



Article

# Identifying and understanding barriers to investigation of gender-based hate crimes: Perspectives from law enforcement in Ireland and the United Kingdom

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## Abstract

This article is an exploratory study presenting empirically based analyses of gender-based hate crime policy and practice from the perspectives of law enforcement officials in Ireland and England and Wales, in the United Kingdom. Despite increasing awareness of victims of gender-based hate crimes, robust legislation and successful investigation and prosecution of these offences remain rare. By developing a critical, evidence-based understanding of the factors impeding effective investigation of gender-based hate crimes, this research provides an early foundation for a more rigorous, survivor-centred approach. This article examines and problematises concepts and norms relating to gender-based hate crimes in law and policy. It analyses the significance of gender in hate crime legislation and examines the relationship between gender-based violence and gender-based hate crimes. Drawing on two case studies, this article suggests ways to refine and redirect law enforcement efforts to improve the quality of outcomes in criminal cases and the quality of survivors' experiences.

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**Introduction**

Gender-based hate crimes (GBHC) are an undefined and, at times, ambiguous category of hate crime and an evolving area of study in criminology, criminal law, human rights, and gender studies. This article seeks to provide clarity on their conceptualisation, identification, recording and the barriers to their successful investigation, from a law enforcement perspective, in both Ireland and England and Wales, in the United Kingdom. The research hopes to contribute to ongoing efforts to pass and amend hate crime legislation in both jurisdictions by offering practical and actionable insights from law enforcement officers from both Ireland and the United Kingdom (UK). Analysing two separate jurisdictions facilitates the comparison of distinct approaches. These neighbouring jurisdictions were chosen as both share a common language and legal system. Thus, developments in one are generally of interest to stakeholders in the other. A discussion of GBHC is timely considering what the United Nations (UN) have dubbed the ‘shadow pandemic’ of domestic violence and violence against women and girls that has worsened due to ‘lockdowns’ associated with Covid-19 (John et al., 2020; Mlambo-Ngcuka, 2020). Furthermore, the killings of Sarah Everard (UK) and Ashling Murphy (Ireland) in 2021 and 2022, respectively, have placed the relationship between gender and victimisation to the fore of social and political debate.

Law enforcement officials were chosen as the research sample as the impact of legislation is greatly determined by who is responsible for implementing it on the ground (Lipsky, 1980). Thus, analysing how GBHC are currently registered and investigated by frontline officers, if at all, is useful for understanding the future potential impact of additional legislation and policy. Understanding what is meant by GBHC in law enforcement practice will also assist in developing a survivor-centred approach.<sup>1</sup>

Ten semi-structured interviews were conducted via secure online platforms between May and July 2021 with relevant law enforcement authorities working in the area of hate crimes, five from Ireland and five from the UK (operating in the jurisdiction of England and Wales). Six interviewees were male, four were female and they ranged in age from 26 to 61 years. Eight interviewees were police officers and the remaining two were civilians employed by their respective police force. Their experience working on hate crimes in policy, training or investigative police work ranged between more than 1 year and over 40 years.<sup>2</sup> Interview questions included, inter alia, how police recorded hate incidents in the absence of specific hate crime legislation or (gender-specific) protected characteristics; how they would define a GBHC and whether they found this category to be useful to address this type of crimes; whether and how they differentiated between instances of GBHC and gender-based violence (GBV); which process individual police officers attending an incident used to differentiate between a ‘traditional’ offence, such as an assault, and a hate-based motivated offence; which communities were most targeted by GBHC; whether specialised training on hate crimes was offered to police officers in either country; whether specialised units and/or interpreters were

present in the respective police force to deal with hate crimes; what the main barriers in investigation and prosecution of GBHC were; their views on the list of protected characteristics to include in hate crime legislation; what a survivor-centred approach vis-à-vis GBHC would look like; what the law enforcement and judicial institutions could do to better address GBHC and what the international community and civil society could do to assist states to confront GBHC.

