



Briefing Note

Defining public duties to tackle incitement to hatred whilst respecting free expression: reviewing the legal & policy framework

A conference to address the 'threshold' and 'intervention' questions increasingly defined in human rights law as to when public authorities can or must act against speech and cultural expression in order to protect the rights of others.

Friday 13th October 2017 Canada Room, Queens University Belfast

- The focus of this conference is on *incitement to hatred* on protected equality grounds namely the racist, sectarian, homophobic, misogynistic etc expression (speech, graffiti or other displays, burning of items, online content etc) that may precede and create the context for 'hate crimes'. The focus is not on the 'hate crimes' attacks or their legal framework;
- There are a number of duties on public authorities provided for in international human rights law under the UN and Council of Europe instruments, and recent years has seen a more precise codification of threshold tests and developments in ECHR case law. In summary the conference will focus on the following areas of duties:
 - Outlawing the most serious forms of hate expression on protected grounds with a codified threshold test to differentiate from protected free expression;
 - Legal certainty over duties to intervene by the police and other public authorities to remove materials that incite hatred on protected grounds;
 - Duties on Councils and other public authorities not to sponsor or support events and actions furthering racist/sectarian/ homophobic/misogynistic/ etc expression, and to take reasonable steps to prevent such manifestations through the conditions on public funding;
- Northern Ireland has had incitement to hatred legislation since 1970. In 2015 one person was convicted under the legislation, relating to racist material on a loyalist bonfire, which was reported as likely to be the first conviction of its kind. More recently it has emerged there have been a total of 14 convictions in recent years. The current legislation is the Public Order NI Order 1987 which falls short of the stipulations of international human rights standards, and has been interpreted within a framework which sets the threshold for the offence very high. The Police (PSNI) currently have a policy of only intervening to remove materials if there is a serious risk to life or public safety. CAJ, the Chief Constable and Human Rights Commission have all called for the legislation to be re-examined. Further to a CAJ request the Justice Minister Claire Sudgeen MLA, initiated such a review within the Department of Justice before the collapse of the Northern Ireland Executive in early 2017;

International legal duties:

- Both protecting freedom of expression and prohibiting advocacy of ethnic and religious hatred have long been complementary aims of international human rights standards. Similar principles have increasingly been held to apply to such advocacy of hatred on other recognised protected grounds –such as sexual orientation, disability or gender/ gender identity. The question that has long been posed is how the boundary between the two is drawn i.e. the need to protect freedom of expression (speech but also other forms of expression including assembly-related expression and religious expression) on the one hand and restrict or sanction (administratively or criminally) hate expression on the other.
- As crude ideal types there have historically been on the one hand the Anglo-American model which gives greater primacy to free speech save when a very high ‘clear and immediate danger’ type threshold is met. On the other hand there is the model which gives greater primacy to restricting expression where necessary to suppress racist ideology and expression, a model more favoured in those European states which faced occupation by the Nazis. The UK historically has more reflected the former model. This is illustrated by its lodging and maintenance of an ‘interpretive declaration’ to Article 4 of the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) on positive obligations to tackle incitement and racist ideologies. This declaration does not however prevent the UK, or any of its constituent parts legislating to strengthen their respective domestic legislation, merely it states that the feels that the provisions of ICERD do not oblige it to do so (although the UN ICERD Committee takes a different view that the provisions are of mandatory character). The ICERD Committee had held, as has the Council of Europe, that sectarianism in Northern Ireland, should be considered as a specific form of racism, which attracts the protections and provisions of ICERD. Article 4 of ICERD provides that:

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

- The UK is also party to Article 20 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*”, and within the Council of Europe human rights system to Article 6(2) of the Framework Convention for the Protection of National Minorities provides that state parties will “*undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*”

- In addition to these grounds the same principles have been applied to a number of other protected non-discrimination grounds in hate speech laws, including Sexual Orientation, disability, gender, and gender identity. The (Council of Europe) European Commission against Racism and Intolerance (ECRI) has also produced a General recommendation (15) on combating hate speech. The preamble sets the regional context for this as:

Recalling moreover that Europe derives from its history a duty of remembrance, vigilance and combat against the rise of racism, racial discrimination, gender-based discrimination, sexism, homophobia, transphobia, xenophobia, antisemitism, islamophobia, anti-Gypsyism and intolerance, as well as of crimes of genocide, crimes against humanity or war crimes and the public denial, trivialisation, justification or condonation of such crimes;

And defines hate expression and its protected grounds as follows:

Hate speech for the purpose of the Recommendation entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”¹, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.

