

Written Evidence submitted by Dr Mark Walters

1. Author Background:

A. Reader in Criminal Law and Criminal Justice, University of Sussex (<http://www.sussex.ac.uk/profiles/112655>). DPhil (doctorate) (criminology) specialising in hate crime and restorative justice at the Centre for Criminology, University of Oxford (2012). Currently involved in the following large research projects on hate crime: 1. Principal investigator (UK) - The Life Cycle of a Hate Crime (funded by EU DG Justice); 2. Co-principal Investigator - The Sussex Hate Crime Project: Indirect Impacts of Hate Crime (funded by the Levehulme Trust); 3. Co-investigator - Policing Hate Crime: Modernising the Craft (funded by the College of Policing/HEFCE)

B. Co-founder and co-Director of the International Network for Hate Studies (www.internationalhatestudies.com). The Network aims to provide an accessible forum through which individuals and non-academic organisations can engage with the study of hate and hate crime in a manner which is both scholarly and accessible to all.

2. Executive Summary:

The aim of this submission is to draw the Committee's attention to the need for law reform for hate crime, to provide recommendations for improving reporting and recording of hate crime, and to highlight current research evidence on responses to hate crime.¹

- The disparate and hierarchical structure of hate crime law is in need of reform. However, before the relevant legislation is amended the Government may benefit from awaiting the results of a full scale review of the legal process for hate crime currently being conducted at the University of Sussex.²
- Research shows that there is still a significant problem of under-reporting. Further training of police officers is required to improve identification (flagging) of hate crimes, while more efficient use, and implementation of, third party reporting agencies is needed (including via the use of online technology/ apps).
- More evidence is required on 'what works' in addressing the causes of prejudice-motivated crime in order to ensure that the Government invests in interventions that are evidence-based.
- There is some tentative empirical evidence illustrating how restorative justice can *help* to repair the harms of hate crime while also addressing its underlying causes.
- Both macro and micro level reform in criminal justice policy is needed if we are to move towards greater use of restorative and community-based interventions for hate crime.

¹ **NB:** Parts of this submission summarise findings and recommendations from the forthcoming report: Walters, M and Brown, R *Combating Hate Crime: Emerging practices and recommendations for the improved management of criminal justice interventions*, Crime Research Centre, University of Sussex and the International Network for Hate Studies, to be published later in September 2016. This report will outline the current evidence base on practices used to tackle hate crime and provides recommendations for better management of justice interventions.

² The University of Sussex is conducting a two year EU funded empirical study entitled, *The Life Cycle of a Hate Crime: Best practice in the prevention and prosecution of Hate Crime*. A final report will be due in Mid-2017.

3. Submissions:

A. The effectiveness of current legislation

There are a number of justifications for enacting hate crime legislation. Primary amongst these is the assertion that enhanced punishments attached to hate crime offences recognise the increased likelihood of the greater levels of harms caused to victims, minority communities and to the cohesiveness of society. Specific hate crime offences also provide an important declaratory and symbolic purpose as they send a clear message to the public that hate-motivated crime will not be tolerated. Some researchers has also argued that these laws help to provide longer-term educative deterrence, whereby over time the wrongfulness of hate-based conduct is reiterated through law enforcement, thereby filtering into public consciousness on the (un)acceptability of prejudice-based conduct.³

Hate crime legislation is additionally important to the effective implementation of justice interventions for hate crime. The codification of specific racially or religiously (for e.g.) aggravated offences means that justice agencies must officially record and monitor these types of offences. A number of policies, strategies and guidance notes have been introduced by criminal justice agencies across England and Wales to tackle hate crime.⁴ Although it is true that some of these policies may have existed without the enactment of hate crime statutes, it is much less likely that the policy and practice-based focus currently given to hate crime would exist without specific legislation. I therefore believe that hate crime laws are key to ensuring that interventions for hate crime are implemented by those agencies that are tasked with preventing crime.

i. Inequalities in hate crime laws

Not all of the five monitored strands of hate crime are included under each of the statutes dealing with hate crime. The fact that some characteristics are included under legislation while others are omitted is problematic for the effective administration of justice for all forms of hate crime. Currently ss 29-32 of the Crime and Disorder Act 1998 (England and Wales) prescribe for racially and religiously aggravated offences only (covering assaults, criminal damage, harassment/stalking, and threatening and abusive behaviour). This means that an assault aggravated by sexual orientation, transgender or disability hostility will not be prosecuted under the Act as an “aggravated offence” but will instead be prosecuted as a “basic offence” (e.g “common assault” as compared to “racially aggravated assault”). Note, though, that any offence where there is evidence of sexual orientation, disability and/or transgender hostility should instead be dealt with at sentencing where the judge “must” increase the perpetrator’s sentence under s 146 of the Criminal Justice Act 2003.