The interviews were transcribed and reflexive thematic analysis was employed to analyse the data (Braun and Clarke, 2006, 2019). After familiarising themselves with the data, initial codes were generated inductively by the researchers. In the second phase of coding, categories were developed, under which sub-categories were listed. From the categories, the researchers then identified themes, which are developed throughout the article to inform the findings. These indicate, *inter alia*, the urgent need for national specific legislation, a rethinking of the evidential burden at trial, resources and specialised training to effectively address the ‘shadow pandemic’.

The structure of the article follows the main themes identified from interviews. The first section serves as an introduction providing context to the study. The second section discusses participants’ conceptualisation of gender in hate crimes and elaborates on the relationship between GBHC and GBV. The third section discusses intersectionality in hate crimes. The fourth section illustrates participants’ views on the impact of GBHC. The fifth section is dedicated to current hate crime definitions and legislation. The sixth section reflects on barriers to investigation of GBHC and the final section provides concluding thoughts.

## **Conceptualising gender in hate crimes and the relationship with GBV**

While some jurisdictions differentiate among hate crimes based on ‘sex’, ‘gender’, ‘gender identity’ and ‘sexual orientation’, this article 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, although the researchers are aware that the concept of gender has been at times used in an exclusionary fashion by women’s rights activists.

With few exceptions, interviewees tended to interpret GBHC to mean male violence against women. Indeed, this tends to be the position in advocacy efforts to address gender-based crime (Carpenter, 2006). This may be because women and girls are more likely to be victims<sup>3</sup> of GBV, and men more likely to be perpetrators (Walters and Tumath, 2014). P6 (male, Ireland) acknowledged this tendency: ‘Our gender definition includes gender identity, transgender, intersex, you know, gender expression, gender exploration. So, I mean, when I speak about female, I obviously mean all these other categories as well’.

The concept of GBHC is still new, and traditionally, GBV and violence against women (VAW) were treated as a separate phenomenon in research and policy. As Walters and Tumath (2014) note, scholarship on VAW has remained separate to scholarship on hate crime, despite ‘the gendered nature of many forms of VAW’ (p. 565). Boyle (2019) is

critical of the term VAW, as she argues it ‘problematically implies women’s vulnerability rather than men’s responsibility’ (p. 20). Scholars argue 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). For example, P1 (male, UK), mentioned that Merseyside police have included attacks on sex workers as hate crimes in a bid to encourage reporting by this group.

Effectively shifting the ‘wrongness’ of and the ‘responsibility’ for the offence from the victim to the perpetrator would amount to a paradigm shift for victims, legal practitioners, law enforcement and wider society. Interviewees were split, but the majority tended to include gender as a protected characteristic under the hate crime umbrella. For example, P3 (female, UK) argued that ‘if you think of GBV as motivated by someone’s gender . . . in my head, it fits within hate crime definition. If you’re being targeted for your gender, that means that there is a hate element’. P4 (female, UK) and P9 (male, Ireland) expressed similar sentiments. However, P6 (male, Ireland) stressed that domestic violence should not be treated as a GBHC as it is not always motivated by hatred of an entire community. P1 (male, UK) was also wary that the inclusion of rape or misogyny in the definition of a hate crime in the United Kingdom would ‘hamstring’ efforts to legislate for it.

## **Intersectionality**

An intersectional approach, which examines and understands people’s lived experiences through a prism of interwoven identities, has been found to improve the quality of policymaking (Lombardo and Rolandsen Agustín, 2016). When discussing where gender might fit in hate crime legislation, the theme of intersectionality came across strongly. P3 (female, UK) remembered being involved in research where victims explained that they were ‘being targeted for their religion, for their sexual orientation, but also for being a woman’. For some research participants, ‘increased intersectionality’ made one more vulnerable to victimisation: ‘The more intersectionality there is in a human, the more likely that they are going to be a victim of hate and if you’re a woman then more so because you are more vulnerable than a man’ (P4, female, UK). Participants were conscious that cases where the hate motivation is intersectional may be even more complicated from a prosecution perspective (P7, male, Ireland). Ireland does not yet have hate crime legislation, but currently in the United Kingdom, gender may be recognised as an important component of hate crimes directed at other characteristics, for example, sexual orientation or race, even though gender on its own is not nationally recognised (Mason-Bish and Duggan, 2020: 115).

