

# Barriers to Investigation of Gender-Based Hate Crimes in the United Kingdom (UK) and Ireland: An Empirical Study

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## Key points

- This paper provides an overview of the obstacles to the successful investigation of gender-based hate crimes (GBHC) in the UK—England and Wales— and Ireland.
- This paper and its recommendations are informed by primary, qualitative research with law enforcement officials in England and Wales and Ireland, working in the areas of gender-based violence and gender-based hate crimes.
- GBHC are explained and its parallels with gender-based violence as well as its impact victims<sup>1</sup> and communities are analysed.
- Five barriers to the investigation of GBHC in the UK and Ireland are identified, namely: the absence of legislation; underreporting; institutional police culture and operational infrastructure; the evidential burden; and the lack of targeted resources. Proposed interventions pertaining to each barrier can be found at the end of each section.
- This policy paper advocates for: the introduction of specific legislation developed with an intersectional approach; a nationally recognised definition; a national reporting mechanism; increased police diversity; inter-agency collaboration; an awareness-raising campaign; targeted resources and specialised training.

## Introduction and background

Gender-based hate crimes (GBHC) are an undefined and ambiguous category of hate crime and are thus a rapidly evolving area for academics and policymakers. This policy paper provides clarity on how GBHC are defined, identified, and investigated in both England and Wales, in the UK, and Ireland. These two jurisdictions were chosen to facilitate a comparative approach as: a) they are neighbours sharing a common language and legal system; and b) because the concept of gender in relation to hate crime is currently on the political agenda in both jurisdictions. This analysis is timely considering not only the so-called ‘shadow pandemic’ of domestic violence against women and girls, which worsened during the Covid-19 pandemic and related restrictions (Mlambo-Ngcuka P 2020). The killings of Sarah Everard (BBC News 2021) and Ashling Murphy (Irish Times 2022) also prompted renewed public engagement and social and political discourse about gender-based violence and violence against women.

## Methodology

Empirical data were gathered via ten semi-structured interviews with law enforcement officials, working in the area of hate crimes, in the summer of 2021. Five interviewees were from the UK and five were from Ireland. Law enforcement was the chosen sample as the impact of legislation is, to a large extent, determined by those implementing it on the ground. Six interviewees were male and four were female. The interviews aimed to ascertain how GBHC incidents are recorded and dealt with, even in the absence of specific GBHC legislation.

## What is gender-based hate crime?

Hate crimes are ‘criminal offences committed with a bias motive’ (OSCE Office for Democratic Institutions and Human Rights [ODIHR] 2020: 9). Hate crime legislation often provides for a list of ‘protected characteristics’, for example, ethnicity, religion, sexual orientation, etc. A protected characteristic is a characteristic shared by a group of people which is ‘fundamental to their identity’ (ODIHR 2020: 9). A hate crime victim is targeted because they possess, or appear to possess, one of these protected characteristics. Gender-based hate crimes are hate crimes in which the bias motivation is the gender of the victim, i.e. gender is the protected characteristic.

While some jurisdictions differentiate among hate crimes based on ‘sex’, ‘gender’, ‘gender identity’ and ‘sexual orientation’, this paper refers to gender as an evolving and changing concept that encompasses intersecting elements of sex, gender, identity, and sexuality (Yahyaoui Krivenko 2020). The category of GBHC can thus include hate crimes against gender non-conforming, gender diverse and LGBTI (lesbian, gay, bisexual, transgender and intersex) individuals and groups, members of feminist associations, sex workers and so on. Yet, the researchers are aware that the concept of gender has been at times used in an exclusionary fashion by women’s rights activists. Intersectionality is an important consideration in the understanding of GBHC, as gender identity is interwoven with other characteristics, and a victim may be targeted because of this intersectionality, e.g. targeted as a Black woman, or a Muslim woman. An intersectional approach has been found to improve the quality of policymaking (Lombardo and Rolandsen Agustín 2016).