- The question of drawing the boundary between protected freedom of expression on the one hand and prohibiting advocacy of ethnic and religious hatred on the other has been debated internationally and locally for some time. ECHR jurisprudence has also long made clear that free expression is protected when it ‘*shocks, offends or disturbs*’² or is capable of ‘creating a feeling of uneasiness in groups of citizens or because some may perceive them as disrespectful.’³ But it does draw a distinction between this and expression which ‘*spreads, incites, promotes or justifies hatred based on intolerance*’⁴ or matters such as ‘*the promotion of discrimination or ethnic division*’⁵ Article 10 includes the ‘rights of others’ as one of its grounds for legitimate restriction. The rights of others includes other ECHR rights. It has been held under Article 8 of the ECHR (right to private and family life) that there is, under certain circumstances, a positive duty on the state to protect persons from racist expression⁶, providing both permissive powers and duties on the state to intervene to protect the rights of others in a number of contexts. In one case in the context of anti-Roma protests organised by right-wing groups in predominantly Roma neighbourhoods, in which a woman and her child had been subject to racist abuse, the Court reiterated the positive obligations under Article 8, including circumstances where there are duties to protect an individual from the acts of another.⁷

¹ The use of the term race in the ECRI recommendation is explained as follows: “Since all human beings belong to the same species, ECRI rejects theories based on the existence of different races. However, in this Recommendation ECRI uses this term “race” in order to ensure that those persons who are generally and erroneously perceived as belonging to another race are not excluded from the protection provided for by the Recommendation.”

² *Handyside v UK* 1976[49]

³ *Vajnai v. Hungary* (2008) [57].

⁴ *Erbakan v Turkey* (1999)[57].

⁵ *Vona v Hungary* (application no. 35943/10), (2013) [66]

⁶ *Aksu v. Turkey* [GC], application nos. 4149/04 and 41029/04, § 58, ECHR 2012.

⁷ *R.B. V. Hungary* (no. 64602/12) 12 April 2016 [99]

- The ECHR case of *Vona v Hungary* also related to anti-Roma marches, in this instance by the far-right Magyar Gárda grouping. The European Court cited the domestic judgments which regarded Magyar Gárda as having “*created an anti-Roma atmosphere by verbal and visual demonstrations of power*” and held public authorities are entitled to take restrictive measures “if the right to freedom of assembly is repeatedly exercised by way of intimidating marches involving large groups” and the measures are necessary to avert large-scale, coordinated intimidation related to the advocacy of racially motivated polices. The Court held, particularly when ethnic groups are singled out, the state can protect the right of targeted groups to live without intimidation. The Court emphasized that although there was no actual violence at the march, its paramilitary nature was problematic given as this meant the group’s discriminatory message was “accompanied by the physical presence of a threatening group of organized activists” and hence that it was capable of “conveying the message to those present that its organizers had the intention and the ability to have recourse to a paramilitary organization to achieve their aims, whatever they may be.” The Court contextualized this threat by reference to the historic context of the group’s association with past racist violence, and held that paramilitary demonstrations, accompanied by racist discourse, “must have an intimidating effect on members of a racial minority.” The Court considered that the repeated organization of the rallies was capable of intimidating others and affecting their rights and it elaborated that this was “notably given the location of the parades” which had been held in proximity to Roma populations. *Vona* referenced a concept emphasized in the domestic courts that Roma residents were a ‘captive audience’ of the parades and, given their locations they “had not been in a position to avoid [their] extreme and exclusionary views”. Ultimately the court upheld that the decision of the domestic authorities to outlaw the group had not breached Article 11 ECHR.⁸

- The emerging jurisprudence therefore points to a manner in which relevant standards could be codified to protect the rights of others in such circumstances, without becoming a further mechanism for the undue restriction of legitimate protests and expression. This risk and important distinction is explicitly recognized by CERD who state that:

The Committee observes with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention. States parties should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition.⁹