## **The impact of GBHC**

The additional impact and trauma that victims of a hate crime suffer (Brown, 2004) was specifically acknowledged by nine interviewees. P1 (male, UK) referred to the 2020 England and Wales crime survey where 36% of those surveyed stated that they were more affected by a hate crime incident than other crime strands.<sup>4</sup> P10 (female, Ireland)

recognised that ‘a victim of a hate crime is different to a regular victim and needs different supports’. As P8 (male, Ireland) noted, referencing the impact of a hate crime, ‘it’s not just physical, it’s not just the assault, it’s not just the criminal damage. It’s psychological’. As P2 (male, UK) put it, ‘it is the personalised nature of hate crime, you know, is why the sort of impact of trauma is so much greater than other crime types that are not necessarily directed at the individual because of who they are’. Hate crime victims are targeted because of an inherent aspect of their identity. Two interviewees drew attention to the fact that the impact of a hate crime extends beyond the primary victim. The effect, by the very nature of the crime, extends to the wider targeted community and causes secondary victimisation (Craig, 2002). P3 (female, UK) commented that ‘hate crime can have [a] wide impact on community and community cohesion’, while P7 (male, Ireland) noted that such a ‘signal’ crime ‘deeply impacts the community as well as the individual victim’. This greater harm caused by hate crimes in relation to other ‘traditional’ crimes is one of the main arguments for defenders of hate crime legislation (Al-Hakim and Dimock, 2012: 588). More than half of the interviewees in both contexts identified the Transgender community, in particular, as the one most at risk and the least likely to report an incident of GBHC. This was explained due to a societal lack of awareness of the Transgender community and their lived experiences, a poor legacy of relations between the police and this community and the latter’s low trust in legal protection mechanisms.

## Hate crime definitions and legislation

While hate crime legislation does not currently exist in Ireland, a Criminal Justice (Hate Crime) Bill 2021 was introduced in April 2021 by the Minister for Justice and is currently before Parliament (*Oireachtas*). If passed in its current form, it would cover eight protected characteristics, including gender.<sup>5</sup> In July 2022, the Minister also announced her intention to update hate speech provisions within the forthcoming Criminal Justice (Incitement to Violence or Hatred and Hate Crime) Bill 2022.<sup>6</sup> The Irish police force (An Garda Síochána) can, however, record incidents as ‘hate-based’ where necessary; they have also adopted their own 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. (Emphasis added)<sup>7</sup>

Thus, the Garda working definition of hate crime includes gender. The perception test was extremely important according to all interviewees, as they explained that if a victim felt that a hate crime had been committed against them, it had to be recorded as such. Furthermore, the perception need not be of the victim alone, but could also be the investigating officer or any other person. In this sense, the hate crime element is not ‘evidence based’ in the usual sense (P8, male, Ireland). This unique ‘perception’ element of hate crimes has been noted in the literature (Mason-Bish and Duggan, 2020).

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 and Jurasz, 2019). However, these statutes do not specifically refer to gender as one of

the protected characteristics of the victim, nor is gender one of the five nationally recognised and recorded hate crime strands in UK police forces, which are race, religion, disability, transgender identity and sexual orientation. Despite this, guidance from the College of Policing in 2014 stated that the five currently protected characteristics were the minimum categories, thus allowing some police forces to record GBHC on an ad hoc basis, including at least one where a UK-based research participant worked.<sup>8</sup>

Research participants suggested that public and political opinion might be shifting in the United Kingdom in recent years towards including gender as a protected characteristic in hate crimes. The reasons behind this shift include the rise of so-called 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 GBV. Following the murder of Sarah Everard in March 2021, the House of Lords asked the police in the United Kingdom to start recording crimes motivated by misogyny (BBC News, 2021).<sup>9</sup> In Ireland, the Minister for Justice reiterated her intention to publish the Hate Crime Bill (including gender as a protected characteristic) in the wake of Ashling Murphy's killing in January 2022, signifying that political opinion in Ireland may be on a similar track.<sup>10</sup>

## **Obstacles to investigation**

Law enforcement plays a crucial gate-keeping role in determining that (a) a crime has occurred, (b) it is bias-motivated and (c) it constitutes a hate crime. Several empirical studies have analysed barriers to investigation and prosecution of bias-motivated crimes generally. This is in contrast to the lack of evidence regarding these challenges to GBHC specifically (see Gill and Mason-Bish, 2013). However, insights can still be drawn from these studies. Based on research participants' responses and existing evidence, barriers to hate crime investigation from a law enforcement perspective were classified under the following categories: lack of legislation, underreporting, institutional culture and operational infrastructure, evidential burden and resources and training.

