

Impact case study (REF3)

Institution: University of Sussex		
Unit of Assessment: 18 – Law		
Title of case study: Transforming legal and criminal justice responses to hate crime		
Period when the underpinning research was undertaken: Jan 2012 – 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Mark Walters	Professor of Criminal Law and Criminology	Oct 2011 – present
Susann Wiedlitzka	Lecturer in Criminology	Oct 2015 – Jul 2020
Period when the claimed impact occurred: Aug 2014 – 2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>This case study draws together three large empirical socio-legal research studies on law and criminal justice reform for hate crime. The findings have:</p> <ol style="list-style-type: none"> 1. shaped public discourse on hate crime law reform and underpinned the lobbying efforts of civil society organisations working to tackle hate crime 2. underpinned official recommendations for legislative reform to UK, Northern Ireland and Scottish governments 3. formed the basis for new legislation introduced to the House of Representatives in Belize 4. resulted in amendments to the Crown Prosecution Service's national Hate Crime Legal Guidance 5. underpinned the establishment, and content, of new restorative justice programmes run by third- and public-sector agencies across England. 		
2. Underpinning research		
<p>The number of recorded hate crimes (offences motivated by identity-based prejudice) has increased significantly over the past five years. Most recently, the coronavirus pandemic has seen the emergence of new forms of hate and hostility, predominantly targeted against Asian, LGBT+, and Jewish people who have been blamed for the spread of the virus. Growing concerns about the social problem of hate crime have resulted in it becoming a focal point for public policy makers and criminal justice agencies alike. Research into the effective use of law and justice measures aimed at challenging hate crime is essential to evidencing and shaping societal responses to prejudice-based conduct. Walters' research evaluates the construction and application of hate crime legislation, and additionally examines outcomes of alternative (restorative) justice mechanisms that are aimed at repairing harms through the use of structured dialogue. The research described below has provided an evidence base upon which Walters and colleagues have outlined recommendations for reform, aimed at helping to transform both legal and community-based mechanisms through which society can more effectively address this invidious type of crime.</p>		
Research on hate crime legislation		
<p>The workability of justice measures for hate crime pivots on the enforceability of hate crime laws. In 2015, an 18-month study of hate crime laws in five European jurisdictions was funded by the European Commission [G1]. Walters led on the English and Welsh study which was entitled <i>Hate Crime and the Legal Process</i>. This was the first academic study to examine the application of criminal laws and sentencing provisions for hate crime in England and Wales in order to capture best practices and identify barriers to the implementation of these laws. Alongside Wiedlitzka (Research Fellow) and Owusu-Bempah (Co-I), the University of Sussex produced a free access 210-page research report in 2017 [R1] that was based on a mixed methodology, including doctrinal analysis of over 100 reported cases, quantitative analyses of secondary and primary crime data, and 71 qualitative interviews with all Crown Prosecution</p>		

Service leads for hate crime, as well as Crown Court Judges as supported by the Judicial Office. The report, and additional academic publications, focused on identifying conceptual limitations of the legislation (e.g. how the word “hostility” is interpreted and applied by the courts, see [R2]) and procedural-based barriers (e.g. how prosecutors collate and present evidence in court, and charging decisions, see [R3]). Based on the empirical findings, the report outlined nine recommendations for practice-based changes aimed at improving procedure (e.g. including alternative charges on indictments and deferring appropriate cases for restorative justice activities). The study also outlined four options for law reform aimed at improving the effective application of hate crime legislation; these included amendments that would ensure parity in the level of protection given to the five characteristics identified by separate statutes.

Additional research was commissioned by the international charity the Human Dignity Trust (HDT) which aimed to build on the findings from the 2015-2017 study. The study took place between 2018-2019 and involved a comparative analysis of different models of legislation for hate crime, and the case law that has interpreted these, across 14 jurisdictions in the Commonwealth. A 94-page research report which Walters co-authored with Dr Kay Goodall was published by the Human Dignity Trust [R4]. The report summarises the main advantages and limitations of the models currently being used internationally and, synthesising these findings along with those from [R1], the authors outline evidence-based recommendations for governments interested in enacting new laws to combat (anti-LGBT) hate crime.

Research on restorative justice for hate crime

Hate Crime and Restorative Justice (2014) [R5] is the only medium-large scale study (globally) to empirically evaluate the use of restorative justice (RJ) in cases involving hate crime. RJ is a dialogical justice mechanism that focuses on bringing stakeholders of a crime (or incident) together in order to repair harms and renew damaged human relations. The study used qualitative methods (interviews and observations) to identify the key process variables within restorative practice (based on 100 cases) that help to repair the harms caused by hate crime. It outlines the steps which should be put in place when using RJ for hate crime in order to avoid re-victimisation. The book [R5] also outlines findings on the emotional and behavioural impacts of identity-based prejudice on individuals and marginalised community members in order to inform practitioners of RJ, and offers an evidence-based typology of the different types of hate incidents and underlying prejudices that frequently occur in communities.