- There have been considerable international developments in recent years in codifying a threshold for intervention test, including the test provided for within the UN Rabat Plan of Action. The ICERD Committee has issued General Recommendation 35 which also codifies a threshold test. The ECRI has also produced a General recommendation (15) on combating hate speech, which also codifies in its explanatory notes a threshold test. This excludes matters such as ‘satire or objectively based news reporting and analysis’ from hate speech and provides a contextual test. The issue of a requirement of ‘intent’ to prove hate speech has been subject to considerable discussion and is provided for in the Rabat Plan of Action but not the ICERD or ECRI recommendation. The ECRI recommendation states that whilst ‘intent’ might be clearly present in some circumstances but may not always be easy to demonstrate – particularly when coded language is used, and sets out that the risks of relevant acts being incited depends on specific circumstances, and like Rabat and ICERD sets

⁸ *Vona v Hungary* (application no. 35943/10), (2013)

⁹ CERD/C/GC/35 General Recommendation 35, (Combating racist hate speech), paragraph 20.

out a number of key considerations, namely in the ECRI recommendation the need to consider:

- (a) the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked);
- (b) the capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders);
- (c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination);
- (d) the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate);
- (e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a “live” event); and
- (f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination).

Northern Ireland legal framework

- The conference is to focus specifically on the issue of countering expression and not the for increased sentencing for offences aggravated by hostility under Article 2 of the Criminal Justice (No. 2) (Northern Ireland) Order 2004. The latter is often referred to informally as ‘hate crimes legislation’. The Conference focus is also not on public relations campaigns against hate crimes, albeit that both areas are likely to be referenced and critiqued where it aids context.
- In Northern Ireland the topic has never been far from the headlines with heavily contested debates over high profile speech considered racist, sectarian, misogynistic or homophobic. The voices of those groups subjected to discriminatory expression are not always prominent in the debate. The purpose of the first panel in the conference is to discuss the harms and impacts of such expression on protected groups – to convey the seriousness of the problem and engage in the debates that whilst there may be many challenges to greater state intervention, not to do so arguably leaves unchecked the harms of such discourse on vulnerable target groups, and creates an ‘acceptable level’ of such discourse.
- There have been a range of significant controversies in recent years over and different formats in which they have manifested themselves. There have been high profile homophobic remarks by senior politicians, the cases of Pastor O’Connell, the Druids, parading and St Patricks Church and the burning of items on bonfires. This has been the case in summer 2017 with issues racist and sectarian slogans and items on bonfires having been particularly prominent. The medium for gender-based and some other hate expression has more prominently been that of social media and online abuse. Significant discourse around welfare changes and cuts has also marginalised and stigmatised protected groups, especially persons with disabilities.
- At the beginning of the modern ‘Troubles’ the former Stormont Parliament passed the Prevention of Incitement to Hatred Act 1970 (on the protected grounds of religious belief, colour, race or ethnic or national origins.) Despite widespread incitement fuelling the conflict, there was only one prosecution and no convictions under this Act. The Act was subsequently superseded by the Public Order (NI) Order 1981;