### *Lack of legislation*

Put bluntly by interviewees, 'you can only investigate what is legislated for' (P7, male, Ireland) and 'we can't prosecute an incident because there is no legislation' (P4, female, UK). 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 as a challenging, if not the most challenging, obstacle to the investigation of GBHC. P8 (male, Ireland) described it as operating in a vacuum. This is backed up by the literature. Evidence suggests that institutional support, for example, national hate crime legislation and adequate anti-hate policy, significantly enhances enforcement of hate crimes and promotes its reporting and subsequent prosecution (see Haider-Markel, 2002; Nolan and Akiyama, 1999). While cases of GBHC in Ireland can currently be charged under various other offences, including public order offences, sexual offences, harassment, or assault, as P7 (male, Ireland) pointed out, 'the patterns [of GBHC] are lost' with this current ad hoc approach and 'the ability to be able to anticipate or look at the vulnerability of the

individual potentially could fall between the cracks'. This point was also evident in UK interviews. That GBHC is not one of the five centrally monitored hate crime strands in the United Kingdom was flagged as a serious problem by research participants working there (P5, female, UK). P1 (male, UK) argued that national hate crime policy would allow for improved recording and documentation of hate crime: 'We would start to get those trends and start to understand those things that maybe start as precursors to more serious criminality'. Phillips' (2009) study suggests that a lack of clear policy has a 'chilling effect' on a vigorous prosecution of hate crime (also Turpin-Petrosino, 2015: 176). However, he also notes that this does not fully explain defects in the prosecution of hate crimes. Despite the existence of a detailed policy and the effort exerted by law enforcers, ambiguities and difficulties enforcing bias crime legislation remain (Phillips, 2009: 901). P7 (male, Ireland) alluded to this when noting the disconnect between law-makers and those who apply the law in the field.

New or additional hate crime legislation could either provide an exhaustive list of protected characteristics or leave the possible protected characteristics open-ended. As Haynes and Schweppe (2019) argue, by including a list of protected characteristics, 'the legislature is classifying distinct victim types as more worthy of legal protection' (p. 310). The majority of research participants (seven) thought that new legislation specifically mentioning gender would be a positive development, although one participant (P7, male, Ireland) was wary that having an exhaustive list of characteristics would prevent the recognition of potential intersectionality. This was particularly reflected in the discussions with research participants working in England. While P2 (male, UK) did not personally support the introduction of new, specific GBHC legislation, he confirmed that his police force would be implementing new reporting requirements, as mentioned earlier in this article. Similarly, P2 (male, UK) also noted that police would align with the Law Commission for England and Wales recommendations in relation to GBHC, regardless of their opinion about its effectiveness.

### *Underreporting*

The underreporting of GBV and sexual violence is a long-standing and global phenomenon (Fernández-Fontelo et al., 2019; Morabito et al., 2019). Research also unequivocally points to a significant underreporting of hate crimes by victims to the police (see Lantz et al., 2017). As P3 (female, UK) acknowledged, 'Hate crime is massively underreported in every single strand, but especially gender-based hate crime'. The problem of underreporting was mentioned in all but one interview. Interviewees attributed this to a lack of confidence in the police and the justice process more generally and a lack of public awareness.