The Law Commission’s recent report on hate crime recommended that, in the absence of full-scale law review⁵, those groups currently not protected under the Crime and Disorder Act 1998 (England and Wales) (i.e., sexual orientation, disability and transgender) should be included under ss. 28-32 of the Act.⁶ This recommendation would ensure that all five strands

³ Walters, M.A. ‘Conceptualizing ‘hostility’ for hate crime law: minding ‘the minutiae’ when interpreting section 28(1)(a) of the Crime and Disorder Act 1998.’ *Oxford Journal of Legal Studies*, 34 (1). pp. 47-74.

⁴ See e.g. College of Policing. (2014). *National Policing Hate Crime Strategy*; Crown Prosecution Service (CPS). (2015). *Hate crime and crimes against older people report*.

⁵ As noted above the University of Sussex is currently undertaking such a review, The Life Cycle of a Hate Crime Project, to be completed in 2017.

⁶ Law Commission (2014) *Hate crime: Should the current offences be extended?*

Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316103/9781474104852_Print.pdf

of hate crime can be pursued in law as “aggravated offences”, meaning that more offences will be flagged on the Police National Database as “hate crimes”. This would, in turn, improve the chances of the hate-element of an offence coming to the attention of those agencies that are tasked with working with offenders post sentence and improve the familiarity of various types of hate crimes amongst criminal justice agents.⁷

However, one identifiable problem with this recommendation is that the Crime and Disorder Act 1998 covers a limited list of offences. For example, a significant proportion of disability hate crime offences involve property related offences and sexual offences.⁸ As these types of crimes are not covered by the Crime and Disorder Act 1998, disability hate crimes may still be left without adequate protection under the criminal law.

Recommendation:

All hate crime laws must operate to protect (both practically and symbolically) the most endangered groups in society. Parliament has already determined that there are five characteristics deserving of legislative protection from hate-motivated crimes. In order to avoid legal disparity between the protected characteristics the Government should seek to ensure that all types of hate crime are protected equally in law.

The committee should note that the University of Sussex⁹ is currently conducting a two year empirical study into the legal process (prosecution and sentencing) for hate crime. The study is examining the prosecution process (including practical application of the law and adherence to policies and guidelines) through to the sentencing of hate crime offenders (including application of sentencing provisions by the courts and average levels of enhancement to sentences). The project comprises a full review and analysis of hate crime case law, statistical analyses of sentencing outcomes, and 75 in-depth qualitative interviews with prosecutors, defence barristers, judges and magistrates throughout England and Wales.

It is recommended that the Government wait for the final assessment/report (to be published in mid-2017) before reforming the law in order to ensure that any amendments made are sufficiently evidence-based.

B. The barriers that prevent individuals from reporting hate crime, and measures to improve reporting rates

The under-reporting of hate crime remains a problem which may contribute to local climates in which some perpetrators feel that they can offend with a sense of impunity.¹⁰ The issue of under-reporting remains a significant limitation to the success of any hate crime prevention strategy. Previous analysis of CSEW data¹¹ found that under-reporting is due to the following reasons:

⁷ For an analysis of hate speech offences see Walters and Brown, above n 1.

⁸ Corcoran, H., Lader, D. and Smith, K. (2015). Hate crime, England and Wales, 2014/15. Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf

⁹ Principal investigator: Mark Walters, co-investigator: Abenaa Owusu-Bempah and research fellow: Susann Wiedlitzka.