3. References to the research

- R1. Walters, M.A., Wiedlitzka, S., Owusu-Bempah, A. (2017) *Hate crime and the legal process: Options for law reform*. University of Sussex. 1-207:
<https://sro.sussex.ac.uk/id/eprint/70598/3/FINAL%20REPORT%20-%20HATE%20CRIME%20AND%20THE%20LEGAL%20PROCESS.pdf>
- R2. Walters, M.A., Owusu-Bempah, A., & Wiedlitzka, S. (2018) ‘Hate crime and the “justice gap”: the case for law reform’, *Criminal Law Review*, 12. 961-986. In REF2.
- R3. Owusu-Bempah, A., Walters, M.A., & Wiedlitzka, S. (2019) ‘Racially and Religiously Aggravated Offences: “God’s gift to defence”?’ , *Criminal Law Review*, 6. 463-485. PDF available on request.
- R4. Goodall, K., and Walters, M.A. (2019) *Legislating to address hate crimes against the LGBT community in the Commonwealth*. Technical Report. Human Dignity Trust:
<https://www.humandignitytrust.org/wp-content/uploads/resources/Legislating-to-Address-Hate-Crimes-against-the-LGBT-Community-in-the-Commonwealth-Final.pdf>
- R5. Walters, M.A. (2014) *Hate crime and restorative justice: Exploring causes, repairing harms*. Clarendon Studies in Criminology. Oxford: Oxford University Press. In REF2.
- [R2] and [R5] are being submitted in REF2. [R2] and [R3] are published in the leading criminal law journal in the UK and have been through a rigorous peer review process, as has [R5]. [R5] has been viewed 2,549 times on SSRN and 907 on academia.edu. The two reports [R1] and [R4] are externally funded (EU and HDT) empirical research outputs, which were externally reviewed by leading academics in the field before publication, and have been cited 23 times collectively in both international journals and research monographs.

G1. European Commission. 'Lifecycle of a Hate Crime' Directorate-General for Justice, Action Grants scheme, £440,000 (£75,587 to Sussex), 10/15-09/17, PI: Walters.

4. Details of the impact

Creating a new public dialogue on the need for hate crime law reform

The EU-funded study has been pivotal in shaping both public discourse and public policy developments on legislating for hate crime [R1-3]. Walters gave interviews detailing findings between 2016-2018, including on: The One Show (BBC, reaching approx. 5 million viewers); ITV Meridian News, (approx. 8 million viewers); BBC News Channel; Victoria Derbyshire Show (BBC2, 140k viewers); The Today Programme (BBC Radio 4, seven million listeners); Live Drive (BBC Radio 5, five million listeners) [S1a]. The extensive reach of these interviews resulted in broader public debate on the topic as evidenced, for example, in the letters section of the Guardian where members of the public cited the research to call for law reform, as well as by journalists who debated the findings more fully (e.g. *The Economist*) [S1a]. Dissemination of research was further supported by Walters' launch of [R1] at the House of Commons at an event hosted by Sir Robert Neill, Chair of the Justice Committee (October 2017). Presentations were then delivered to public sector and civil society organisations, including: the National Offender Management Service; the Sentencing Council; Hate Crime Awareness Week (charity); and Equally Ours (charity).

This public and policy engagement has contributed to improved understanding of the impacts of hate crime and how the law *should* be used to effectively challenge it. This has, in turn, influenced the direction of third-sector charities that work with the UK Government to reduce hate crime. For instance, the Director of one national equality charity *Equally Ours* has stated:

“Professor Walters’ work has been a crucial resource for a wide range of civil society organisations to lobby both politicians, officials and criminal justice organisations. It has underpinned our work, firstly, in lobbying for parity of uplift in sentencing across all five characteristics [and, secondly] his work on legal reform has provided a focus for a comprehensive overhaul of legislation around hate crime and has aided civil society organisations in developing lobbying options for change.” [S2a].