## Gender-based violence versus gender-based hate crime

The concept of GBHC is still new in law, policy, and research. Traditionally, gender-based violence (GBV) and violence against women (VAW) were treated as separate from hate crime in research. Scholars argue, however, that using a hate crime approach gives (male) violence against women an elevated legal significance (Brown 2004) and shifts the focus away from the victim’s conduct to the actions of the perpetrator (Walters and Tumath 2014), both of which may encourage survivors to report their victimisation (Mason-Bish and Duggan 2020) The majority of research participants interviewed had favourable attitudes towards the inclusion of gender-based violence under the umbrella of hate crimes.<sup>2</sup>

## **Current legislative frameworks**

### **Ireland**

Hate crime legislation does not currently exist in Ireland, although it has long been called for (Schweppe, Haynes and Carr 2014) and a Criminal Justice (Hate Crime) Bill 2021 has been introduced by the Minister for Justice and is currently before Parliament (Oireachtas).<sup>3</sup> The Minister for Justice reiterated her intention and efforts to publish the Hate Crime Bill in the wake of Ashling Murphy's killing in January 2022 (Schweppe, Haynes and Carr 2014). If passed in its current form, it would cover eight protected characteristics, including gender.<sup>4</sup> The Irish police force (An Garda Síochána) can, however, record incidents as 'hate-based' where necessary and have adopted a working definition of a hate crime as 'any criminal offence which is perceived, by the victim or any other person to, in whole or in part, be motivated by hostility or prejudice, based on actual or perceived age, disability, race, colour, nationality, ethnicity, religion, sexual orientation or gender'.<sup>5</sup> Thus, the Garda working definition of hate crime includes gender. The Gardaí use the 'perception test' in relation to hate crimes; if the victim, or any other person, perceives that the criminal act was motivated by hate, then it must be recorded as such.

### **UK (England and Wales)**

In England and Wales, hate crime is prohibited under several statutes: the Crime and Disorder Act 1998; the Public Order Act 1986; and the Criminal Justice Act 2003 (Barker K and Jurasz 2019). However, these statutes do not specifically refer to gender as one of the protected characteristics of the victim. Despite this, guidance from the College of Policing in 2014 stated that the five currently protected characteristics were the minimum categories,<sup>6</sup> thus allowing some police forces to record GBHC on an ad hoc basis, including at least one where a UK-based research participant worked. Interview participants suggested that public and political opinion has shifted in the UK in recent years towards including gender as a protected characteristic in hate crimes. The reasons behind this shift include the rise of involuntary celibate (INCEL) movements, the escalation of abuse levelled at women and girls online, the misogynistic element of white supremacy ideology, and the general failure of current government policy countering gender-based violence. Following the killing of Sarah Everard in March 2021, the House of Lords asked the police to start recording crimes motivated by misogyny.<sup>7</sup>

### **Impact of GBHC**

As with all hate crime, GBHC not only harms the victim (direct impact), but also harms the community who share that characteristic (e.g. women) at large (indirect impact) (Craig 2022). Furthermore, victims of GBHC may face secondary victimisation through the criminal justice response (ODIHR 2020:15). The direct impact of hate crimes on the actual victim is also additionally traumatic because the victim is targeted due to an inherent aspect of their identity (Brown 2004). Therefore, the impact is psychological over and above any physical impact. This greater harm caused by hate crime in contrast to 'traditional' crime is one of the main arguments for supporters of hate crime legislation (Al-Hakim and Dimock 2012:588).

## Obstacles to investigation

There is a lack of extant research evaluating the investigative and prosecutorial efforts in relation to GBHC. Barriers to the successful investigation of GBHC, as constructed from the first-hand, empirical data, are set out below.

### 1. Lack of legislation

The police are an arm of the state and can only operate within the extant legal framework. The absence of specific GBHC legislation was flagged by research participants as the most challenging obstacle to the investigation of GBHC. Without specific legislation, investigators are operating in a vacuum. While hate incidents in Ireland can currently be charged as ‘traditional’ offences e.g. assault, harassment, sexual offences, public order offences, interviewees were concerned that patterns of GBHC cannot be documented or tracked under the current ad hoc system. In the UK, GHBC is *not* one of the five centrally monitored hate crime strands, thus similar concerns were raised by research participants working in the UK. Precursors to escalated violence are missed when there is no way to record GHBC in police systems.