- The current legislation is Part III of the Public Order (NI) Order 1987 Part III of the Public Order (Northern Ireland) Order 1987 prohibits incitement to hatred. This covers offences of ‘stirring up hatred’ or ‘arousing fear’ against a group of persons on grounds of religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins. The categories of sexual orientation and disability were added in 2004. Gender is not a category in the legislation, nor is gender identity, although the PSNI do consider transphobic hate expression to be covered, presumably under grounds of sexual orientation (given as the perpetrators of such expression rarely make a distinction).
- Offences under this legislation include (with some caveats) threatening, abusive or insulting words or behaviour, or displaying written material which either intend to stir up hatred or arouse fear (on one of the listed grounds), or which, having regard to all the circumstances, are likely to have that effect. The legislation therefore already does not require proof of ‘intent’, rather defers to a contextual context. Summary conviction can carry a fine or up to six months imprisonment, or on conviction on indictment a fine or imprisonment for a longer term.
- In 2015 there was a high profile conviction relating to racist messages placed on a bonfire.¹⁰ Statistical data released by the police under Freedom of Information indicates there have only been a small number of arrests and charges under the legislation since its inception.
- In September 2015 the Chief Constable told the Northern Ireland Policing Board that the PSNI wished for a review of the legislation with a view to the legal regime being simplified. The Chief Constable urged the ‘legislative authority in Northern Ireland to consider this matter urgently.’¹¹
- The problem with the current legislation is that it is interpreted as setting a high threshold and neither the Public Prosecution Service (PPS) nor PSNI have any specific written guidance themselves on how to interpret its provisions. In our view this compounds the lack of legal certainty over the scope of Part III offences. The PSNI does have a Hate Crime Incidents Service Procedure and a Manual of Conflict Management, but these are limited to passing references to the PT III Offences. The PPS Hate Crime Policy 2010 is similar; the PPS do also have a short four-page document entitled the ‘stirring up offences’ under the Order, but does not currently reference any of the international law contextual tests.
- In 2014 the office of the Attorney General for Northern Ireland issued statutory human rights guidance to prosecutors.¹² This guidance references, for example the UN Rabat Plan of Action and includes the six-stage threshold test for incitement to hatred within the guidance. This provides therefore a framework the PPS should have regard to when considering charges under Part III of the 1987 Order.
- s37 of the Justice Act (Northern Ireland) 2011 outlawed, with a fine, ‘sectarian chanting’ at major sporting events along with chanting of an ‘indecent nature’ and chanting which “consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's colour, race, nationality (including citizenship), ethnic or national origins, religious belief, sexual orientation or disability”. There was considerable discussion during

¹⁰ See ‘X convicted over racist slogan on loyalist bonfire’ *BBC News Online* 8 September 2015.

¹¹ Northern Ireland Policing Board, Questions to the Chief Constable, 3 September 2015. ‘The placing on bonfires of election posters, effigies and other images of public figures (Pat Sheehan)’

¹² Guidance by the Attorney General for Northern Ireland pursuant to Section 8 of the Justice (Northern Ireland) Act 2004 No. 4 HUMAN RIGHTS GUIDANCE FOR THE PUBLIC PROSECUTION SERVICE Laid before the Northern Ireland Assembly on 21 March 2014.

the passage of the bill regarding its provisions and protecting free speech. There was also ultimately a removal of a definition of sectarian from the face of the bill.

- The Public Order (NI) Order 1987 repealed the Flags and Emblems (Display) Act (Northern Ireland) 1954 and there is no legislation *directly* regulating the private display of flags. There is the 2005 Joint Protocol in Relation to the Display of Flags in Public Areas in which the PSNI are the lead agency. The interagency protocol lists four reasons why flags are often displayed: the ‘celebration of cultural identity’, ‘marking of a festive event’, ‘sectarianism or intimidation’ or ‘marking out territory’. The latter two categories could correlate with the ‘rights of others’ exemptions permitted under ECHR Article 10. At present however the PSNI position is that it will not intervene unless there is a significant risk to public safety or life;
- Section 76 of the Northern Ireland Act 1998 provides a general prohibition on a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.
- Under section 75(2) there is a duty on designated public authorities in carrying out functions in relation to Northern Ireland to (without prejudice to the duty to promote equality of opportunity under s75(1) to “have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group”. Unlike the counterpart duty in Great Britain (under s149 of the Equality Act 2010) in which the good relations duty is defined as in particular concerning ‘tackling prejudice and promoting understanding’ across all protected grounds, the term ‘good relations’ is not defined in the NI legislation. There has also been significant criticism from Council of Europe treaty-bodies as to the interpretation of the NI duty. Nevertheless there have been more recent moves, including by the Equality Commission who have the statutory function to advise on the duty, to define the duty in a manner similar to GB legislative provisions – across the three existing protected grounds. The good relations duty can therefore be reasonably interpreted as providing for a legislative duty on public authorities in NI to tackle racism and sectarianism. There is also a similar duty on local councils (who are also subject to s75(2) to *inter alia* promote good relations between different ‘racial groups’ under article 67 of the Race Relations NI Order 1997.
- Anti-discrimination legislation also outlaws discriminatory harassment in, where applicable, employment and goods facilities and services, although there are gaps in these protections.
- The framework for regulating of parades in NI has also been subjected to a number of (ultimately aborted) processes for reform, flowing from both the Strategic Review of Parading (resultant from St Andrews Agreement) and the Draft Public Assemblies, Parades and Protests Bill 2010 (resultant from Hillsborough) and the recommendations for legislative reform that were to flow from the Stormont House Agreement. There have been calls for greater transparency within the framework in which decisions are made and the successive agreements have sought to more closely tie the decision making framework in the legislation to the ECHR – with particular reference to restrictions based on the rights of others rather than public order considerations. As such any reform to parading legislation would also have to grapple with similar ‘threshold questions’.
- There are therefore a number of areas where by the existing legislative framework in NI falls short of the stipulations of international standards such as ICERD, FCNM and the ICCPR.
- The legislation in Great Britain already differs to Northern Ireland in a number of ways and has been shaped by a different context. For example for a long time ‘religion’ was not included as a ground in Great Britain (until 2006- incitement to racial hatred having first been