*Lack of confidence in police and the justice process.* A lack of trust in police forces was highlighted by six interviewees. P1 (male, UK) recalled a survey of the LGBT (lesbian, gay, bisexual, and transgender) community where a key finding was that respondents 'said they wouldn't report because they didn't think the police would take it seriously or . . . they didn't trust the police'. With reference to the Transgender community – simultaneously the most affected and the most reluctant to report these crimes – P2 (male, UK) referred to

'legacy issues' to explain the lack of confidence in police forces. Problems such as fear of further stigmatisation, trauma, the potential of exposure to potential further attacks, slow criminal proceedings and language and cultural barriers also emerged as obstacles to victims' willingness to cooperate with the criminal justice system in both jurisdictions. Walfield et al.'s (2017) study in the United States analysing variables associated with the reporting and arrest of hate crimes finds that members of minority groups may be hesitant to report because of fear of family/community reaction or stigmatisation. This was noted by four interviewees. P9 (male, Ireland) was particularly concerned about victims' fear of community reprisals in relation to the Irish Travelling Community. P8 (male, Ireland) hoped that a new Irish online reporting mechanism would increase reports from those who otherwise would not report a GBHC to the police in person. This new mechanism launched shortly after P8's interview in July 2021.<sup>11</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 (see Perry, 2010). Walfield et al.'s (2017) study suggests that improving police–community relations and outreach to marginalised groups would increase the effectiveness of hate crime legislation. Community policing was discussed in all 10 interviews. In Ireland, P8 (male, Ireland) argued that it was the job of the Gardaí to 'build confidence within the various different communities' and that a way to achieve this is by ensuring a diverse Police Force that represents the communities they police. This concurs with Balboni and McDéviot's argument (2001). In England and Wales, P4 (female, UK) argued that a return to neighbourhood policing would help officers integrate with the communities they police, which would improve information gathering and foster confidence in policing.

*Lack of awareness.* P6 (male, Ireland) noted that the Garda working definition of hate crimes only dated back to 2019. As he put it, 'I think one of the major obstacles is the recognition by all of society that some crimes are GBHC. I think we are relatively new in that area'. Victims may not view themselves as the subject of a hate crime. They may not even know what a hate crime is (Chakraborti et al., 2014). This may be due to the victim's normalisation of their experiences of repeat harassment and hostility as a routine feature of being 'different' (see Chakraborti, 2018: 393). As P3 (female, UK) stated, 'starting with comments on the street, wolf-whistling and stuff like that . . . we just normalise [it] and we don't take it seriously enough and we don't report it'. For P2 (male, UK), awareness raising should fall not just on the police, but from government and civil society to educate young people 'so that women and girls can better recognise when things are being done towards them, are directed at them . . . [and] boys and males better educated to understand their behaviours and how they impact on women and girls'. This was reflected in the Irish Minister for Justice's statement after Ashling Murphy's killing where she acknowledged that part of the solution to GBV lay outside the criminal justice sphere.<sup>10</sup>

### *Institutional culture and operational infrastructure*

Officers' personal prejudices and beliefs are prominent factors which affect identification and investigation of bias-motivated offences (Franklin, 2002; King et al., 2009). 'Subconscious bias' (P9, male, Ireland), 'unconscious bias' (P8, male, Ireland),



‘unchecked biases’ and ‘performance of masculinity-related bias’ within the police (P7, male, Ireland) were mentioned by seven interviewees. P1 (male, UK) argued that the perception test is an effective tool to attempt to combat the persistent problem of an officer’s internal beliefs or prejudices, that is that the perception of the victim or any other person alone was enough to flag an incident as a hate crime. P1 (male, UK) referenced the Stephen Lawrence inquiry<sup>12</sup> in which the Metropolitan Police Force were found to be institutionally racist and individual officers had investigated crimes motivated by racism according to their ‘own pre-conceived ideas or prejudices’. Due to the discretion afforded to officers, perceptions of bias within police forces ‘have perennially been the most potent threat to their legitimacy’ (Reiner, 2010: 159). P7 (male, Ireland) believed that the increased representation of women in the police force in Ireland has combatted some of the prejudice among police, particularly regarding ‘the canteen culture expression of misogyny’.

Law enforcement officers may be reluctant to define events as hate crimes due to a personal belief that hate crime laws are unimportant, infrequent or illegitimate (see Cronin et al., 2007). Boyd et al. (1996) found, in their study of two police divisions in the United States, that there was a general perception that only a limited number of crimes can really be classified as hate motivated. Other research indicates that only hate crimes that fit popular constructions of ‘normal victims and offenders’ receive investigative outcomes (see Lantz et al., 2017: 200).

