasising the apparently idiosyncratic nature of responses received to both non-crime and crime reports, another participant who had received dismissive responses from the police to the reporting of non-crime incidents notes that they were originally advised to report all such incidents by a sympathetic member of the police:

“He suggested it to me, you should come and get them to write it down every time something happens. Make a note of it.” (Victim of a crime post Victims’ Directive)¹⁴⁰)

In our data participants expressed frustration where no action appeared to have been taken by police in relation to non-crime incidents. This frustration in turn impacted on their trust in the police:

“So it’s like you’re being a nuisance, and the reason they’re coming out is some of them they don’t want to be reported [to the Ombudsman] or something ... because nothing was ever done about the whole thing ... the people continued doing ... the harassment and intimidation.” (Victim of a crime pre Victims’ Directive)¹⁴¹)

Some of the participants’ frustration might have been assuaged by the responding police officer’s signposting of appropriate avenues for reporting and support, as well as a clear explanation that the incident was not a criminal offence and thus did not merit a criminal justice response.

¹⁴⁰ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁴¹ Ibid

Investigating hate crime

The 2014 Garda Inspectorate report *Crime Investigation*, found many cases where there were unnecessary delays in progressing an investigation of a crime. The Inspectorate highlighted the current system for crime investigation with the majority of investigations remaining with regular unit gardaí. Many of these officers were investigating high volumes of crimes without any investigation time built into their working roster. The Inspectorate recommended many changes to crime investigation practices, including the adoption of minimum standards of investigation and the introduction of dedicated investigation units. It was suggested that most crime investigations should be completed within a 28 day period. The Inspectorate maintained that this needed to be supported by enhanced technology, to allow for crime investigations to be accurately recorded and cases tracked through an electronic case management system.¹⁴²

Garda perspectives

While gardaí interviewed for our 2017 research¹⁴³ admitted that the hate element will sometimes be considered or recorded during the course of an investigation, the vast majority of police officers were of the view that it simply is not something that will be prioritised at the investigation stage. By far the most common reason for this was the absence of legislation. Gardaí discussed their investigative approach, which is led by legislation and the proofs required to secure a conviction. Thus, they stated, in the absence of legislation, and thus the absence of any stated proofs, the hate element is simply not prioritised:

“Because there isn’t actually legislation there, it takes a secondary role to the actual, the facts and the proofs that actually need to substantiate where it actually does sort of get recorded under legislation because that’s the primary function by the time it moves towards actually prosecution, you can only prosecute what’s actually legislative work.” (Garda)

“You need a box of tools. You need something to operate with. The job of the police is to land perpetrators in a court room. You have to have tools to do that ... ok. But one of the tools that was absolutely missing for us was that whole idea of ... you know ok it was just an assault because it’s far more serious. It was an assault because that person happened to be gay, Traveller or whatever.” (Garda)¹⁴⁴

¹⁴² Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014)

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

¹⁴³ Amanda Haynes and Jennifer Scheppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁴⁴ Ibid

Indeed, this garda elaborated that while they would be individually aware of the racist element of the offence, the absence of official policy meant that it was not given attention:

“... it wasn't in our consciousness that this was ... sorry while it might have been in your individual consciousness that this was done because, right, but there was no tool there, there was nothing to take out of the box and say, ‘Well ok, I need to use ... as well as the charge for damage or whatever or breach of the peace.’ There was nothing to aggravate it.” (Garda)¹⁴⁵

While garda resources were perceived by defence practitioners as the primary reason why the hate element was not investigated, only a small minority of gardaí suggested that this was the case suggesting that an absence of resources would lead to the discriminatory motives marker box not being ticked due to the additional resources required to investigate that element:

“... when that box has to be ticked it now takes on a whole life of its own. Because, not saying it would be left or ignored, but now there's a requirement that this gets a higher level of investigation. You get one hundred of them or 50 of them and where's the resources coming from to investigate that? And what happens then is I believe we begin to associate that with a problem.” (Garda)¹⁴⁶

Two gardaí who worked in community policing were of the view that the reason the hate element was not appropriately investigated was the fact that gardaí “on the regular”, or those who are the first responders to incidents, do not understand the impact of hate crime, and thus will either not recognise a hate crime when it is presented, or will not appreciate the significance of such offences to the victim:

“I feel ... that it's something that requires the officer to understand the complexity of it. To understand the sensitivity in relation to the victim. I think it needs a more specialist approach.” (Garda)

“... the investigating guard has a stack of stuff and he's getting through stuff and he sees this, it's an assault, off you go and the whole lot.” (Garda)¹⁴⁷

Only one garda was of the view that the hate element of a crime would typically be investigated appropriately:

¹⁴⁵ Ibid

¹⁴⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁴⁷ Ibid

“In my opinion, from my perspective I think it’s well investigated by the guards. And that’s not just the guards backing the guards. I think at this stage unlike in the past maybe ten, twelve, fourteen, fifteen years ago, we’re acutely aware of the racist element or potential in relation to victims and offending generally.” (Garda)¹⁴⁸

Legal practitioners’ perspectives

In the absence of any policy on appropriate protocols for the investigation of a crime, it is unsurprising that legal practitioners, interviewed in 2017, gave mixed responses to the question of how they believed the hate element of a crime was investigated:

“I’ve seen specific cases where they’ve gone way beyond you know ... what would normally be expected and I’ve seen other cases where they don’t lift the phone.” (Solicitor)

“Well it isn’t investigated really at all in my view ... I just don’t really think it’s considered at all.” (Barrister - Defence)¹⁴⁹

Some practitioners did take the view that some gardaí investigated hate crimes appropriately. Those who held that such crimes are not investigated properly gave a number of reasons, summed up succinctly by one solicitor:

“Don’t have the resources to do that, don’t have the knowledge base to do that, don’t have the tools to do it, we don’t have the people to do it, we don’t have the expertise to do it ... you know there’s always why you can’t do something.” (Solicitor)¹⁵⁰

The first reason, perhaps unsurprisingly, was resources, linked to the second reason, ie, the absence of training or specific policies on the issue:

“... you’re just putting in sulphur into an already sort of sulphuric situation – do you know what I mean? It’s an added layer of raising a temperature significantly – do you know what I mean? And he might feel, because there’s no specific offence, then you know, ‘Why am I going down this road?’.” (Solicitor)

“It could be, I mean, a funding element in that, a training element maybe for Gardaí in terms of picking that out ... and maybe saying look, you know, this is

¹⁴⁸ Ibid

¹⁴⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁵⁰ Ibid

how you deal with this, this is how you prosecute it and this is how we're going to deal with it..." (Solicitor)¹⁵¹

Garda discretion and approaches to investigation broadly were also mentioned by legal practitioners, but as issues which impact on the investigation of crime generally, rather than hate crime specifically:

"This is a complete broader problem that the guards generally speaking very often and I say generally speaking within a small context, but does happen when they don't take a statement it can be for those reasons that they don't believe the individual or they don't accept it or they don't think it's worth going to trial, small assaults, minor assaults, road traffic matters, it does happen an awful lot where they actually don't take statements from the victims or investigate it fully or properly." (Barrister - Defence)

"The methodology employed by An Garda Síochána [in taking statements] is to ask questions and to write the answers to those questions down in the form of a narrative. But it's not a free flowing narrative it's a narrative that is constructed based on linked statements elicited through often very leading questions. People's accounts are shaped according to the priorities and motivations of the police officer and sometimes that is obvious when reading a statement. And I think you would get a shaping of narratives that would quite honestly and innocently avoid any mention of racial or gender or sexual orientation." (Solicitor)¹⁵²

Finally, one participant asserted that the manner in which the crime was investigated depended on the status of the victim in the eyes of the garda:

"I think if you have the nice Chinese couple who run the Chinese or ... you have a nice Muslim doctor or you have somebody from Nigeria who is working wherever else, I think it would probably be investigated pretty well ... If it's ... a Roma or Traveller or a Chinese person who is here illegally ... if it's if any of the less socially acceptable minority groups ... I don't think the Gardaí particularly care..." (Barrister – Defence)¹⁵³

Victims' perspectives

In 2017, we asked victims interviewed for the same research for any information they might have had on the manner in which the crime they reported was investigated. It is

¹⁵¹ Ibid

¹⁵² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁵³ Ibid

important to note that this information represents their perception as individuals lacking familiarity with police procedure. Nonetheless, the victims' recall of garda responses to, for example, their availability to provide statements, or their direction to CCTV footage or other forms of evidence, can at the very least provide insights into investigative factors impacting the gathering of evidence of a hate element.