¹⁰ Sin, C.H., Hedges, A., Cook, C., Mguni, N. and Comber, N. (2009). *Disabled people's experiences of targeted violence and hostility, Research Report 21*, Equality and Human Rights Commission. Available: http://www.equalityhumanrights.com/sites/default/files/documents/research/disabled_people_s_experience_s_of_targeted_violence_and_hostility.pdf

¹¹ Home Office, Office for National Statistics and Ministry of Justice. (2013b). *An Overview of Hate Crime in*

- Police would not/could not do anything (43%)
- Trivial/no loss (21%)
- Private/dealt with ourselves (12%)
- Common occurrence (10%)
- Dislike or fear of the police/previous bad experience with the police or courts (8%)
- Fear of reprisal (8%)
- Inconvenient to report (1%)
- Reported to other authorities (2%)

These findings suggest that over 50% of respondents do not report incidents because of their (potentially negative) perceptions of the police. While the police have made a number of improvements to the way that they respond to reported hate crimes since the Macpherson report was published in 1999, there remains much more work to be done in order to improve reporting levels.

Another problem identified by researchers from the Leicester Centre for Hate Studies is that many victims are still unaware of the term “hate crime”.¹² The police and other statutory agencies must therefore continue to work with local communities to promote understanding of hate crime and to encourage victims to report it.

In response to some of these issues local authorities and civil society organisations have established third-party reporting centres that offer victims an alternative 'safe' place to report incidents. Other national organisations such TellMama, the Community Safety Trust and Stop Hate UK also provide a reporting service, which help to further improve the monitoring of hate crimes throughout Britain.

However, recent research by the Equality and Human Rights Commission found that despite these numerous initiatives, very few people are actually aware that third party reporting agencies exist.¹³ Earlier research has also found that third party reporting centres in the north of England were rarely used and that awareness of them was either very low or non-existent.¹⁴

Recommendations:

In order to improve reporting levels and recording practices for hate crime a forthcoming co-authored report (*Combatting Hate Crime: Emerging practices and recommendations for the improved management of criminal justice interventions*)¹⁵ recommends the following:

- I. **On-going police training** should be implemented to ensure that officers are able to identify hate crimes and deal adequately with the needs of victims. A number of organisations provide tailored training in this regard including (amongst others) the Leicester Hate Studies Centre

England and Wales: appendix tables. Available: <https://www.gov.uk/government/statistics/an-overview-of-hate-crime-in-england-and-wales>

¹² Chakraborti, N., Garland, J. and Hardy, S.-J. (2014) *The Leicester Hate Crime Project: Findings and Conclusions*. University of Leicester. Available at: <https://www2.le.ac.uk/departments/criminology/hate/documents/fc-full-report>

¹³ Chakraborti, N. and Hardy, S.-J. (2015). *LGB&T Hate Crime Reporting: Identifying Barriers and Solutions*. Available:

http://www.equalityhumanrights.com/sites/default/files/publication_pdf/EHRC%20LGB%26T%20hate%20crime%20reporting%20research%20report.pdf

¹⁴ Wong, K. and Christmann, K. (2008), ‘The Role of Decision-Making in Reporting Hate Crime’, *Safer Communities*, vol. 7, no. 2, pp. 19-34.

¹⁵ Walters and Brown, above n 1.

(<http://www2.le.ac.uk/departments/criminology/hate/professional>) and Stop Hate UK (<http://www.stophateuk.org/training/>) who provide broad hate crime training provision, and many local, regional and national organisations that provide strand specific hate crime training, such as the EHRC partnered LGBT consortium hate crime training package.