Other reasons for reluctance include the officers’ belief that hate crimes have lesser priority within the department (Nolan and Akiyama, 1999), that a high number of reported incidents can tarnish the image of the community (Bell, 2002) or for fear of political ramifications (see McVeigh et al., 2003). While the above barriers are *not* reflected in research participants’ responses, two of them clarified that the standard investigation is quite subjective to the individual police person: ‘no more than if you go into a restaurant it depends on the chef in the kitchen on duty that day’ (P6, male, Ireland). Likewise, the impact of individual leadership was mentioned by four participants as a determining factor for adopting anti-hate policy or action. As P10 (female, Ireland) noted, ‘I think . . . at the moment we have good leadership that are certainly pushing from the front’.

In addition to individual subjectivity, the social organisation of police forces also has consequences for how officers enforce hate crime law (Martin, 1995, 1996). Nolan and Akiyama (1999, 2002) noted that the prioritisation of hate crime within police departments was one of the most prominent encouragers of hate crime reporting. Balboni and McDevitt (2001) found that ‘although individual officers may have differing opinions about the nature of the crime, if there is a policy about how to proceed with a hate crime investigation, officers will respect that policy’ (p. 15). This was also noted above in the discussion about legislation. P5 (female, UK) was concerned about the heterogeneity among police forces regarding issues that ‘remain outside of statute’ in the United Kingdom. To promote an operational infrastructure conducive to the investigation of GBHC, research participants called for robust reporting mechanisms (P6, male, Ireland). P7 (male, Ireland) also pointed to the need to establish inter-agency collaboration in relation to GBHC in Ireland.

## *Evidential burden*

The bias motivation that is the crux of a hate crime prosecution adds another layer to the burden of proof; it must be proved in court beyond reasonable doubt not only that the incident occurred (*actus reus*) but also that it was motivated by hate (*mens rea*) (see Barker and Jurasz, 2019). Where the offence involves multiple motives or more than one perpetrator, the evidential burden gets even more complex (Eisenberg, 2014). Further complicating things in Ireland, P6 (male, Ireland) added, 'there is no legislative provision presently so for us to advise a court that this was a hate crime . . . because there is no such thing as a hate crime in legislation'. When imagining a hypothetical scenario where GBHC legislation is in place, almost all research participants were cognisant of the inherent difficulty of evidencing the bias element in court, with all five Irish research participants explicitly noting that the perception test is insufficient to ground a conviction.<sup>13</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, as mentioned by P8 (male, Ireland). P3 (female, UK) also expressed disillusionment with this disconnect: 'If I report it and even if it's being taken to court, but actually the hate element will never be recognised, what's the point, what's the point for the victim to go through all of this distress?'. P9 (male, Ireland) highlighted the importance of victim evidence at trial in these sorts of cases, which the literature has extensively problematised in relation to perceived victim credibility (Menaker and Cramer, 2012; Mindthoff et al., 2019).

A hate crime investigation is often guided by perceived likelihood of success. Bell (2002) noted that the screening of cases by officers and the filtering of information in hate crimes is often based on 'pragmatic concerns'. This is consistent with Haider-Markel's (2001, 2002) findings about the perception of solvability: When police leaders believe that hate crime policies can reduce hate crimes, implementation efforts increase. P6 (male, Ireland) suggested that police self-select cases to increase the likelihood of a conviction in court and are wary of the case being thrown out by miscategorising an incident as a hate crime. The internal filtering process by both the prosecution services and senior police figures was commented upon by two interviewees, one from each jurisdiction. If the investigating officer is unable to convince a superior officer of the bias element, the matter does not even reach the stage of the prosecution services, the Crown Prosecution Service (CPS) (England and Wales) or the DPP (Ireland). As P7 (male, Ireland) commented, 'If you can't actually convince the Inspector that this [incident] may be gender-based . . . then that's not necessarily going to be communicated to the DPP'. This aligns with P4's (female, UK) opinion that 'if you can't present the evidence to our internal gatekeepers then it won't get to the CPS and if it doesn't get to the CPS, we can't get a charge'. P9 (male, Ireland) suggested that the length of time it takes to investigate GBHC relative to other crimes can be a barrier as 'people like to get things rushed through'.