Making a statement and making a complaint

Given the Central Statistics Office's published findings on failures to log crimes to the national crime incident recording system,¹⁵⁴ PULSE, it is worth noting at the outset that there are instances where victims' description of their interactions with the police made it unclear that a report was logged. For example, a victim recounts that in one instance in 2014 they approached an officer on patrol to address a crime which had just occurred and where the offender was still on the scene. The officer asked the participant to stand apart from the offender. The participant states that they observed the garda speak with the offender, who laughed and left the scene.

"I was standing in the door and watching and at some stage I saw them talking. She was talking with guard; she looked back and laughed and kept walking, looking back and laughing. And I closed the doors and I went and I started to cry in the bathroom." (Victim of a Crime Pre-victims' Directive)¹⁵⁵

In total, victims recounted four incidents, the most recent of which occurred in 2014, which they understand to have been concluded informally by police at the scene. None of the four victims report having received a PULSE number.

It goes without saying that the statement of the victim is vitally important evidence in criminal justice proceedings. In Ireland, the victim's statement has additional significance: practice states that the failure of a victim to provide a statement commonly results in a case being closed. According to the Central Statistics Office, the current crime counting rules permit a crime to be marked as detected if "A victim or essential witness refuses or is unable to attend the court proceedings."¹⁵⁶

At a public session of the Policing Authority in 2017, the Head of Analysis at An Garda Síochána, Gurchand Singh, noted that:

¹⁵⁴ Central Statistics Office, *Review of the quality of crime statistics* (CSO June 2015) <http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2015/reviewofcrime.pdf> accessed 6 October 2017.

¹⁵⁵ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁵⁶ Central Statistics Office, *Review of the Quality of Crime Statistics 2016* (CSO 2016) 26 <http://www.cso.ie/en/media/csoie/releasespublications/documents/crimejustice/2016/reviewofcrime.pdf>.

“if the Garda became aware of a crime and the victim did not want to make a statement, that offence was recorded and classified as detected.”¹⁵⁷

In respect to seven of the ten incidents reported from November 2015, the victim states that they did not make a signed statement. In one case, the victim abandoned their report while it was in progress because they felt they were being treated unfairly by the police officer. In a second case, a victim who had made reports of crime and non-crime incidents states that they were informed that someone would be sent to take their statement in relation to their telephone complaint, but this did not materialise. In a third case, frustrated by delays in the police attending the scene to examine criminal damage, the victim attended the station of their own initiative and received a PULSE number but was not asked to make a signed statement.

It is of concern that, with one exception, victims did not clearly differentiate between making a complaint and making a statement. They used the latter term to describe either process. In relation to each case, we therefore made the point of asking them whether they had made a *signed* statement. In the majority of cases, as noted, the response was a clear negative. This leads to two particular points of concern. First, the lack of a signed statement from the victim may have resulted in the case being marked as detected – in any case, members of the police have confirmed that it is difficult to proceed with an investigation in the absence of a statement from the victim. Second, the victim was often under the impression that they had made a statement, having made only a complaint. Thus, where a signed statement was not made by the participant, this was not because they were unwilling, but because they had not been invited to provide one. It is important to note that, in the absence of a clear appreciation of the difference between a complaint and a statement, and indeed, the significance of a victim’s statement to initiating an investigation, victims would not have appreciated the importance of pursuing this issue.

Of the ten incidents which were reported from November 2015, when the Victims’ Directive came into effect, only three victims recalled with clarity making a statement.¹⁵⁸ One of these three participants, an EU citizen who was the only victim to demonstrate a clear awareness of the importance of making a signed statement, states that having been attended at the scene by the police, they pursued the issue until they

¹⁵⁷ Conor Lally, ‘Authority finds Garda inflated detection figures’, *The Irish Times* (Dublin 29 September 2017).

¹⁵⁸ In the first case, the participant states that the statement was the basis for a decision as to whether to charge the participant or another party - the participant was subsequently ascribed the status of victim. The second participant was also initially detained but never charged.

“That guy didn't take a statement from [me] that day because they said I was the one wrong on which I had to prove I wasn't wrong.” (Victim of a crime post Victims’ Directive)

They pursued making a signed statement and state that they succeeded in this two months after the incident occurred. The delay was contributed to by the investigating police officer being on holidays, according to the participant.

were facilitated to make a statement. In the aftermath of the incident, they were visited twice by members of the police, who did not take a signed statement on either occasion:

“... they just took literally my name, address, my DOB, my phone number and that’s it, when they were supposed to take a statement from me.” (Victim of a crime post Victims’ Directive)¹⁵⁹

Eventually they state that they attended a station without an appointment and refused to leave until their statement was taken. They state that this was at least a month following the commission of the hate crime.

“Yeah and I said that I want to make a statement about hate crime, and the guy there asked me am I really sure I want to do it, and I said yes I want to do it, and I said I’m not leaving the station without getting my statement done.” (Victim of a crime post Victims’ Directive)¹⁶⁰

Content of the statement

With respect to the inclusion of the indicators of the hate element in the statement, this last victim, interviewed for our 2017 research¹⁶¹, ensured that the language indicating the hate element was included. One of the two remaining victims who made a statement post Victims’ Directive, stated that the racist language used was not included in the statement because the expressions of racist hostility were made by an associate of the individual who struck them, rather than by the person who had initiated physical force against them. The third individual felt they had been thorough in making their statement, but was unclear as to whether the language used by the suspected offender was included explicitly.

Language is one of the clearest indicators of a hate element. In the case of 17 of the 26 incidents discussed, victims clearly stated that language identified the hate element of the crime(s). Offenders frequently used slurs targeting the participant’s identity in the course of the offence. The language used was both offensive and overtly biased. In cases of criminal damage such expressions might be emblazoned on someone’s property. In two additional cases, participants referred to verbalisations of hostility on the part of offender, not during, but in the period before or after the offence.

¹⁵⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁶⁰ Ibid

¹⁶¹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

Gathering physical evidence

In five cases, all in relation to incidents involving criminal damage, interviewees pointed, not to language, but to a pattern of victim selection which spoke to a hate motivation. For example, two unconnected Black African-Irish participants spoke of criminal damage to their cars where, of all the cars parked in a row, only cars owned by Black people were vandalised. In the case of two crimes, the participant stated that they perceived them to be bias-related based on the fact that there was simply no other reason for the crime. In one case the offence was described as an unprovoked assault on the participant.