- II. Linked to the above, training should be given to police officers and other criminal justice agencies on correctly **flagging hate crimes** on crime reporting systems. This is especially the case for disability hate crime where recorded levels are still disproportionately lower than their estimated numbers.
- III. Further investment should be considered in accessible and **user-friendly online technology**, including reporting apps, which may help to increase reporting levels among victims of hate crime. One such new app, “Self Evident”, is being promoted by the charity Witness Confident and is provided by social enterprise Just Evidence. It allows victims and witnesses of hate crime to report their experiences using a mobile phone or tablet. An evaluation of the Self Evident app carried out by Witness Confident found that the vast majority of users had positive experiences with it, with 94% rating positively their ability to report a crime by smartphone and 96% rating positively their ability to send evidence via the app to the police.¹⁶ Importantly, the evaluation found that over one third of users stated that they would not have reported the crime without the app (Witness Confident, 2016: 5).
- IV. **Multi-agency partnerships** should be developed where they do not currently exist, and maintained where they do, in order to provide a more holistic approach to identifying hate crimes. One method is for areas to use a “One Question Solution” approach to identifying hate crime victimisation. An example of this approach is found in Merseyside where the Fire Brigade has initiated a new approach to gathering information about the needs of local residents that extends beyond fire security. Officers ask individuals how they are and any information (such as people experiencing hate crime) can be shared (with the permission of the individual) with other local agencies.
- V. More work is needed on creating better awareness of **third part reporting**. A recent EHRC report notes that this should involve the use of “mainstream media and the minority press, developing poster campaigns in appropriate community venues and ‘hubs’, and utilising social networking sites such as Twitter and Facebook”.¹⁷ The authors of the report also recommend that agencies should consult with LGB&T communities about where to locate third-party reporting centres in order to improve accessibility amongst targeted groups.
- VI. Police services should **assess the viability of flagging all offences which have been specifically targeted against certain minority groups as “hate crimes”**. Supervising officers, who review the evidence in each report, would then make a final decision on whether the crime should be left with the flag or whether it should be removed - based on whether the victim/witness believed it to be motivated by prejudice or where there is objective evidence of prejudice or identity-based hostility. This will ensure that more hate crimes are accurately flagged at the investigation stage. Such an approach may be particularly useful for certain strands of hate crimes (e.g., disability based) where officers remain unsure about what evidence is required for an offence to be flagged as a hate crime.¹⁸

¹⁶ Witness Confident, (2016). *How New Technology is Enhancing the Service the Police Provide the Public*, Witness Confident, p. 7. Available: https://www.witnessconfident.org/images/How_New_Technology_is_Enhancing_the_Service_the_Police_Provide_the_Public.pdf

¹⁷ Chakraborti and Hardy, above n 11, p. 30.

¹⁸ See e.g. Criminal Justice Joint Inspection. (2013). *Living in a Different World: Joint Review of Disability Hate*

VII. Where perpetrators are sentenced for an aggravated offence to a term of imprisonment offences should be flagged as hate crimes on the **Prison National Offender Management Information System**. The importance of this measure is pivotal to establishing an accurate account of the numbers of convicted hate crime offenders, while also enabling post-sentence agencies to identify and address all types of hate-motivated crimes.

C. Challenging attitudes that underpin hate crime

There are currently a number of interventions that can be used pre and post-conviction that aim to address the underlying causes of hate crime.¹⁹ One such intervention is that of restorative justice. RJ practices generally employ inclusive forms of dialogue between stakeholders of a crime in order to more fully comprehend its causes and consequences. Collectively, the victims, perpetrators and their supporters determine how each of the affected parties can resolve the problems the incident/s has caused. It is common for the perpetrator to repair the harms that have been caused via some form of material, financial or emotional reparation (such as apologies, returning of stolen goods, financial compensation, or community work). Central to the restorative process is the development of empathy, i.e. the understanding and appreciating of other people's experiences and feelings. One factor that has been consistently shown to be associated with increased empathy is intergroup contact, which may help to reduce levels of prejudice across groups of individuals.²⁰ If members of different groups encounter each other under certain conditions – generally, those which do not exacerbate existing negative or unequal intergroup relations – then increased empathy, trust and decreased anxiety are commonly observed.

There are a growing number of restorative practices being used within and outside the criminal justice system to address crime, including (amongst others): victim-perpetrator mediation, family group conferencing, Neighbourhood Resolution Panels as well as a number of police-led restorative interventions, including conditional cautions and community resolutions. However, current CPS policy remains that conditional cautions should not be used for hate crime.²¹

The only study to observe restorative justice meetings for hate crime in England and Wales was published in 2014.²² The study is based on over 60 interviews with victims, restorative practitioners and police officers and 18 observations of restorative meetings. The research focused on two main restorative practices: Community Mediation, administered by the Hate

Crime. Available: https://www.justiceinspectors.gov.uk/cji/wp-content/uploads/sites/2/2014/04/CJI_DHC_Mar13_rpt.pdf