The majority of interviewees supported the potential (Ireland) or hypothetical (UK) introduction of new hate crime legislation that would explicitly list gender as a protected characteristic. Even in instances where interviewees would not personally support it, they acknowledged that police forces would abide by any new introduction of legislation in this area. Previous research suggests that the existence of clear law and policy supports the successful investigation of hate crimes (Phillips 2009; Turpin-Petrosino 2015).

**Proposed intervention:** Introduction of legislation in Ireland and the UK explicitly including gender as a protected characteristic, utilising an intersectional approach to understanding hate crime victimisation.

### 2. Underreporting

The chronic underreporting of hate crimes and sexual violence is well documented (Fernández-Fontelo, Cabaña, Joe H, et al. 2019; Lantz, Gladfelter, Ruback 2017; Morabito, Pattavina and Williams 2019). Underreporting was identified as a significant challenge for all hate crime, but GBHC in particular. Apart from the absence of legislation, contributing factors to this lack of reporting include a lack of public confidence in the justice system and a lack of awareness among victims, law enforcement, and society at large.

## *2.1 Lack of confidence in police and the justice process*

Underreporting was attributed to a lack of trust in police forces by more than half of the research participants. Regarding the transgender community especially, there are ‘legacy issues’ in relation to the historical relations between certain groups and law enforcement. Problems such as fear of further stigmatisation, trauma, the potential of exposure to potential further attacks, slow and long criminal proceedings, and language and cultural barriers also emerged as obstacles to victims’ willingness to cooperate with the criminal justice system in both jurisdictions. It was hoped that a new online reporting mechanism in Ireland would increase reports from those who otherwise would not report a GBHC to the police in person. This new mechanism was launched towards the end of the data collection period on 21st July 2021.<sup>8</sup>

The relationship between the police and the community has been identified as a key ingredient in the effective translation of hate crime policy into policing action (Perry 2010). Participants argued that increased police diversity and an increased emphasis on community and neighbourhood policing would improve information gathering and foster confidence in policing. Similar suggestions for addressing the lack of reporting have also been proposed by previous research in this area (Balboni and McDevitt 2001; Walfield, Socia and Powers 2017).

**Proposed intervention:** Increased police diversity, increased community policing, and more effective outreach to marginalised groups, in order to combat underreporting in this area.

## *2.2 Lack of awareness*

The Garda working definition of hate crimes was only established in 2019. Society at large needs to be aware that some crimes can be hate crimes based on gender in order to increase reporting. Low-level harassment based on gender (cat calls, etc.) may be so normalised that there is a lack of awareness of hate crimes. Victims may not identify themselves as victims of a hate crime (Chakraborti, Garland and Hardy 2014). This was reflected in the Irish Minister for Justice’s recent statement where she acknowledged that part of the solution to gender-based violence lay outside the criminal justice sphere.<sup>9</sup> Definitional ambiguities also hamper police awareness. Determining whether an incident qualifies as a hate crime in the first place is a massive barrier to effective hate crime policy enforcement.

**Proposed intervention:** An awareness-raising campaign to inform the public and potential victims of what constitutes a GBHC.

**Proposed intervention:** A nationally recognised definition of GBHC to assist law enforcement in their investigative efforts.

### 3. Institutional Culture and Operational Infrastructure

Officers' personal prejudices and beliefs affect the investigation of GHBC and hate crimes in general (Franklin 2002; King, Messner and Baller 2009). While the perception test is important in addressing this, police prejudice is still a problem. While the interviewees did not flag major issues with police bias in their responses, it was acknowledged that the discretion afforded to police officers make investigations subjective. Furthermore, the nature of investigations is impacted by individual leadership. The length of time it takes to investigate GBHC relative to other crimes can be a barrier if the institutional culture prioritises quantity of cases solved.

In addition to individual subjectivity, the social organisation of police forces also has consequences for how officers enforce hate crime law (Martin 1995; Martin 1996). Prioritising hate crime within police departments has been found to encourage reporting and investigation (Nolan and Akiyama 1999; Nolan and Akiyama 2002). Furthermore, when a clear and established policy is in place, it has been found to override differing opinions about the nature of a particular crime amongst police officers (Balboni and McDevitt 2001:15). There is heterogeneity between forces in the absence of coherent national policy on GBHC. To promote an operational infrastructure conducive to the investigation of GBHC, interviewees called for robust reporting mechanisms and inter-agency collaboration in relation to GBHC in Ireland.