Evidence such as CCTV footage can be important to proving the hate element of a crime. In some cases, participants expressed frustration that the police did not respond in a timely fashion to their identification of CCTV or audio visual footage as important evidence. Participants reported that there was CCTV footage available in relation to five of the crimes reported and audio visual recordings either made by the participant or a witness in two further cases.

In one case occurring prior to the commencement of the Victims' Directive, the participant asserts that the police were very proactive in ensuring that they got access to the CCTV footage before it was deleted or overwritten:

"... they said they spoke to (company) and basically it's there for three days and then it's gone. So it happened (day) and it would have been gone by (day). But they spoke to (company) and they told them to keep it there. And they actually got the footage ..." (Victim of a crime pre Victims' Directive)¹⁶²

On the other hand, another participant who identified the availability of CCTV footage to the police states that they received a different quality of response.

Interviewee: No, he just told me they'll have a look at the CCTV, but as far as he's concerned this happens all the time, it was antisocial behaviour.

Interviewer: Was there any follow up then from the guards afterwards?

Interviewee: No. I did the follow up. I called in four times and I never heard back." (Victim of a crime pre Victims' Directive)¹⁶³

In this case the participant had had access to the footage and, having seen the faces of the offenders, believes that it was possible to identify them.

One of the participants who reported having to pursue the making of a statement, felt the investigation of their case did not commence until they had succeeded in doing so.

¹⁶² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁶³ Ibid

Thus they did not receive assurances from the police that they would examine the CCTV footage that was available in relation to their assault until two weeks after it occurred. A second individual reporting a crime occurring after the Victims' Directive took effect, reports precisely the same issue.

Two individuals cite the availability of audio-visual recordings made on a mobile phone. In one case the participant asserts that the police, arriving at the scene, attempted to stop them recording the crime which was in progress.

In the period from November 2015, half of the crimes reported had witnesses, however, participants were unaware of whether individuals present at the scene were approached by the police to provide evidence in all but two cases. In one of these cases the participant, who commends the response of what they refer to as "armed gardai", states that at least two witness statements were taken. In a second case, the participant states that they personally know a number of the witnesses, none of whom they assert were asked to make statements.

In relation to one crime reported prior to the commencement of the Victims' Directive, the participant asserts that there were long delays in obtaining statements from the suspected offenders whom they had identified to the police.

"So the guards came, they took a statement and they said because of the time of night or early hours in the morning, they can't go ... they're not allowed it's not like before. Now they've a new law they can't do that. So they'll come back and take statements from them. ... the woman they said she was on break it was maybe like a month later. And also I had to be calling and asking and what's happening - and they had not even gone to speak to the perpetrators and it's been a while now and this incident happened ..." (Victim of a crime pre November 2015)¹⁶⁴

Garda training

In other jurisdictions, hate crime training initiatives are provided to the police to support them in recognising and investigating hate crime and in some cases is a requirement for future police officers during training.¹⁶⁵ Police services in England and Wales have published guidance on investigating hate crime since 2000,¹⁶⁶ following on

¹⁶⁴ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁶⁵ Phylis B Gerstenfield, *Hate Crimes: Causes, Controls and Controversies* (Sage 2017)

¹⁶⁶ Association of Chief Police Officers (ACPO), *Guide to Identifying and Combating Hate Crime* (Home Office Police Standards Unit 2000). See also ACPO, *Hate Crime: Delivering a Quality Service - Good Practice and Tactical Guidance* (Home Office Police Standards Unit 2005) and the 2014 guidance, below.

from the Macpherson Report on the racist murder of Stephen Lawrence.¹⁶⁷ Currently, national guidance for officers in that jurisdiction is set out in the *Hate Crime Operational Guidance*¹⁶⁸ and the *National Policing Hate Crime Strategy*.¹⁶⁹ There is also a significant body of action plans and additional training materials at the national level,¹⁷⁰ developed with the assistance of external partners. Evaluation of progress is carried out by the national policing inspectorate.¹⁷¹ Furthermore, there is a plethora of materials on related matters such as equality, diversity, use of stop and search powers, treatment of victims, and specific strands of discrimination and hate ranging from transphobia to sectarianism. The *Hate Crime Operational Guidance* for officers in England and Wales is particularly thorough. It includes:

- agreed definitions of hate crime, with case study examples
- summaries of relevant legislation
- information on the individual strands of monitored hate crime
- reasons for under-reporting
- appropriate responses to hate crimes and incidents, and minimum standards for response, investigation and supervision. (Since 2005, hate crime guidance has emphasised recording not only hate crimes but also incidents which do not constitute a criminal offence¹⁷²)
- working with partner organisations and community engagement
- performance targets and indicators

¹⁶⁷ William Macpherson, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* CM 4262-I (TSO 1999)

<<http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>>

<<http://webarchive.nationalarchives.gov.uk/20131205132800/http://www.archive.official-documents.co.uk/document/cm42/4262/4262-II.htm>>

¹⁶⁸ College of Policing, *Hate Crime Operational Guidance* (2014)

<<http://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf#search=hate%20crime>>

¹⁶⁹ College of Policing, *National Policing Hate Crime Strategy* (2005) 2

<<http://www.college.police.uk/What-we-do/Support/Equality/Documents/National-Policing-Hate-Crime-strategy.pdf#search=hate%20crime>>

For Northern Ireland, see Police Service of Northern Ireland, *Service Procedure: Hate Crime/Incidents* (2016)

<https://www.psn.police.uk/globalassets/advice--information/our-publications/policies-and-service-procedures/service_procedure_01-16.pdf>

For Scotland, see Police Scotland, *Hate Crime: Standard Operating Procedure* (2016)

<<http://www.scotland.police.uk/assets/pdf/151934/184779/hate-crime-sop>>

¹⁷⁰ See e.g. Gail Mason, JaneMaree Maher, Jude McCulloch, Sharon Pickering, Rebecca Wickes and Carolyn McKay, *Policing Hate Crime: Understanding Communities and Prejudice* (Routledge 2017) 18-19.

¹⁷¹ Familiarly known as HMIC, its full title is now HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). See eg its three 'Winning the Race' reports in 1997, 1998 and 2001.

For Northern Ireland and Scotland, see the relevant thematic reports and reviews:

<<https://www.nipolicingboard.org.uk/thematic-reports>>

<<http://hmics.org/sites/default/files/publications/Thematic%20-%20pride%20and%20prejudice%20-%20race%20relations%20-%20jun%202003.pdf>>

¹⁷² Neil Chakraborti and Jon Garland, *Hate Crime: Impact, Causes and Responses* (2nd edn, Sage 2015) 119-20. A similar approach is taken in Scotland and Northern Ireland.

- specific areas such as hate crime around sports, inciting hatred, internet hate crime, and hate crime within the police services themselves.

The guidance also focuses on practical insights, such as advice on making positive first impressions when responding to victims from minority communities.¹⁷³ Applied training, however, is more variable. Other than online packages produced for the College of Policing by the National Centre for Applied Learning Technologies (NCALT), training is arranged service by service. Some police services provide additional local training,¹⁷⁴ but Trickett concludes that overall, training remains of varying quality, and warns in particular against focusing only on e-learning.¹⁷⁵

Our research shows that the lack of training is an enormous issue. Indeed, the requirement for training across the service was highlighted by a number of participants in our 2017 research:

“... you can train all the community guards as you say ... they're disposed towards that kind of thing. But then you're the Muslim lady and you're going into the counter above in [the local garda station] or whatever and you're meeting some guy that has no training, that's your first point, you know you're not going to jump in and meet the community guards straight away. So those are the people that need to be trained up and understand you know.” (Garda)¹⁷⁶

The potential for secondary victimization in this context was highlighted by one garda:

“But the harm ... can actually be amplified and it can be exacerbated by garda inaction or the perception of garda inaction.” (Garda)¹⁷⁷

Gardaí spoke to a number of issues they felt should be included in training. There was no general agreement on what should be included in such training, perhaps due to the fact that the gardaí we spoke to came from across a range of specialisations. However, the most common issue that gardaí stated should be included in training was the human impact of hate crime. This, gardaí felt was required not only to ensure members of the service were aware of the potential impacts of the crime on its victims, but also to raise

¹⁷³ Neil Chakraborti and Jon Garland, *Hate Crime: Impact, Causes and Responses* (2nd edn, Sage 2015) 157.