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outlawed in 1965) – with the concern of the debate being that such measures may encroach on satire. By contrast the NI issue has been one of combating sectarianism. The related debate has also been different in Scotland.

The Conference

Following an introduction by the Equality Coalition Co-Conveners and a welcome by the former Justice Minister Claire Sugden MLA the first panel of the conference will focus on the Harms and Impacts of Hate Expression with a number of perspectives as to impacts on the protected groups in the existing legislation (ethnicity, religion, sexual orientation and disability) as well as a speaker on ‘gender’ which is not currently a ground in the legislation. Its participants are:

10.00 PANEL 1: Harms and Impacts of Hate Expression: Chair Patricia McKeown

- **Gavin Boyd**, the Rainbow Project; **Ellen Murray**, Sail; **Ola Sobieraj**, Stronger Together Network; **Anna Lo**, former MLA and Director of Chinese Welfare Association; **Dessie Donnelly**, Participation and Practice of Rights; **Dr Rachel Killean**, School of Law, QUB

This will be followed by a presentation by Dr Robbie McVeigh:

Presentation: Dr Robbie McVeigh – Independent Researcher: Equality Coalition research report ‘Incitement to Hatred in Northern Ireland’;

Session 2: will then focus on the Legal frameworks and the European Context with three plenary speakers:

- **Judit Geller, Senior Lawyer, European Roma Rights Centre:** anti-Roma parading and police intervention – the case law of the European Court of Human Rights;
- **Jeremy McBride, Barrister, Monckton Chambers, London and External Expert, ECRI:** ECRI (European Commission against Racism and Intolerance) General Policy Recommendation 15 on Combating Hate Speech;
- **Prof Jon-Mirena Landa, Director of the Chair of Human Rights and Public Authorities, University of the Basque Country UPV/EHU:** Incitement to hatred in Spain: the risk of political censorship;

There will then be a panel of public authorities Chaired by Professor Colin Harvey featuring:

- **Sinead Simpson**, Head of Crime and Community Safety Branch Department of Justice;
- **Paul Giannasi**, Head of the Cross-Government Hate Crime Programme, London;
- **Assistant Chief Constable, Mark Hamilton**, Police Service of Northern Ireland (PSNI);

The afternoon session will commence with a panel of political parties moderated by Professor Kieran McEvoy featuring the following MLAs:

- Mike Nesbit MLA, Ulster Unionist; Claire Sugden MLA, independent; Gerry Kelly MLA Sinn Féin; Clare Bailey MLA, Green Party; Stephen Farry MLA, Alliance; Colin McGrath MLA, SDLP, DUP (tbc).

There will then be four parallel workshops on the following subjects:

1. A Fresh Start for Parades, Flags, Identity, Culture and Tradition - factoring in countering hate expression and the rights of others?

The December 2014 Stormont House Agreement (SHA) provided for the establishment of a 15 member Commission on Flags, Identity, Culture and Tradition with a remit of producing, within 18 months, a report on 'flags and emblems and, as required, broader issues of identity, culture and tradition.' Following the November 2015 *A Fresh Start Agreement* the Commission was appointed in June 2016. The SHA also proposed looking at legislative options on 'remaining key issues' for Parading with a focus on 'proper regard for fundamental rights protected by the ECHR'. This was reaffirmed in the Fresh Start Agreement, which referred to the preparation of a discussion paper for the NI Executive. This workshop aims to discuss the engagement with the remit of both of these SHA initiatives with the subject matter of the conference, and how policy and legal frameworks for parading and the issues within the Commission's remit should factor in ECHR 'rights of others' considerations, including the countering of hate expression.

