

Opening statement to the Justice Committee, meeting to discuss the Criminal Justice (Hate Crime) Bill 2021

on Wednesday, 17th November 2021 at 5.30pm

by [Dr Séamus Taylor](#), Head of Department of Applied Social Studies, Maynooth University

I welcome the Government's commitment to addressing Hate Crime as set out in the General Scheme of the Criminal Justice (Hate Crime) Bill 2021. The principle underpinning this bill and much of the substance is to be welcomed.

I have however, some specific concerns with the Bill. My concerns are based upon 25 years' experience in the equality and diversity, and criminal justice sectors in England and Wales, including serving as Director responsible for Hate Crime policy in the DPP's Office. Based on this experience, together with academic research, I am concerned that if specific issues are not addressed in the Hate Crime Bill, Ireland risks ineffective Hate Crime law. This would be a significant lost legislative opportunity for Ireland.

1. The most significant concern relates to Head 8 of the Bill which deals with determining whether an offence was motivated by prejudice. The proposed legal test of proof is a test of motivation. For most offences, proof of committing the offence is sufficient. The proposal here sets a different legal threshold for Hate Crime. The Department of Justice acknowledge that this is difficult. They indicate that without a successful way through this, it is unlikely that the legislation will be successful. A workable and effective way through this exists for 20 years (approx.) in England and Wales. Ireland risks ignoring effective law in our neighbouring jurisdiction. Instead, the Dept. of Justice appear to be proposing inclusion of bias indicators from which to adduce motivation. This is inappropriate, unduly complex and fails to learn from England and Wales. In England and Wales, the determination on whether an offence has a hostility dimension, rests on a legal test of proof based on whether a hostile motivation exists and or evidence of a demonstration of hostility. 20 years of implementation involving training, guidance, monitoring and reporting shows that Hate Crime cases, except for disability, now have similar success rates as 'regular' criminal cases.
2. I have further concerns in relation to Disability Hate Crimes. This also relates to Head 8. There is a significant issue of non-recognition of Disability Hate Crime within criminal justice systems. Hostile targeting of disabled people is routinely framed as vulnerability targeting or senseless crimes and full justice can be denied. My research identifies the need for a test of proof in Disability Hate Crimes, which provides for proof based on a hostile motivation and or a demonstration of hostility and or discriminatory selection of a victim by reason of disability. Anything less in legal provisions will not capture the range of challenges in recognising and responding to Disability Hate Crime.
3. The definition of 'hate' as used in the Bill should be inclusive of how it manifests for different protected grounds. The definition should also be inclusive of concepts such as hostility, prejudice, ill-will, contempt and detestation.
4. Further serious attention needs to be given to the use of bias indicators for hate crime and their location in the context of Hate Crime legislation. This also relates to Head 8. I recommend that bias indicators are not included on the face of the Bill. I recommend that inclusive consultation be undertaken on bias indicators. I recommend producing a good-practice guide on bias indicators across the protected grounds. It should be promoted widely amongst police, prosecutors, the judiciary, and civil society.
5. A final and by no means the least important consideration: Hate Crime legislation is non-discrimination legislation within the criminal law framework. It mirrors somewhat employment equality and equal status legislation in civil law. As part of the Good Friday Agreement (GFA) 1998, there is a commitment to parity of protection on the grounds of equality and human rights in Northern Ireland and in the Republic of Ireland. If this Bill is enacted as set out, there will be a higher legal threshold to be met for victims of hate crime in the Republic of Ireland than in Northern Ireland. This would not be in keeping with the GFA 1998.