¹⁷⁴ See e.g. the Lancashire Police package summarised in HMCPSP and HMIC, *Joint Review of Disability Hate Crime Follow-up* (HMCPSP 2015) 28-29.

<<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/joint-review-of-disability-hate-crime-review.pdf>>

¹⁷⁵ Loretta Trickett, *Hate Crime Training of Police Officers in Nottingham: A Critical Review* (Nottingham Trent University 2016) 188.

<<http://irep.ntu.ac.uk/id/eprint/28089/7/5642Trickett.pdf>>

¹⁷⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁷⁷ Ibid

awareness more generally of the phenomenon, as well as ensuring that it is appropriately recognised during court proceedings:

“So again especially for ourselves prosecuting ... again I suppose the various effects it might have on injured parties and so on in case they don't give a victim impact statement. That guards when they're taking the statement off them, an injured party statement maybe if it's taken a few days later, they could say well look, to incorporate in that – what has happened since, and how they're feeling.” (Garda)

“Look, listen you're dealing with a victim here who is very sensitive to the motive for the commission of the crime more so than the actual substantive offence and for the police this is going to more sort of a sensitive type of approach to any other type of investigation.” (Garda)¹⁷⁸

From a more operational perspective, garda participants also spoke to the need to reinforce the perception test across the service:

“And that you know the basic, they've to understand that that person perceives that as a hate crime, that will be hate crime. Not up to the guard to decide or the witness, the witness can say it's a hate crime no problem, but it's not up to you to say 'Ah Jesus the window was broken, don't be worrying at all it's not because you're Black.' If he or she says I believe that window was broken because of my colour, we'll go along with that. You've got to tell the police office that. That can be difficult for some people to understand.” (Garda)

“I think there should be particular emphasis paid towards the Macpherson definition and how it is orchestrated in other jurisdictions and how other jurisdictions are dealing ... So an awareness of what's going on in other jurisdictions and where we wish to go I think would be better for policing.” (Garda)¹⁷⁹

Others emphasised the need for cultural and diversity training and awareness across the service:

“... if I'm a tax payer, I'm paying for those police to be trained sufficiently well and to be able to leave their biases outside the door or at least not to make them visible to me, that if I arrive in I expect I should get equal and equitable treatment. That for me is that every police officer should be in a position to deal with my issue.” (Garda)

¹⁷⁸ Ibid

¹⁷⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

“I think even on cultural things, knowledge is power really. If you know the cultural differences really between everybody at least you can relate to them a little bit better than not knowing, d'you know. Even we'll say as a female I would have come across Muslim men that probably wouldn't be very comfortable with me, you know I suppose I could have been offended by it but when you look at cultural differences ... d'you know can't really be offended as such.” (Garda)¹⁸⁰

Some gardaí emphasised the need for training on how to effectively investigate and prosecute a hate crime, in which the tools, policies and legislation available to gardaí should be presented:

“... what can we do in law. Because at the end of the day a crime is a crime. We have to prosecute ... we have to proceed with it and if we can prosecute, we can prosecute ... but I suppose it's just knowing what legislation is there to deal with it. We can take a report, we can be sympathetic to the injured party, we can treat them all equally as I said. But I suppose ... when it comes to us going back to the station, putting incident on PULSE and proceeding with it ... after we take the statement we have to know what legislation we can use. Because d'you know ... if you're prosecuting somebody it has to go to court and everything has to be right.” (Garda)¹⁸¹

This garda spoke of equivalent training in the context of domestic violence and sexual assault, and was of the view that those who interview victims of hate crime have particular training needs to ensure they ask questions to elicit the requisite information:

“... it's really important to understand that if somebody is stealing with a bias, you know we have to factor in they have feelings about that. They might feel ashamed, they might have other issues that they don't feel comfortable in coming forward. So I suppose we should be more sensitive but also kind of ... probing towards getting towards the root of the issue. I think that would require training in itself because if you're feeling particularly vulnerable and someone comes in like a bull in a china shop hitting you with all these questions. Like if you're dealing with a sexual assault you're starting with 'I have to ask certain questions that may make you feel uncomfortable. Please don't feel judged and if at any point you feel that we need to stop ... we will.' And every guard will do that when dealing with somebody of a sexual crime. If we could bring that understanding over to a hate crime arena I think it would go further. Because people don't want to address the elephant in the room, they don't want to say I'm going to say things and if you take me up wrong or if I communicate wrong ... definitely don't

¹⁸⁰ Ibid

¹⁸¹ Ibid

be afraid to ask the questions but again that's training. Sensitivity training, probing training." (Garda)¹⁸²

Only one garda we spoke to was of the view that they had sufficient training to accurately record, investigate and prosecute a hate crime. However, this person in explaining their approach to addressing diversity in the context of criminal investigation and prosecution, and explaining why they do not need training, stated:

"... just try to treat everyone equally. I know ... I'm not just rattling off buzzword but I think that is the only way to go and then ... I wouldn't treat anyone any different regardless of what their ethnicity is. That's the way I try and deal with it and try to be as professional as I can and if they think there was a hate crime in what they're reporting and I'd take it on board and I'd record it as well." (Garda)¹⁸³

New Garda Diversity and Inclusion Strategy

The An Garda Síochána Modernisation and Renewal Programme 2016-2021 committed to the development and implementation of a new Garda Diversity and Inclusion Strategy by Q3 2016.¹⁸⁴ The 2017 An Garda Síochána Annual Policing Plan committed to the implementation of a new Garda Diversity and Inclusion Strategy by Quarter 3 2017.¹⁸⁵ As far as we are aware, this later deadline has not been met. The absence of any updated plan in the context of the implementation of the Victims' Directive, the development of Garda Victim Services Offices, and the inclusion of increasing reporting as a Garda priority is to be lamented. In the absence of such a clear plan, with associated training and policies, it is unsurprising that there is such a lack of clarity around the reporting and recording of hate related incidents.

¹⁸² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁸³ Ibid

¹⁸⁴ An Garda Síochána, Modernisation and Renewal Programme (Garda.ie, 2016) 13
<http://www.garda.ie/Documents/User/Garda%20Strategy%20final%20%2014.7.16.pdf>

¹⁸⁵ An Garda Síochána, Annual Policing Plan 2017 (Garda.ie 2017)
<http://www.garda.ie/Documents/User/Policing%20Plan%20English%20Version.pdf>.