The significance of the research led to Walters being called to give televised oral evidence to the Home Affairs Committee’s Inquiry into Hate Crime in the House of Commons (February 2018), where he outlined the need for a reformed legal framework and for greater use of alternative justice measures to tackle the underlying causes of hate crime. Findings were thereafter requested by the All-Party Parliamentary Group (APPG) on Hate Crime and their report published in 2019 [S2b] details Walters et al.’s research extensively (Walters/Sussex is cited 72 times in the 58-page report). Drawing directly on [R1], the APPG final report states: “The law on hate crime needs to be consolidated and evened out to ensure that all victims can expect the same level of justice.” [S2b, p56]. Later that year, Walters was awarded the Social Research Upstander Award at the National #No2H8 Crime Awards (run by a coalition of civil society organisations) in recognition of his work on criminal justice reform [S2c].

Shaping formal reform proposals across UK jurisdictions and underpinning new legislation internationally

In response to the findings disseminated in [R1-3], and ensuing lobbying efforts by civil society organisations and parliamentary inquiries, the UK Government announced a full review of hate crime legislation by the Law Commission for England and Wales. The Commission published its consultation paper (no.250) in September 2020 in which it notes “[R1], that examined the legal framework for hate crime in England and Wales, has been particularly influential in the hate crime sector.” Referencing the work of Walters 148 times, the Commission goes on to use the research to underpin proposal recommendations throughout, and pivotally they ask consultees to respond to a newly-designed model of legislation set out by Walters et al in [R1] (p.200), which aims to have the effect of reducing the fragmented and hierarchical structure of the current law [S3a].

Simultaneously, [R1-3] were used extensively by Judge Desmond Marrinan, tasked by the Department for Justice in Northern Ireland to review hate crime legislation, and by Lord Bracadale in his Government-commissioned review of legislation in Scotland. In his final report

[S3b], Judge Marrinan recommends the new model of legislation proposed in [R2] and states in a letter “It is no exaggeration to say that this work [R1-2] in particular has prompted a number of... recommendations in my own work” [S3c]. For example, the legislative model outlined by Walters and colleagues in [R1] is adopted by Marrinan [S3b, p.130-132] and he is further persuaded by reform proposals to change the legal test in the legislation [S3b, recommendation 6]. Marrinan also notes in relation to the Scottish law review that “Professor Walters’ academic work was acknowledged to be a significant influence in shaping the final [Scottish] proposals” [S3c]. Indeed, Lord Bracadale’s final report [S3d, p.18-20] has a section dedicated to reviewing and responding to the research conducted at the University of Sussex. Bracadale’s proposals have now been taken forward and a new Hate Crime and Public Order (Scotland) Bill was introduced at Holyrood on 23 April 2020 [S3e]. The Bill is currently at Committee Stage 2 where MSPs are reviewing the legislation.

Most recently, Walters was commissioned by the international charity the Human Dignity Trust to produce a research report outlining recommendations for enacting new hate crime legislation internationally [R4]. Upon publication, Walters was invited by the Belizean Special Envoy for Women and Children to advise on law reform to the Belizean Government. The report was then used directly by the legislative draftsman as the basis for a new Hate Crime Bill, which was introduced to the House of Representatives in 2020 [S3f]. The Bill, which is the first piece of hate crime legislation in central America / the Caribbean, aims to provide protection to six identity characteristics (race, religion, sexual orientation, disability, gender identity and sex). The draftsman for the Attorney General’s Office states in a letter “The Bill which I prepared is constructed on the basis of the recommendations of [R4] ... The draft Bill would not have taken the form it did but for the influence of Walters’ work.” [S3g].

Changes to national prosecution guidelines

[R1] outlined nine recommendations to change prosecution practice. The Crown Prosecution Service (CPS) responded formally to each of its recommendations, including changing its CPS Evidence Checklist (based on that outlined in [R1]), which is used to assist police and prosecutors prepare evidence for trial [S4a]. Further amendments were made to the CPS’ *Racist and Religious Hate Crime Legal Guidance* section on “alternative charges” based on findings that uncovered a disparity in day-to-day practice [S4b]. The CPS Legal Lead on Hate Crime states in an email to all regional hate crime leads that “[this] update is as a result [of] an article on hate crime in the Criminal Law Journal [Review] written by Professor Mark Walters of Sussex University.” [S4a]. The fourth and fifth paragraphs of the guidance are now fully revised online [S4b]. These amended guidelines directly affect charging practices across the country (as prosecutors must include alternative charges in the Crown Court) affecting circa 15,000 cases each year [S4c].

