

Homophobic hate crimes and hate incidents



**Equality and
Human Rights
Commission**

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Introduction



Hate crimes and incidents can range from insults to inciting others to hatred, serious physical assault and murder. Perpetrators of homophobic hate incidents are motivated by prejudice or hostility towards their victim's actual or perceived lesbian, gay and bisexual (LGB) sexual orientation.

Homophobic hate crimes and incidents occur commonly in the everyday lives of LGB people. Too many LGB people worry about being the victim of crime and feel at risk of being a victim of hate crime. Both the experience and fear of homophobic hate crimes and incidents have a dramatic impact on the quality of life of millions of LGB people.

In order to avoid victimisation, some people try to avoid being identified as 'gay', which curtails their freedom and their right to be who they are. The criminal justice system as a whole has failed to systematically and consistently prevent or respond to homophobic hate crimes. Efforts to tackle homophobic hate crime have been hampered by a lack of data and evidence on both the victims and perpetrators, with no clear picture about how to improve reporting and with continuing low levels of community confidence. Stonewall were commissioned by the Equality and Human Rights Commission (the Commission) to write a seminar summary paper, after presenting findings from their Home Office funded research: *Homophobic Hate Crime: The British Gay Crime Survey 2008* at a seminar in April 2009.

This paper draws primarily on Stonewall's report *Homophobic Hate Crime: The British Gay Crime Survey 2008* and a range of other recent and relevant sources. *Homophobic Hate Crime 2008* reports the findings of an online YouGov survey of over 1,700 LGB respondents in Britain regarding their experiences of homophobic hate crimes and incidents. It is the most comprehensive data source to date on homophobic hate crime and incidents.

At the time of the survey, YouGov had information on the sexual orientation of only a proportion of their panel members, and 99 per cent known to be LGB were invited, via email or online, to participate in a survey. Participants were unaware of the subject of the survey when invited to participate. Forty-three per cent of panel members responded to the invitation and broadly reflected the demographics of YouGov's LGB panel. Thirty-two per cent of respondents were female, and 68 per cent male. Forty-nine per cent of respondents were gay men, 19 per cent bisexual men, 14 per cent were lesbian and 18 per cent bisexual women. There is no demographic profile of Britain's LGB population, therefore YouGov were unable to weight the data accordingly.

This paper includes:

- definitions of homophobic hate crime and homophobic hate incidents
- gaps, weaknesses and trends in data sources
- the prevalence and impact of homophobic hate crime upon LGB women and men
- the barriers faced by LGB women and men when reporting homophobic hate crimes, and
- recommendations and ways forward.



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Definitions of homophobic hate crime and homophobic hate incidents

Section 146 of the Criminal Justice Act (England and Wales) 2003, that came into effect in 2005, provides that a court must treat hostility based on sexual orientation as an aggravating factor when considering the seriousness of an offence. This is determined by whether:

- ‘at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on... the sexual orientation (or presumed sexual orientation) of the victim’
- or

- ‘that the offence is motivated (wholly or partly)... by hostility towards persons who are of a particular sexual orientation’.

If an offence is believed to have been motivated by hostility or prejudice based on sexual orientation (actual or perceived) the judge is required to:

- treat this as an aggravating factor
- state in open court any extra elements of the sentence that they are giving for the aggravation.

The Offences Aggravated by Prejudice (Scotland) bill, was passed in June 2009 and will bring Scotland into line with the rest of hate crime legislation in Britain. The bill includes homophobic and transphobicⁱ hate crime.

The Association of Chief Police Officers (ACPO) distinguishes between a hate incident and a hate crime. A hate incident is:

- ‘Any non-crime incident which is perceived by the victim or any other person, as being motivated by hostility or prejudice based on a person’s sexual orientation.’

A hate crime is:

- ‘Any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate based on a person’s sexual orientation.’

The law is uneven regarding different types of hate crime. Perpetrators of racially and religiously motivated hate crimes can be charged by the police with specific offences such as racially or religiously aggravated harassment or assault. Perpetrators of homophobic hate crimes cannot be charged with a specific offence of homophobically motivated harassment. Instead, perpetrators of homophobic hate crimes are charged with existing offences, such as assault, and the homophobic motivation is taken into account during sentencing.

This paper refers to hate crimes and incidents that are homophobic, in that they are motivated by prejudice or hatred towards LGB women and men. Homophobic hate crimes and incidents are commonly used terms within the criminal justice system.

Data sources

The British Crime Survey (BCS) measures the amount of crime in England and Wales by asking people about crimes they experienced in the previous year. The Scottish Crime and Justice Survey (SCJS) collects similar data in Scotland. Interviews for the SCJS began in April 2008 and will run continuously until March 2010. These surveys are important sources of information about other topics, such as attitudes towards the criminal justice system and perceptions of antisocial behaviour. The BCS and SCJS include crimes that are not reported to the police, so are important alternatives to police records.

To date, the BCS has not asked respondents whether they experienced crimes on the grounds of their sexual orientation. From 2007/08 the BCS included a question on the self-reported sexual orientation of respondents to the self-completion module only, not the whole survey. The SCJS collects the self-reported sexual orientation of respondents. There has been no systematic baseline data collected on the extent and nature of homophobic hate crimes and incidents in England and Wales. Neither is there baseline information on the patterns or trends in crimes experienced by LGB people. In England, Wales and Scotland this important work has only just begun.