The Role of the ELO/LGBT Officer

The Garda Síochána Diversity Strategy and Implementation Plan 2009-2012 provides for the amalgamation of Ethnic Liaison Officers and LGBT Liaison Officer to one role, ELO/LGBT Officers. The role of such officers, according to the plan, include:

- Liase with representatives of all of the nine strands of diversity;
- Inform diverse community groups of the relevant local and national Garda support services;
- Support integration through involving the diversity population in Garda/Community social events;
- Attend Diversity Information Seminars and participate in online training;
- Ensure reporting of all consultation meetings to the Diversity Strategy Board.¹⁸⁶

In the context of hate crime, the Plan states that ELO/LGBTLOs should:

- “Assist, where required, in the investigation of racist and homophobic incidents and ensure appropriate support mechanisms are available to ethnic minority communities and the lesbian, gay, bi-sexual and transgendered communities;
- Monitor the recording of racist and homophobic incidents within the district on a weekly basis.” (sic)

The problematic language and exclusionary nature of this definition is a cause for concern. Further, given the fact that such officers, despite being called “ELO/LGBT Officers” were responsible for all nine strands of diversity with significant and diverse populations, including age, disability and “race”, the fact that the Plan explicitly and emphatically states, that the roles “are not full-time positions” is surprising.¹⁸⁷ This was remarked upon by one garda we interviewed:

“... the Ethnic Liaison Officer may be used for everything in the station. He or she could be just on call and reacting to the call, they don't have time to engage with you, they're under pressure for results. They're going for interview maybe and they have to get so many summonses in and they have to get so many penalty points, they have to get so many charges.” (Garda)¹⁸⁸

¹⁸⁶ Garda Síochána, *Diversity Strategy and Implementation Plan 2009-2012*, (An Garda Síochána, May 2009)

¹⁸⁷ Garda Síochána, *Diversity Strategy and Implementation Plan 2009-2012*, (An Garda Síochána, May 2009) emphasis in original.

¹⁸⁸ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

In fact, the merger of the two roles was criticised by the Garda Inspectorate which recognised that while the roles are similar, they deal with very different communities, with different training needs associated with each.¹⁸⁹ The Inspectorate recommended review of the decision to merge both roles, a recommendation we support. Further, as the 2009-2012 Diversity Plan requires ELO/LGBT Officers to be responsible for communities across all nine strands of Diversity, the complexities of the role are much more than simply the two roles highlighted. Despite this, the time allocated for training was not increased to accommodate the broader responsibility of the role:

“Interviewer: And its two days training to cover all nine grounds in the context of every aspect of that level of community policing?

Interviewee: Yeah.” (Garda)¹⁹⁰

In this context, while the Plan envisages appropriate and ongoing training being provided to such officers, not one individual we spoke with was of the view that such training was sufficient:

“It was more about speakers coming in telling their stories. But like, which is fine you got a picture of it but then how do you put that into practice. How do you put this model into practice? How do you sustain it, you take it away, you've all this information what do you do with it. That's the thing.” (Garda)

“You go to Templemore for a day and you listen to a couple of guys talking and you're trained. That's the extent of the training.” (Garda)¹⁹¹

It was also unclear who is responsible for training ELO/LGBT Officers, with both the Garda Racial, Intercultural, and Diversity Office (GRIDO) as well as the Training College in Templemore being mentioned as training providers. Those delivering such training were unaware of what was being taught by their counterpart in the other organisation, which potentially leads to confusion and mixed messaging, as well as duplication of efforts and thus a waste of resources and training opportunities.

Three gardaí we spoke to as part of our 2017 research did not know who the ELO/LGBT Officer was in their local area:

“Interviewer: how many LGBT or Ethnic Liaison Officers are based here?

Participant: I wouldn't know.

¹⁸⁹ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014)

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

¹⁹⁰ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁹¹ Ibid

Interviewer: Are there any?

Participant: See ... I left and I came back in [YEAR] ... everyone I knew retired”(Garda)

“Interviewer 1: Do you have Ethnic Liaison Officers here in (place)?

Participant: I think we do.

Interviewer 1: Do you have LGBT Liaison Officers?

Participant: I'm not sure about the LGBT, don't hold me on that.” (Garda)

One garda was of the view that there were none in their area, and that such officers were located in Dublin:

“Interviewer: And do you have Ethnic Liaison Officers and LGBT Liaison Officers?

Participant: In our division – no. No. I'd imagine that's in Dublin.” (Garda)¹⁹²

When participants in our research investigating *‘The relationship between An Garda Síochána and the trans community in Ireland’*¹⁹³ were questioned about their awareness of the role of LGBT Liaison officer, 65 per cent of survey respondents were unaware of the existence of the role of LGBT liaison officer/diversity officer within An Garda Síochána. The majority of focus group participants were equally uninformed regarding the position's existence. Although, almost 87 per cent of respondents had had contact with An Garda Síochána over the course of the previous 5 years, more than 83 per cent of the sample had never had any contact with an LGBT/diversity officer. Most of those with experience of LGBT liaison/diversity officers found them to be trans aware in contrast to the majority perception of An Garda Síochána as lacking trans awareness.

The Diversity Plan states clearly that ELO/LGBT Officers should assist where possible in the investigation of racist and homophobic incidents. However, any garda interviewed for our 2017 research, who discussed the role of ELO/LGBT Officers in the context of such crimes, was clear that their role was limited to victim support, and that they had no investigative function:

“... they were not directly involved in the investigation at the investigation stage but they were heavily involved in the victim management, victim statement stage...” (Garda)

“... the people that are in community engagement are seen as the soft side of policing and not terribly relevant to what's going on in the division that they're useful for holding hands and getting the good news stories, get the photo in the

¹⁹² Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁹³ Amanda Haynes and Jennifer Schweppe, *The relationship between An Garda Síochána and the trans community in Ireland* (TENI, forthcoming)

paper presenting the positive side of policing. But part of that they don't really add much value. The real value is out there catching the bad guys and putting out the parking fines and issuing summonses.” (Garda)¹⁹⁴

However, three experienced officers with knowledge of the work of ELO/LGBT Officers were clear that such officers should be more fully integrated into the investigative process:

“I think myself that if the Ethnic Liaison Officer was tasked with investigating it and bringing it to its conclusion, and training the Ethnic Liaison Officer up properly in how to investigate, how to bring it forward, and the Ethnic Liaison Officer is the contact ... person getting back to the victim. There’s that contact feedback to the victim and the whole lot. And I think the Ethnic Liaison Officer should bring it to its conclusion, bring it on that journey.” (Garda)¹⁹⁵

The Inspectorate recommends a review of the decision to merge the two roles.¹⁹⁶ This recommendation is welcome but does not go far enough: the skills needed for dealing with for instance disability hate crime¹⁹⁷ are different to those relation to, for example, anti-LGBT hate crime, and cannot be subsumed easily within these roles. We recommend a full scale review of the role of the ELO/LGBT Officer.

¹⁹⁴ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

¹⁹⁵ Ibid

¹⁹⁶ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014) Part 46 and Recommendation 6.19 <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

¹⁹⁷ Seamus Taylor, ‘The Challenges of Disablist Hate Crime’ in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave 2017) 224 and Jim Winter, ‘Intellectual Disability and Hate Crime’, also in in Amanda Haynes, Jennifer Schweppe and Seamus Taylor (eds), *Critical Perspectives on Hate Crime: Contributions from the Island of Ireland* (Palgrave 2017) 234.