¹⁹ For a full review of these see, Walters, M and Brown, R (forthcoming) *Combatting Hate Crime: Emerging practices and recommendations for the improved management of criminal justice interventions*, Crime Research Centre, University of Sussex and the International Network for Hate Studies. For a review of the literature on causes of hate crime see, Walters M.A and Brown, R. (2016) *Causes and motivations of hate crime, Research report 102*, Equality and Human Rights Commission. Available: <https://www.equalityhumanrights.com/sites/default/files/research-report-102-causes-and-motivations-of-hate-crime.pdf>

²⁰ Brown, R., and Hewstone, M. (2005). 'An integrative theory of intergroup contact' *Advances in Experimental Social Psychology*, 37, 255-343.

²¹ See CPS Cautioning and Diversion guidelines, available: http://www.cps.gov.uk/legal/a_to_c/cautioning_and_diversion/

²² Walters, M. A. (2014). *Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms*, Oxford, Oxford University Press.

Crimes Project at Southwark Mediation Centre, South London and the Restorative Disposal, implemented by Devon and Cornwall Police since 2008.

i. Summary of findings:

Community Mediation: The majority of complainant hate victims interviewed (17/23) stated that the mediation process directly improved their emotional well-being. Most participants indicated that their levels of anger, anxiety and fear were reduced directly after the mediation process. Notably, 11 out of 19 separate cases of ongoing hate crime incidents researched in Southwark ceased directly after the mediation process had taken place. A further 6 cases stopped after the community mediator included other agencies within the mediation process. These included schools, social services, community police officers and housing officers.

Police Restorative Disposals: Unfortunately the positive findings reported from Southwark were not repeated for the restorative policing measures used for low-level offences by Devon and Cornwall Police. Just seven (half) out of the 14 interviewees stated that they were satisfied with the outcome of their case. The study also found that only seven out of the 14 interviewees felt that they were provided with an opportunity to explain how the incident affected them – a key aspect of restorative justice. Only four out of the 14 participants stated that they felt the RD helped to repair the harms caused by their targeted victimisation.

ii. Avoiding the risks when using Restorative Justice for hate crime

A number of potential risks must be carefully considered when using RJ for hate crime. The most significant concern is that restorative meetings might cause re-victimisation by bringing victims and perpetrators together via direct meetings. Qualitative research with victims and practitioners suggests that re-victimisation is very rare however.²³ Re-victimisation and power differentials are important considerations for practitioners facilitating restorative justice interventions. In order to minimise power divisions and to reduce the risk of re-victimisation the following processes should be incorporated:

- Thorough preparation of participants before any direct dialogue took place. This involved outlining the aims and objectives of RJ meetings, to rehearse dialogue, and to ascertain whether perpetrators would re-vocalise their prejudices in direct meetings
- Ground rules at the start of meetings outlining any unacceptable language and behaviour during meetings
- Arranging for other participants to take part who supported the participant, but not the prejudice/s that were central to the case, including: school teachers, sports coaches, friends, and family members.
- Using indirect mediation meetings, allowing participants to talk and for an agreement to be reached between participants without them directly meeting.
- Meetings should be facilitated by fully trained and dedicated practitioners. Agencies should avoid using RJ as a quick fix by partially trained justice practitioners.

Recommendation:

Both macro and micro level reform in criminal justice policy is needed if we are to move towards greater use of empathy-based or rehabilitative interventions for hate crime. At the micro level, the CPS should remove their objection to the use of conditional cautions for hate

²³ Ibid, Ch 4.

crime offences. Other front line service providers should also now provide RJ as an option for those hate crime victims who wish to participate.

The move towards greater use of community-based and restorative interventions across Britain must be embedded in policy and practice if such interventions are to have any long-term impacts on the way in which the justice system operates. Agencies that invest more of their time and resources on these types of intervention will enhance their chances of more effectively addressing the causes and consequences of hate crime. This recommendation is not to suggest that hate crime should not be dealt with as a serious form of offending under hate crime legislation. It is, instead, a call for agencies to make greater use of alternative justice interventions in conjunction with the legal provisions, or to utilise them in cases where prosecution is not possible.