In terms of the 2021 Irish Hate Crime Bill, research participants were satisfied with the proposed two-tier approach, which would mean that 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,

for example, assault (see P10, female, Ireland). In the UK context, P3 (female, UK) had thoughts along the same lines that ‘hate crime should be recognised as an . . . aggravating factor to an offence, not on its own, because hate doesn’t exist on its own really’.

### *Resources and training*

Legislation alone cannot have a meaningful impact and lead to practical implementation without resources to back it up. A lack of resources is a further hindrance to GBHC prosecution (see Hardy and Chakraborti, 2020). This is not a new point, but it is one that came across strongly as a theme in interviews. As P5 (female, UK) put it, ‘it’s the same with anything in life, it needs funding’. Critically analysing proposed new legislation, P7 (male, Ireland) wondered if new legislation would end up ‘front-loading the work onto the likes of the police, yet again’. He described policing as a ‘fire brigade putting out fires’, with police officers having an impossible mandate and a need to find the most ‘efficient, effective, and simplest way’ to carry out their many tasks. He suggested putting resources towards the establishment of specialised units to tackle hate crime. Manning’s (1997) 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’ (p. 32). P9 (male, Ireland) was also cognisant of the extra work it takes for Gardai to investigate build a case of GBHC and referenced issues with the availability of highly trained interpreters to assist in such cases. Concern was raised that GBHC legislation would open the floodgates and place an onerous burden on the police to investigate instances such as ‘wolf-whistling’ (P1, male, UK). P4 (female, UK) pointed out that, due to a lack of resources in the United Kingdom, the police capacity to record and collect data was hampered. Without a specific policy and associated resources pertaining to GBHC, P7 (male, Ireland) argued that ‘it’s asking Members to voluntarily apply more paperwork, more scrutiny and apply more oversight to their work’. In addition, the lack of supports for victims was lamented by various research participants. P1 (male, UK) referenced the 2008 financial crash, which saw supports for victims of hate crime in the UK plummet and never recover. P8 (male, Ireland) highlighted the need for an organisation that could deal specifically with victims of hate crimes. P6 (male, Ireland) stated that ‘there is no real victim support for victims of hate crime’, further impeding successful outcomes.

Aside from additional resources for police forces and victims, training is often mentioned as a useful tool to identify hate crimes when it is adequately provided and as a barrier when it is lacking (see Hardy and Chakraborti, 2020). Ambiguity reigns in the absence of specific training. For example, P10 (female, Ireland) noted that, in Ireland, incidents flagged as age-related hate crimes often turn out to be incidents where the victim just happens to be elderly, and the motivation for the crime was opportunistic, rather than bias-motivated. The impact of training on the way in which a certain incident was recorded was reported by all research participants, who pointed to the inconsistency in recording among officers in both jurisdictions. While some police departments seemed well ahead in terms of training and availability of funding for capacity building opportunities, others seemed to lag behind in terms of level, depth and outreach of training and related funding opportunities. This was attributed to different levels of training on bias

indicators, as well as on individual capabilities and individual leadership against hate crimes: ‘There is not a good knowledge even of what constitutes a hate crime within our membership’ (P10, female, Ireland). P10 opined that additional training would assist officers to have more confidence with investigating such crimes. P7 (male, Ireland) noted that Irish officers are provided with training on bias indicators, arguably to help them assess situations where a bias element may be present. P7 (male, Ireland) also stressed that training would assist police officers with the identification of internal and subconscious biases.