Prosecuting crime

The Director of Public Prosecutions is now ultimately responsible for most prosecutions in Ireland, though the Attorney General, An Garda Síochána, some statutory agencies and citizens retain a right to prosecute in various circumstances.¹⁹⁸ The Prosecution of Offences Act 1974 guarantees that the Director is independent from government in the prosecution of offences, which the DPP has stated is essential to safeguard citizens against unjust or improperly motivated prosecutions.¹⁹⁹

Section 8 of the Garda Síochána Act 2005 provides that a Garda can prosecute cases in courts of summary jurisdiction, but only in the name of the Director of Public Prosecutions. Thus, members of An Garda Síochána have no independent powers of prosecution. Generally speaking, a member of An Garda Síochána can institute and conduct prosecutions in the District Court, whether it is a summary or an indictable offence. However, certain offences, though chargeable summarily, can only be prosecuted by An Garda Síochána with the consent of the Director of Public Prosecutions: charges under section 2 of the Prohibition of Incitement to Hatred Act 1989 are an example of this.²⁰⁰ Further, where the multiplicity of charges, the previous record of the accused, or other aggravating circumstances suggest that summary disposal would be inappropriate, or that a twelve month sentence would be inadequate, then the Garda should also consider forwarding the case to the DPP for consent to prosecute. Even where the case is of a summary nature, where the case involves an unusual question of law, where the charge is without recent Irish precedent, or where the matter has, or is likely to, arouse unusual public interest, the Garda is further encouraged to seek directions from the DPP.

Outside the Dublin Metropolitan District, summary prosecutions are normally presented in court by a Superintendent or Inspector of An Garda Síochána, whilst inside the Dublin Metropolitan District, “straightforward” prosecutions are presented by members of An Garda Síochána, whilst solicitors from the Office of the Director of Public Prosecutions will present more complex cases.

For this reason, gardaí were interviewed for our 2017 research project as prosecutors, but an unexpected theme arose during the course of the research: whether it was appropriate for gardaí to have this role, and whether there was a parity of arms

¹⁹⁸ Government Ministers are often given prosecutorial powers for summary cases in relation to offences under a particular Act relevant to their Department. For instance, s 272 of the Social Welfare (Consolidation) Act 2005 provides that proceedings for a relevant offence will only be instituted by or with the consent of the Minister for Social Welfare or an officer authorised by the Minister (Vicky Conway, Yvonne Daly and Jennifer Schweppe, *Irish Criminal Justice: Theory, Process and Procedure*, (Clarus 2010))

¹⁹⁹ Vicky Conway, Yvonne Daly and Jennifer Schweppe, *Irish Criminal Justice: Theory, Process and Procedure*, (Clarus 2010)

²⁰⁰ A full list of offences for which a member of An Garda Síochána must seek permission to prosecute are listed in General Direction No 3 issued by the Director of Public Prosecutions available here: Office of the Director of Public Prosecutions, SECTION 8 GARDA SEOCHANA ACT 2005 General Direction No.3 (DPP 2005) <http://dppireland.ie/filestore/documents/General_Direction_No._3.pdf>

between gardaí as prosecutors when the defendant is routinely represented by a solicitor and/or barrister. As this theme arose through interviewing members of An Garda Síochána, not all defence lawyers were probed on this issue. Of those that were, all participants observed that as trained legal practitioners, they had an advantage over garda members:

“Well you’ve got somebody who is a trained lawyer as opposed to somebody who ... he’s got to deal with some accident and emergency as well as know every single minute piece of law in relation to a relevant proof. Now, you get some exceptionally good guards who ... I go down there and I just know there’s not going to be any wriggle room there for me. But, you know, overall you know ... it’s difficult. I mean to go up against somebody who was trained in the law. It’s not balancing of arms do you know what I mean?” (Solicitor)²⁰¹

Indeed, two participants discussed the fact that they would use the lack of legal training on the part of the prosecuting garda to their advantage:

“I think it’s probably safe to say that I have definitely won cases where I think I shouldn’t have where had there been more informed legal knowledge on the other side, different arguments could have been made.” (Barrister – Defence)

“[In appreciating] the pertinence of what you would call ... a hate element to a crime, they might not be aware of that ... and I would say I’d be convincing enough to say to a presenting officer ‘this comment isn’t relevant to the charge before the court it needs to go out’. I’d say nine times out of ten quite possibly that would work.” (Barrister – Defence)²⁰²

Conversely, two participants suggested that gardaí abuse their position as prosecutors:

“... on a day that’s not the day the criminal matter is in court you know the guard might meet the accused person on the street and the accused person will say look whatever ... might have a chat and quite casually the guard will say oh yeah remember that matter I’ll withdraw it, I understand what happened and I’ll withdraw the case. So the person doesn’t attend court on that basis and the guard for whatever reason doesn’t withdraw it and there’s a bench warrant issued and then the person is picked up and taken into custody because they fail to appear when they ought to have appeared. So ... that would happen regularly enough. That would happen regularly enough.” (Barrister – Defence)

²⁰¹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

²⁰² Ibid

“I’m very conscious of the fact that Gardaí overegg in certain circumstances and particularly in the context of hearing, I have absolutely no doubt that situations as outlined in court bear no resemblance to reality.” (Solicitor)²⁰³

We spoke with a number of dedicated garda court presenters, as well as gardaí who had prosecuted their own cases in the District Court. Gardaí expressed mixed views on whether having members prosecute cases was a good or bad policy, summed up neatly in these two opposing views:

“So we’ve great interest in obviously because we’re involved in the detection of the thing in the first place the investigating of it in the second case and thirdly gathering all the evidence and I would say I have a great interest in making sure that we do the best we can to secure a prosecution. I know that the big argument against changing it was that you might not have the same level of commitment maybe coming from somebody that was just prosecuting along. And they had no interest or maybe no knowledge of how the case came about.” (Garda)

“It’s an unusual mix that you’re involved in the investigation and the prosecution. Probably a lot of ink been spilt on it over the years. There are certain conflicts potentially ... It’s probably desirable ultimately that there’d be a separation there. What the Gardaí have done is they have in as much as you can within a force the size of what we have, isolated the people that are involved in prosecution from investigation. So you’d never have situations where they’re mixed totally. But there’s an uncomfortable connection there all right yeah ... You can see where conflicts would arise. They’re involved in the investigation, they’re involved in the decision to institute proceedings and then ultimately they prosecute.” (Garda)²⁰⁴

Not one of the gardaí we spoke to believed that that training they had either prior to prosecuting their own cases, or prior to their role as a court presenter was adequate. Court presenters typically spoke about doing an examination prior to promotion and being eligible for the role, but they all stated unequivocally that they did not have sufficient training for the role. In answer to the question, “what training did you get”, typical answers were:

“Zero.” (Garda)

“I got none.” (Garda)

²⁰³ Ibid

²⁰⁴ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

“Participant: Pretty much watch and observe the prosecutors in the court house

...

Interviewer: So you had four days observation then you were ...

Participant: Thrown into the deep end...” (Garda)²⁰⁵

While some court presenters will have had previous experience prosecuting their own cases in the District Court, and thus will have been familiar with court practice and procedure to some degree, this would not always be the case:

“There are newly promoted inspectors there who have never been operational, don't have a clue ... And then suddenly they're in court and they have to just learn as they go. The promotions system is ridiculous in that way, people are just thrown in at the deep end.

Interviewer: I hadn't realised that that was a possibility.

Participant: So you could come from the [specialised] unit and you've always been a sergeant in [that] unit and then you could be in court presenting the next week. It's that bad.” (Garda)²⁰⁶

One individual said that he was aware of court presenters who were paying or had paid for further education by way of University or professional qualifications to ensure that they had appropriate training for the job:

“Participant: But basically they're up skilling themselves.

Interviewer: And they're paying themselves, so that they can do their job properly.

Participant: Correct.” (Garda)²⁰⁷

We then asked gardaí how they felt about prosecuting cases where the defence was represented by either a barrister or solicitor. The vast majority of gardaí we spoke to stated unequivocally that they perceived there to be an imbalance of legal expertise.

