



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION



**Investigation
Report**



Statistics

Aggravated by racial hostility	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
PSNI incidents	1047	976	990	1038	842	696
PSNI detections	101	86	96	115	71	77
PPS prosecutions**	NA	88	88	104	81	84
NICTS convictions, sentences enhanced	0	2	1*	0	2	1

* In this instance, the sentence was not enhanced due to mitigating factors.

** These figures do not include diversions (cautions, informed warnings and youth conferences) made by the PPS.



The "4 P's"

- Access to information regarding their rights and their case;
- Ensure victims can understand and be understood;
- Implement protection measures;
- Access to free and confidential support services.

PROTECT

- Accessible reporting;
- Accurate recording;
- Independent and expeditious investigation – the hate element;
- Prioritise the prosecution of racist hate crimes;
- Enable the victim to be heard during proceedings;
- Ensure a outcome within reasonable time frame.



PREVENT

- Ensuring safer communities
- Initiatives that promote good relations between communities;
- Measures that racial promote equality and non-discrimination;
- Data collection, and disaggregation.

PROHIBIT

- Prohibition of discrimination;
- Criminalisation of racist violence and racist hate speech;
- Sanctions must be effective – proportionate and dissuasive.

PROSECUTE



Prohibit



Criminal Justice (No.2) (NI) Order 2004, Article 2:

(3) an offence is **aggravated by hostility** if –

(a) at the time of committing the offence, or immediately before or after doing so, the offender **demonstrates** towards the victim of the offence hostility based on ... the victim's membership (or presumed membership) of a racial group; ... or

(b) the offence is **motivated** (wholly or partly) by hostility towards ... members of a racial group based on their membership of that group.

The lack of knowledge of the two-limbed nature of the legislation represented a major obstacle in ensuring the effective enforcement of the law.





Reporting

The 'Perception Test':

"Any incident, which is perceived to be racist by the victim or any other person."

Investigation

'Beyond reasonable doubt':

"Perception will not be sufficient in order to seek a conviction..."

Prosecution and judicial process

The 'Evidential Test'

Requirement to open case as hate crime in court

- **Limited understanding of the evidential burden concerning the racist element.**
- **Overemphasis on 'motivated' limb of legislation.**
- **Reluctance to alert judges to their specific sentencing powers.**



Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive to fundamental human rights.
[*Nachova v Bulgaria*, ECtHR (2005)]

- Impact on victim, the community they belong to; repeat victimisation; secondary victimisation
- Access to information
- Protection measures within and outside court
- Access to free and confidential support services

- **Difficulty in articulating why hate crimes have a more serious impact on victims and their communities.**
- **Victims received insufficient information on their case once the file had passed to the prosecution service.**
- **Difficulties in identifying victims of racist hate crimes for protection measures at court**
- **Limited knowledge of external support agencies**



The criminal justice agencies should introduce measures to ensure that staff are made fully aware that 'aggravated by hostility' under the 2004 Order, Article 2, includes both 'motivation' and 'demonstration' of racial hostility.



The PSNI should ensure that, in addition to an effective investigation of the base offence, equal attention is paid to investigating suspected racial hostility.



The PSNI should reaffirm among its officers that differential treatment of the victims of racist hate crimes is required to afford due recognition to the unique impact of racism.

The criminal justice agencies should introduce measures aimed at ensuring that victims of racist hate crimes are made aware of their right to access information regarding their case, including: that the offence was aggravated by hostility.