P7 (male, Ireland) mentioned that training for domestic violence was more established than specific GBHC training in Ireland and training in this area was mentioned by P6 (male, Ireland) as a recent phenomenon in that jurisdiction. P8 (male, Ireland) hoped to have a training programme rolled out for Gardai in Ireland before the Hate Crime Bill was passed. P8 (male, Ireland) specifically wanted police to have a good grounding in the application of the perception test when it comes to hate crimes. P9 (male, Ireland) was also concerned about the need to ‘sensitise’ police ‘to the vulnerability’ of victims of hate crimes. P10 (female, Ireland) confirmed that a new, mandatory, hate crime training module had been completed, as of July 2021, and was in the process of being rolled out to the entire organisation in Ireland. P5 (female, UK) hoped that any training in relation to hate crime would be consistent among police officers nationally.

## **Conclusion**

This article analysed the concept of GBHC in the literature and its practical understanding in law enforcement in Ireland, and England and Wales in the United Kingdom. This article corroborates findings from other studies on hate crime, arguing that the current legislative frameworks of both countries – and particularly in the case of Ireland – are inadequate in tackling hate crimes, specifically in relation to gender-related biases. The barriers to the successful investigation of GBHC, as constructed from the firsthand, empirical data, are as follows: a lack of applicable legislation, underreporting, institutional culture and operational infrastructure, evidential burden, and resources and training.

Conceptual difficulties in understanding and defining GBHC were evident across the interview sample. This reflects the existing challenges and debates in the extant literature on, *inter alia*, GBV, VAW, queer legal theory and hate crime studies. A key debate that the article illuminated was the intersectional relationship between GBV and GBHC. Data from this research area mirror the tendency in advocacy research to assume that GBHC or GBV refers exclusively to male violence against women. While existing studies in the two jurisdictions indicate a propensity by many practitioners and experts to address certain incidents of GBV as hate crimes, this area of research warrants further investigation based on more representative samples of respondents, possibly through large-scale, national surveys of distinct groups (e.g. law enforcement, judiciary, victims of gendered violence, specialised NGOs and the wider public). What did emerge from the present data is the difficulty that law enforcement officials encounter in clearly demarcating and differentiating between GBV and GBHC, which in turn generates challenges for investigations and support to victims/survivors.

This article sheds light on a fast-evolving area of law, research and policy that deserves more attention in theory and practice. While the authors acknowledge the difficulties involved in providing definitive answers to a complex conceptual and legal problem, this article makes a timely contribution to the literature in view of the ongoing public policy processes of relevance for hate crimes in both Ireland and the United Kingdom. At this key juncture, and in light of the ongoing ‘shadow pandemic’ of VAW, this article meaningfully contributes to clarifying the meaning of gender-related biases in crimes and influencing hate-related policies and laws with evidence from grassroots, hands-on, law enforcement perspectives.

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### **Notes**

1. We mainly refer to victims rather than survivors throughout the article in order to encompass victims of fatal gender-based hate crimes (GBHC).
2. Research participants are referred as P1 to P10 throughout the article. Their gender and country of residence/work are also included although other identifiers (such as age, ethnicity, religion or the specific police force of belonging) were removed to prevent identification and protect their anonymity.
3. [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en) (accessed 1 February 2022).
4. Home Office, Official Statistics Hate Crime, England and Wales, 2019 to 2020. Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2019-to-2020> (accessed 2 October 2021).
5. At the time of writing, 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 15 July 2022).

6. <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 15 July 2022).
7. <https://www.garda.ie/en/crime/hate-crime/what-is-hate-crime-.html> (accessed 2 December 2021).
8. Hate crime operational guidance, College of Policing, 2014. Available at: <http://library.college.police.uk/docs/college-of-policing/Hate-Crime-Operational-Guidance.pdf> (accessed 24 September 2021). See also the Criminal Justice Act, 2003. Available at: <https://www.legislation.gov.uk/ukpga/2003/44/contents> (accessed 19 August 2022).
9. 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 from the United Kingdom 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 15 July 2022).

10. <https://www.gov.ie/en/speech/4d9d1-dail-statement-by-minister-for-justice-helen-mcentee-on-violence-against-women/> (accessed 19 August 2022).
11. <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/news-media/an-garda-sochna-online-hate-crime-reporting-facility-launch-21-7-21.html> (accessed 31 January 2022).
12. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf) (accessed 8 February 2022).
13. 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 15 July 2022).

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