“Legal jargon, being honest you could get caught up ... you could get your hands tied because it could just go over your head. But the worst thing about it, you could probably know the answer to it ... but it's the legal jargon could confuse you. Obviously you have well educated solicitors who start using words and their previous experience on how to confuse maybe prosecuting sergeants and inspectors.” (Garda)²⁰⁸

²⁰⁵ Ibid

²⁰⁶ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

²⁰⁷ Ibid

²⁰⁸ Ibid

One court presenter was of the view that the role was the “least desirable part of the work”: when asked why, he responded:

“Interviewee: Because it’s very demanding. And there’s a fear factor in it.

Interviewer: What is that?

Interviewee: That’s you’ll do something wrong.” (Garda)²⁰⁹

Some gardaí stated that, were they presented with a legal argument they could not respond to, they would seek an adjournment in the case to have the issue considered by their superior, which, combined with the inevitable waiting for cases to be called, leads to delays in the system and a waste of garda and state resources.

Concerns about the role of gardaí as prosecutors have been expressed for many years: a report in 1985 found that some cases were being struck out in court because gardaí failed to appear to prosecute or produced inadequate evidence.²¹⁰ Observations of gardaí by the Garda Inspectorate reinforce concerns about competence:

“The Inspectorate found a wide variation in who actually presents cases in court and the abilities of those performing this role. The Inspectorate observed several members in courts and while most were very proficient, some lacked the skills to perform this role. ... Without any performance data available on individuals prosecuting cases, there is no evidential basis to identify those that are very good at securing convictions and those who have training needs.” The problem is not seniority of staff, but appropriate skills.²¹¹

The Report also notes that during visits to garda divisions, “the Inspectorate found that many district officers were not aware of the requirement to review unsuccessful prosecutions, and no evidence was provided that this takes place.”²¹² Other concerns voiced include the “[a]bsence of good data created and shared between the Court Service, the DPP, the Garda Síochána and other agencies involved in the prosecution process”²¹³ and the lack of resources to formally train officers at an early stage in their careers in the skill of disclosure of evidence for court cases and interviewing suspects, despite this being “a crucial skill required by all gardaí that are interviewing suspects

²⁰⁹ Amanda Haynes and Jennifer Schweppe, *Lifecycle of a Hate Crime: National Report for Ireland* (ICCL 2017)

²¹⁰ David Rottman and Philip Tormey, *Report of the Committee of Enquiry into the Penal System* (TSO 1985) cited in Ciaran McCullagh, ‘Crime in Ireland: Facts, Figures & Interpretations’ (1986) 75:297 *Studies: An Irish Quarterly Review* 11, 17. More recently, however, Caroline O’Nolan in *The Irish District Court: A Social Portrait* (Cork UP 2013) maintains that this is a problem only in the Dublin courts.

²¹¹ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014) Part 11, 32.

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

²¹² *Ibid* Part 11, 2.

²¹³ *Ibid* Summary, 37.

and preparing prosecution files”.²¹⁴ Delays in getting prosecutions to court²¹⁵ and some less serious cases lapsing altogether²¹⁶ are also highlighted.

The report notes, “[m]ost other jurisdictions have a clear line of separation between investigators and prosecutors” but adds that it nonetheless “supports the use of the court presenters ... The Inspectorate advocates that this scheme should, in the absence of a state prosecution scheme for district courts, not only deal with first hearings but also present all not guilty cases at district court level.”²¹⁷ It maintains however that presenters should be selected on skill levels and that more junior officers should be selected, rather than district superintendents and inspectors.²¹⁸ It added that the matter was to be reviewed in the Haddington Road report: this report is however now available and it does not appear to have been covered.²¹⁹

Furthermore, in a later report in 2015, the Inspectorate drew attention to the time spent on prosecuting cases and concluded that district court prosecution was one of the areas which might be suitable for transfer in the long run to the prosecution service²²⁰ or at least for regionalisation and amalgamation between divisions.²²¹ Although senior gardaí expressed the view to the Inspectorate that “conducting prosecutions allows superintendents to assess crime in their areas and to monitor the work of personnel within the district”, the report responded that “the Inspectorate does not believe that a superintendent needs to attend court to determine those types of issues.”²²²

In the shorter run, the 2015 report suggested, efficiency in prosecution could be promoted by the creation of the post of Superintendent Criminal Justice and Support responsible for prosecuting all district court cases in the division and for working with key criminal justice stakeholders such as the DPP, State Solicitors and local courts so that these partners would not have to contact several individual districts.²²³

²¹⁴ Ibid Part 6, 18.

²¹⁵ Ibid Part 11, 31.

²¹⁶ Ibid Part 6, 50.

²¹⁷ See also in Recommendation 11.17 “The Inspectorate recommends that in the interim, the Garda Síochána extends the role of the court presenters scheme to include all the prosecution role in courts, across all divisions.”

²¹⁸ Garda Inspectorate, *Crime Investigation* (Garda Inspectorate 2014) part 11, 32-33.

<http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

²¹⁹ See John Horgan, *Haddington Road Agreement: Review of An Garda Síochána* (2016)

<[http://www.justice.ie/en/JELR/Horgan%20Review%20\(Dec%202016\).pdf/Files/Horgan%20Review%20\(Dec%202016\).pdf](http://www.justice.ie/en/JELR/Horgan%20Review%20(Dec%202016).pdf/Files/Horgan%20Review%20(Dec%202016).pdf)>

²²⁰ Garda Inspectorate, *Changing Policing in Ireland: Delivering a Visible, Accessible and Responsive Service* (2015) 280

<http://www.gsinsp.ie/en/GSINSP/1286-ChangingPolicinginIreland_Low-Full.pdf/Files/1286-ChangingPolicinginIreland_Low-Full.pdf>

²²¹ Ibid 111-112.

²²² Ibid 280.

²²³ Ibid 103.

Conclusions and Recommendations

As can be seen across the findings reflected in this report, the manner in which the Irish police service is perceived and utilised by members of minoritised communities leaves much room for improvement. Across all projects, we see trust as a fundamental deficit. This conclusion is based on findings from a series of research projects, some of which indirectly addressed the issues of policing, and one of which was directly aimed at understanding the relationship between An Garda Síochána and the trans community. We also base our conclusions on data collected by the European Social Survey which measures the gap in trust in the police between members of the majority community, and members of communities which are discriminated against. We assert that an absence of trust is a grave issue, being a substantial impediment to the individual's capacity to activate their access to justice, a fundamental human right. Further, we argue that even the perception that one section of society has privileged access to justice is divisive and damaging to the social fabric.

To date, the approach of An Garda Síochána to policing and protecting minoritised communities has been piecemeal, looking at, for example, increasing numbers of recruits from underrepresented identity groups; improving reporting rates; and community policing. Moreover, these priorities share in common an outward focus, designed to activate, and arguably responsabilise, minoritised communities. While we fully support a participatory approach, we assert that it is equally, if not more, important that An Garda Síochána look inwards and critically evaluate the implications of its own internal policy and practice for minoritised communities. Moreover, it is essential that this process is addressed first and foremost with respect to the core activities of An Garda Síochána, that is, the recording, investigation and prosecution of crime. Equal access to justice requires that the policing and protection of minoritised communities must not emphasise community policing to the exclusion of operational policing.

To date, the needs of minoritised communities have been addressed in a piecemeal manner, which we argue has resulted in a fractured approach to diversity issues across the force, arguably contributing to inconsistencies in the experiences of minoritised communities of the police.