**Proposed intervention:** Increased inter-agency collaboration in relation to GBHC.

### 4. Evidential Burden

The successful prosecution of a hate crime rests on proving, beyond a reasonable doubt, not only the crime (actus reus) but also the hate motivation (mens rea) (Barker and Jurasz 2019). Almost all participants were acutely aware of the difficulty of evidencing the bias element in court (in the Irish context this was a hypothetical scenario). All Irish interviewees explicitly noted that the perception test is insufficient to ground a conviction.<sup>10</sup> This highlights a real disconnect between the importance of the perception test during the investigation, and the need for concrete evidence of bias or prejudice during the prosecution stage in court. Disillusionment with this disconnect was expressed. The importance of victim evidence at trial in these sorts of cases was highlighted, which the literature has extensively problematised in relation to perceived victim credibility (Menaker and Cramer 2012; Mindthoff, Goldfarb and Behre 2019).

Hate crime investigations, like all investigations, are guided by the perceived likelihood of success at trial. The internal filtering process was mentioned by two interviewees as a barrier, as if the investigation officer is unable to convince a superior officer of the bias element, the case may not even reach the prosecution stage.

In terms of the proposed Irish Hate Crime Bill, interviewees were satisfied with the proposed two-tier approach. The hate element of the crime would be an 'add-on' to an existing crime, so

that even if the hate crime element failed to be sufficiently proved in court, a conviction could still proceed on the original charge.

**Proposed intervention:** Urgent passing of the Hate Crime Bill by the Oireachtas to allow for GBHC to be prosecuted in Ireland.

**Proposed intervention:** Establishment of national reporting mechanisms in both the UK and Ireland that include gender amongst their protected characteristics.

## 5. Resources and training

Legislation needs resources for it to operate effectively. This point came across strongly in the interviews. Interviewees were concerned that new legislation, or other potential reforms, would ‘front-load’ more work onto the already overburdened police. Manning’s (1997:32) classic account of police work echoes this point; the police are subject to ‘ever-increasing public demand for a level of public order and crime prevention they cannot possibly fulfil’. There was also a general call for increased and specialised support for victims of GBHC and hate crimes more broadly.

Specialised training has a huge impact on the identification of hate crimes (Hardy and Chakraborty 2020; Trickett and Hamilton 2018). The impact of training, or the lack thereof, on recording hate crimes was mentioned by all interviewees. Also mentioned was the inconsistency in training amongst departments and jurisdictions. Additional training was hypothesised to bolster police officers’ confidence in investigating such crimes. A new, mandatory, hate crime training module had been completed in Ireland as of July 2021, and was in the process of being rolled out to the entire organisation in Ireland at the time of data collection.

**Proposed intervention:** Increased resources specific to the investigation of GBHC, e.g. the establishment of specialised hate crime units, trained interpreters, and victim support.

**Proposed intervention:** Specialised GBHC training to be rolled out to police departments nationwide in both Ireland and the UK.

## Conclusions

This policy paper corroborates findings from other studies on hate crime, arguing that the current legislative frameworks in both the UK and Ireland are inadequate in tackling hate crimes with a gender bias. This paper identified barriers to the successful investigation of

GBHC in the UK and Ireland and proposed interventions to address these barriers. Also, of note from the empirical research that this paper draws from is the tendency to assume that GBHC or GBV refers exclusively to male violence against women. This mirrors advocacy research, which tends to rest on the same assumption. This paper stresses the importance of valuing the perspectives of frontline stakeholders when suggesting proposals for reform. This paper strongly supports using a survivor-centred and intersectional approach to addressing hate crimes, which is cognisant of and attentive to the various elements that intersect in shaping a victim's understanding and experience of hate crimes.