Impact on national and regional restorative justice programmes

In addition to law reform work, Walters has carried out impact-led research on alternative justice measures to combat hate crime. His book *Hate Crime and Restorative Justice* [R1], launched in the House of Commons in July 2014, has provided both theoretical grounding and practical guidance to new restorative initiatives run regionally and nationally by criminal justice agencies and civil society organisations. Collectively, these projects have offered hundreds of victims and offenders an alternative justice process aimed at resolving the harms caused by hate crimes. Examples include:

- *Why Me?*, a national restorative justice (RJ) charity, which set up a RJ programme in 2017 across multiple police forces in England. The project manager stated that the book “has been critical to *Why Me?*’s project ... [and] provided [the programme] with an academic rationale [and has] helped to shape the trajectory of the work” [S5a]. The book is also prescribed reading for all new restorative practitioners working on the programme. As a result of the programme, Cambridge, Lancashire and Avon & Somerset police services are all now referring hate crimes for RJ, with two areas reporting a “significant increase in hate crime cases” being referred for RJ since the start of the *Why Me?* programme. A further five police areas are now at the beginning stages of working to offer RJ for hate crime [S5a].
- *Restore DiverCity* is a police-led programme that uses RJ for “low-level” hate crime cases in East Sussex and was established in 2015 by Brighton and Hove Police after the city RJ

coordinator attended a workshop led by Walters. The programme coordinator stated “I have worked in partnership with Dr Walters since [his book’s launch] with his knowledge and research feeding into the development of restorative justice across the city” [S5b].

- The book’s findings underpinned a HEFCE-funded restorative programme, *Restore Respect*, set up in 2018 at the Universities of Sussex and Brighton. 82 student support staff have been trained on the harms of hate, and 12 new university-based practitioners have had advanced three-day training drawing on case studies from the book. 15 students who have experienced a hate incident on campus have been referred to Restore Respect. A full toolkit and training materials have been disseminated to the Office for Students and are now freely available to all universities across the UK via the University of Sussex website.

5. Sources to corroborate the impact

S1. Public discourse sources:

- Media sources list document

S2. Public policy and third sector sources:

- Email from Parliamentary and Policy Advisor, Equally Ours (formerly EDF), 28/9/2018.
- All Party Parliamentary Group on Hate Crime (2019) *How Do We Build Community Cohesion When Hate Crime is on the Rise?* <http://www.appghatecrime.org/wp-content/uploads/2019/02/APPG%20on%20Hate%20Crime%20Report%20Hate%20Crime%20and%20Community%20Cohesion.pdf>
- The National #No2H8 Crime Awards, List of Nominees and Winners at the No2H8 Crime Awards (2019): <https://no2h8crimeawards.org/2019/11/list-of-nominees-and-winners-at-the-no2h8-crime-awards-2019/>

S3. Official law reform sources and legislation:

- Law Commission (2020) *Hate crime laws: A consultation paper*, No 250: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/10/Hate-crime-final-report.pdf>
- Judge Desmond Marrinan (2020) *Hate Crime Legislation in Northern Ireland Independent Review*: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/hate-crime-review.pdf>
- Letter from Judge Desmond Marrinan, Government review of hate crime legislation in Northern Ireland, 13/07/20.
- Lord Bracadale (2019) *Independent Review of Hate Crime Legislation in Scotland Final Report*: <https://www.gov.scot/binaries/content/documents/govscot/publications/progress-report/2018/05/independent-review-hate-crime-legislation-scotland-final-report/documents/00535892-pdf/00535892-pdf/govscot%3Adocument/00535892.pdf?forceDownload=true>
- Hate Crime and Public Order (Scotland) Bill: <https://beta.parliament.scot/bills/hate-crime-and-public-order-scotland-bill>
- The Criminal Code (Amendment) Bill, 2020 (Belize). Available in pdf only.
- Letter from James Chalmers (28/10/2020), legal draftsman for Belize Attorney General’s Office and Criminal Code (Amendment) Bill, 2020 (Belize).

S4. Crown Prosecution Service sources:

- Emails, including official letter, from Hate Crime Policy Lead, CPS, 11/09/2018, and Legal Lead on Hate Crime, CPS, 06/11/2019.
- CPS, Racist and Religious Hate Crime - Prosecution Guidance: <https://www.cps.gov.uk/legal-guidance/racist-and-religious-hate-crime-prosecution-guidance>
- CPS, Hate Crime Report 2018-19: <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Hate-Crime-Annual-Report-2018-2019.PDF>

S5. Restorative Justice programme sources:

- Emails from project manager of Why Me? ‘Access to Justice: Hate Crime and Restorative Justice’, 26/07/2018 and the Policy and Communications Officer at Why me? 10/07/2021.
- Email from the Restorative Justice Co-ordinator, Brighton and Hove Police, 25/09/2017.

All non-URL documents are available as PDF files.