Two clear examples of this are first, the recording of what are referred to by An Garda Síochána as discriminatory motivation markers; and second, the role of ELO/LGBT Officers. An Garda Síochána have demonstrated a commitment to improving the recording of hate crime, having expanded the named categories (problematic as they are), and adopted the "perception test", also known as the "Macpherson test" for recording such crimes. However, in the absence of any meaningful definition of what a hate crime is; any training on the use of the marker; and any shared definitions of the protected categories; or any guidance as to how to investigate or prosecute hate crimes,

members of the force cannot be expected to reliably recognise and consistently address hate crime when they are faced with it. Indeed, our research findings show that, while a crime may be marked as having a discriminatory marker on PULSE, this will not necessarily be reflected in the investigation or prosecution of the case. Having completed two separate research studies which specifically address the treatment of hate crime in the Irish criminal justice process, we have identified that the hate element of the crime is - not in every case, but routinely - overlooked, minimised or excluded at the points of recording, investigation and prosecution. This leads to what EUFRA refer to as the filtering out of the hate element of the crime, or what we call the “disappearing” of hate crime from the criminal justice process.

The second example of the current fractured approach to addressing hate crime and diversity in policing is the operation of the ELO/LGBT Officer role. As the only specialist officer with an explicit remit in relation to hate crimes, this role is potentially a key resource in the investigation of hate crime and the accommodation and support of hate crime victims. However, numerous obstacles to the realisation of this potential have been raised across our research, including inadequate training; lack of availability of ELO/LGBT Officers when required by victims; a lack of awareness within the Force as a whole as to their presence in individual areas or stations; and the discounting of the investigative remit of the Officer. These issues, in and of themselves, require the role of ELO/LGBT Officers to be completely revisited. The side-lining of the specialist officer to a support role, to the exclusion of the investigate functions assigned to that position in garda policy, speaks particularly to the need for this review to focus on an integrated strategy for addressing hate crime.

Further, while all legislative frameworks (including the Equality Acts and the Criminal Justice (Victims of Crime) Act), and the discriminatory markers on PULSE, reflect a broad understanding of diversity, only ethnic groups (presumably broadly understood) and members of the LGBT community have dedicated liaison officers. Beyond the operational implications for minoritised communities’ access to justice, this imbalance creates a hierarchy of victims within minoritised communities.

We believe that the current approach of An Garda Síochána adopts a ‘vertical’ approach to diversity: PULSE has approached hate crime as a technical problem; human resources has an internal policy; GRIDO has a community policing role, as do ELO/LGBT officers; and GVLOs have a related but separate remit. This “vertical” approach to serving minoritised communities results in the current circumstances of a set of individual interventions which is atomistic and fractured, and none of which address the needs of minoritised communities in relation to the investigation and prosecution of crime., The last diversity strategy and implementation plan for An Garda Síochána expired in 2012 and has not been replaced.

We propose that diversity and inclusion should be a policing priority which operates horizontally across the force. A single policy should be introduced, which every member of the force must adhere to, and every branch of the force must respond to. This policy should address:

- positive action policies in recruitment and promotion;
- respect and dignity within the Force and its interactions with the community;
- online and hard copy communications policies in a range of languages (including sign language);
- community policing and minoritised communities;
- recognising and recording hate crime;
- policy regarding the recording of non-hate incidents and the signposting of appropriate services;
- the roles and functions of specialist officers and units;
- investigation of hate crime, including appropriate charges and related proofs;
- prosecution of hate crime, including policy on plea bargaining;
- victim support and accommodation.

Training must be rolled out across the force to ensure the implementation of the policy. Our comparative research across five European countries suggests that there is value in shared policy and training, such that discrete sections within the Force are aware of the manner in which all members must approach serving minoritised communities generally, and the phenomenon of hate crime specifically.

The policy should include specific targets, with timelines, the achievement of which should be monitored and reviewed. Further, and parallel to this, in line with recommendations from ECRI and EUFRA, we advocate the setting up of dedicated hate crime units across the country. More detailed recommendations regarding the operationalisation of these proposals are available in our published reports, and set out below.

A final issue which arose unexpectedly in our research relates to the prosecutorial function of An Garda Síochána. Leaving aside the enormous drain on resources which this represents, whether garda respondents were dedicated court presenters, or prosecuted cases as part of their ordinary duties, all were clear that they did not feel they had sufficient legal training to support them in prosecuting cases in court. Lawyers who defended clients in cases prosecuted by gardaí largely shared this perspective. We advocate a review of the prosecutorial role of An Garda Síochána and advocate transferring it to the Chief State Solicitors Office, and/or the Office of the Director of Public Prosecutions.

Specific recommendations:

General

- Publication of an updated Garda Diversity and Inclusion Strategy drafted in consultation with members of minoritised communities.
- Mainstreaming of training across the force on diversity and inclusion designed in consultation with members of minoritised communities.
- Mainstreaming of training across the force on hate crime designed in consultation with members of minoritised communities.
- The development of mechanisms to gather and publish data regarding the prosecution and sentencing of crimes which have been flagged as having a discriminatory motive.
- The inclusion of diversity awareness training within the foundational training programme delivered to all new recruits at the Garda College. Moreover, we recommend that this training be provided by members of minoritised communities.
- The inclusion of hate crime within the foundational training programme delivered to all new recruits at the Garda College.

Reporting and Recording

- All members of An Garda Síochána and GISC to be given access to documentation and training on protocols for recording a discriminatory motive in relation to both crime and non-crime incidents, including elaborated definitions of the recording categories and the perception test and protocols governing the circumstances in which a discriminatory motive should be recorded.
- The addition of recording categories for religion and for lack of religion or belief on PULSE.
- A public awareness campaign to encourage members of the public to report crimes with a discriminatory motivation and to ask for the discriminatory motivation marker to be selected when they do so.
- The discriminatory motivation question to be added to all non-crime databases and ELO/LGBT Officers and GVLOs are provided with contact details for authorities responsible for addressing common non-crime hate incidents.
- Training and resourcing of civilian victims' advocates within the minoritised communities who can accompany victims to make crime reports and to medical examinations necessary to the criminal justice process.

Investigation

- The development of protocols for the explicit communication of the discriminatory motive marker to the responsible investigator and the prosecution.
- Published guidelines on the investigation of a crime with a discriminatory motive.

- The development of a specialist hate crime investigation unit in each of the six Garda regions.
- Training on the investigation of crime with a discriminatory motive to be provided to all stakeholders involved in crime investigation.
- Full scale review of the role of the ELO/LGBT Officer
- An expansion of the number and range of specialist liaison officers available nationwide and a programme of continuous professional development for officers occupying these roles.
- The incorporation of specialist liaison officer roles into rostering arrangements, such that at least one specialist officer will be available 24/7 in each of the 109 Garda districts.
- The development of a formal link between the work of specialist liaison officers and the work of the Garda Victim Liaison Offices.

Prosecution

- The development of specific guidelines on prosecuting hate crime by the Office of the Director of Public Prosecutions, with particular reference to:
 - Considerations in determining whether to prosecute a hate crime
 - Introducing a hate element in court
 - Pre-trial discussions (plea agreements) in respect to hate crime
- Published guidelines for prosecutors working with victims, witnesses or offenders of a crime involving a hate element.
- Bespoke training for all prosecutors on identifying, recognising and prosecuting hate crime
- Full scale review of the role of gardaí as prosecutors.
- Joint training between investigators and prosecutors to identify and address shared challenges.