## **Summary of Proposed Interventions/Recommendations**

1. Introduce legislation in Ireland and the UK explicitly including gender as a protected characteristic. The legislation should be inclusive of gender in its broadest interpretation and having a category of 'other' to allow for new and evolving forms of hate crimes.
2. Increase police diversity, increase community policing, and conduct more effective outreach to marginalised groups.
3. Launch an awareness-raising campaign to inform the public and potential victims of what constitutes a GBHC.
4. Call for a nationally recognised definition of GBHC to assist law enforcement in their investigative efforts.
5. Increase inter-agency collaboration in relation to GBHC.
6. Establish national reporting mechanisms in both the UK and Ireland in relation to GBHC. Reasonable accommodation should be provided in reporting mechanisms. The new Irish online reporting system should be evaluated and adopted in the UK if successful.
7. Increase resources specific to the investigation of GBHC, e.g. the establishment of specialised hate crime units, trained interpreters, and victim support. These resources should address the inconsistencies between policymaking and policy implementation.
8. Launch specialised GBHC training which should be rolled out to police departments nationwide in both Ireland and the UK.

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<sup>1</sup> We mainly refer to victims rather than survivors throughout the article in order to include victims of fatal GBHC.

<sup>2</sup> For a more detailed discussion, please see our article: Gagliardi, S., Valverde-Cano, A., & Rice, O. 2022. Identifying and understanding barriers to investigation of gender-based hate crimes: Perspectives from law enforcement in Ireland and the United Kingdom. *Criminology & Criminal Justice*. 0(0). <https://doi.org/10.1177/17488958221120885> .

<sup>3</sup> <https://www.gov.ie/en/speech/4d9d1-dail-statement-by-minister-for-justice-helen-mcentee-on-violence-against-women/> (accessed 04 October 2022).

<sup>4</sup> In July 2022, the Minister of Justice of Ireland had announced her commitment to pass an amended version of the 2021 Hate Crime Bill by September 2022 with the aim of enacting it by the end of the year. See more: <https://www.gov.ie/en/press-release/0f17e-minister-mcentee-to-update-new-hate-crime-legislation-to-make-it-easier-to-secure-prosecutions-and-convictions/> (accessed 04 October 2022).

<sup>5</sup> <https://www.garda.ie/en/crime/hate-crime/what-is-hate-crime-.html> (accessed 04 October 2022).

<sup>6</sup> Available at: [https://www.report-it.org.uk/college\\_of\\_policing\\_publishes\\_new\\_hate\\_crime\\_gu](https://www.report-it.org.uk/college_of_policing_publishes_new_hate_crime_gu) (accessed 04 October 2022).

<sup>7</sup> In December 2021, the Law Commission for England and Wales published a long-awaited report on hate crimes where it decided not to include sex and/or gender as additional protected characteristics in its hate crime legislation. Prominent hate crime scholars working in the UK commented on this decision noting that: ‘[T]his is a missed opportunity to create a framework of hate crime laws that operates to prevent all types of prejudice-based criminal conduct; as evidenced under the Commission’s own criteria. The failure to include gender or sex sends out a clear message that prejudice directed towards women is not considered worthy of the specific label of hate crime (...).’ See more: <https://internationalhatestudies.com/a-response-to-the-law-commissions-hate-crime-law-final-report/> (accessed 04 October 2022).

<sup>8</sup> Please find information on the online hate crime reporting mechanism here:

<https://www.garda.ie/en/reportahatecrime/> (accessed 18 October 2022).

<sup>9</sup> <https://www.gov.ie/en/speech/4d9d1-dail-statement-by-minister-for-justice-helen-mcentee-on-violence-against-women/> (accessed 04 October 2022).

<sup>10</sup> At the time of writing, the Minister of Justice of Ireland had issued a statement noting that: ‘(...) motivation alone in proving hate crime offences can be difficult to establish and therefore might not result in a conviction. A demonstration test means simply that a perpetrator demonstrates hatred towards a member of a protected group/characteristic at the time of an offence being committed (...). In practice, it means that by using a demonstration test, the prosecution does not necessarily have to get inside the mind of a perpetrator to prove the crime but can use a demonstration test as an alternative method of proving a crime committed is a hate crime within the provisions of the legislation.’ See the full statement: <https://www.gov.ie/en/press-release/0f17e-minister-mcentee-to-update-new-hate-crime-legislation-to-make-it-easier-to-secure-prosecutions-and-convictions/> (accessed 04 October 2022).