2. Countering Incitement to hatred on grounds of gender: a missing category

The Public Order NI Order 1987 outlawing stirring up hatred and arousing fear originally, reflecting ICERD, covered a number of indicators of ethnicity in NI (including nationality, religion etc). In 2004 the grounds of sexual orientation and disability were added. Gender however is not a category. In relation to transphobic expression, usually dealt with under 'gender identity', there has been some read into the legislation.¹³ Gender as a category and hence the protection of women from misogynistic hate expression is not however covered at all. Gender is a protected ground in 'hate speech' laws in a number of other jurisdictions, including South Africa, Canada, Netherlands, France, Chile and some Australian states, and is a referenced ground in the ECRI general recommendation. The types of harms and impacts that are the logic for protection of other protected groups that have been added are also to be found in the context of discourse that incites and provides the context for gender-based violence, hostility and discrimination. This panel will discuss the problems created by the exclusion of gender from the current legislation and legal framework, and the actions public authorities could take by way of remedy.

3. Free religious expression & countering homophobia, drawing the line

Article 9 of the ECHR guarantees freedom of thought, conscience and religion – this itself is not qualified, persons are entitled to think and hold the religious beliefs they wish to. Article 9 also provides for freedom to *manifest* religion. This is however qualified in much the same manner as freedom of expression and assembly are under Articles 10 and 11 ECHR. The manifestation of religion can be subject to proportionate restriction, provided this is no more than necessary and is set out in the legal framework, in pursuit of a number of listed legitimate aims, including the protection of the (ECHR and other human) 'rights of others'. This is particularly relevant in relation to the rights of LGBT persons not to face discrimination. There are a variety of viewpoints within persons of faith in relation to LGBT rights, with some faith groups supporting, for example, marriage equality and others opposed. Under the previous mandate the DUP, with some reported support from the Catholic hierarchy, proposed a 'conscience clause' to amend equality legislation to permit acts of discrimination on grounds of sexual orientation in goods, facilities and services, when undertaken for reasons of any religious belief. There is also religious discourse that veers to stating that persons of minority sexual orientation should not exist, that being gay is a 'sin' or even an 'abomination' that can or should be 'cured'. In the case of *Core Issues Trust v Transport for London* the courts upheld a ban on the former placing adverts on London busses implying persons could be cured from being gay, arguing that the 'rights of others' limitations on free religious expression, and the Council being duty bound to follow a properly defined 'good relations' duty to tackle homophobia, meant that the public authorities actions were compatible with the ECHR. This workshop will explore these issues as to where the line should be drawn between the categories of protected

¹³ (In the absence of a category reflecting gender identity the PSNI interpret the legislation as protecting transgendered persons (under grounds of 'sexual orientation', in the context that perpetrators often do not make a distinction between homophobic and transphobic expression).

manifestation of religious beliefs, homophobic discourse that should be discouraged or challenged by public authorities and homophobic hate expression.

4. What is the broader role of public authorities? Public funding and intervention

UN and Council of Europe human rights treaties on countering racism (which both bodies have held in NI includes sectarianism) contain a number of binding duties on public authorities to counter racist expression. This includes through the prevention of public funding for organisations and activities that involve racist/sectarian discourse and duties on public authorities (including councils and devolved bodies) to take effective steps to promote respect and tolerance; and counter acts of discrimination, hostility or violence. Article 4 UN ICERD provides that public authorities are to ‘undertake to adopt immediate and positive measures designed to eradicate all incitement to or acts of [racial/sectarian] discrimination’; ‘prevent the provision of any assistance to racist[/sectarian] activities, including the financing thereof’ and that public authorities (national or local) are banned from promoting or inciting racial discrimination. Article 6 of the (Council of Europe) Framework Convention for National Minorities obliges public authorities to “*encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media*” and to “*undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*” The legal and policy framework in Northern Ireland contains a number of gaps to ensure compliance with these duties. This workshop will explore the issues of public funding and the actions of public authorities in compliance with this framework.

There will be a final panel to close the conference.