Policymakers and the criminal justice system have relied upon homophobic hate crime and incidents data from police records where it has been reported. There are significant concerns about the reliability of police data on recorded crime. According to the Association of Chief Police Officers

(ACPO) all police forces must record all incidents reported, or those that appear to have been motivated by homophobia. In practice, the recording of actual and potential hate incidents is influenced by the capacity, willingness and understanding of individual police staff. Many homophobic hate crimes are not reported as a hate crime by the victim, nor recorded as a hate crime by the police.

The Crown Prosecution Service (CPS) record and publish data on homophobic hate crime cases and prosecutions in England and Wales. They published their first annual report in February 2009. The CPS *Hate Crime Report 2007–2008* includes information on racist and religious crime, homophobic and transphobic crime, disability hate crime and domestic violence, bringing the strands together in one report for the first time.

The Crown Office and Procurator Fiscal Service (COPFS) is responsible for the prosecution of crime in Scotland. As the law on homophobic hate crime was passed in June 2009, the COPFS has not recorded and published data on homophobic hate crime cases and prosecutions to date.

Existing official statistics on recorded and prosecuted crimes fail to capture under-reporting, but may also include or exclude a significant number of misrecorded and misreported homophobic hate incidents.

The Criminal Justice and Immigration Act (2008) also extended the provisions on incitement to racial hatred to create the new criminal offence, yet to be commenced, of incitement to homophobic hatred from May 2008. This covers

incitement to serious acts of hatred, including, for example, homophobic song lyrics that encourage the murder and torture of LGB people.

A number of studies have been conducted into homophobic hate crimes and incidents (for example Morrison and Mackay, 2000; Stonewall Cymru, 2003; Williams and Robinson, 2004). The majority were conducted on a local scale and focused on areas with highly visible LGB communities. The sample sizes of such studies are often too small or self-selecting to be reliable, making it difficult to draw firm conclusions.

Stonewall were funded by the Home Office to conduct a new study into homophobic hate crime in 2008.

The aims were to:

- quantify the proportion of LGB people who had experienced a homophobic hate crime or incident during a set period
- identify the extent of under-reporting of homophobic hate crimes and incidents not reflected in police data on recorded crime or CPS data on prosecutions
- identify the extent of misreporting by victims and misrecording by police of homophobic hate crimes and incidents
- provide an evidence base to support action by the criminal justice system in tackling homophobic hate crimes, and
- set the parameters for Stonewall's ongoing engagement with the criminal justice system.

Worry about crime

It's important to examine worry about crime and perceptions of safety, as this compromises the quality of people's lives in a range of ways. LGB people appear to worry about being the victim of crime to a greater degree than other minority groups. Around 40 per cent of LGB people say they are worried about being the victim of a crime (*Homophobic Hate Crime*, 2008). This compares to 23 per cent of ethnic minority people and 13 per cent of people on average who are worried about being the victim of a crime (*Crime in England and Wales 2007/2008*).ⁱⁱ Eleven per cent of LGB people say being the victim of a crime is their biggest worry (*Homophobic Hate Crime*, 2008).

Perceptions of being at risk of being the victim of crime

Perceiving you are at greater risk of being the **target** of crime because of who you are means that LGB people will take steps to avoid victimisation including hiding their identity and changing their behaviour. Seven in 10 LGB people think they are at greater risk of being insulted, harassed than someone who is heterosexual and half think they are at greater risk of being physically assaulted.

Young LGB people feel at greater risk than older LGB people. Over a third of victims of homophobic hate crimes and incidents said the perpetrator identified them as gay because of where they were, for example a

gay venue, or who they were with, for example, their partner. Half of lesbians experiencing hate crimes and incidents said they occurred when they were with their partner (*Homophobic Hate Crime*, 2008). 'In this context it might seem unremarkable that LGB people have often tried to create relatively 'safe spaces' in large towns and cities or in specific locations, for example, some rural areas and seaside towns' (Mitchell et al., 2009).



Experiences of homophobic hate crimes and incidents

The official estimates of the number of LGB people who have experienced homophobic hate crimes and incidents have been unreliable to date. The findings from *Homophobic Hate Crime*, 2008 suggest that one in eight of lesbians and gay men and one in 20 bisexuals had experienced a hate crime or incident in the year to February 2008.

The crime and incidents experienced vary, with certain groups more or less vulnerable. Seventeen per cent of victims of homophobic hate crimes experience a physical assault and the figures double for ethnic minority gay people. Twelve per cent of people experience unwanted sexual contact. Eighty-eight per cent of homophobic incidents involve some form of harassment. Homophobic crimes and incidents also include burglary, theft and robbery (*Homophobic Hate Crime*, 2008).

Although bullying is not considered to be a crime in itself, certain behaviours perpetrated by bullies may constitute a crime. Bullying motivated by hostility or prejudice based on a person's actual or perceived sexual orientation can be considered to constitute hate incidents. Young LGB people report high levels of homophobic bullying and evidence suggests that it may be becoming more of a problem than previously, though data on trends is not available. Sixty-five per cent of LGB young people aged 18 and under experienced homophobic bullying in schools. Some of those experiences were crimes, including death threats and serious physical assaults (*The School Report*, 2007).

Perpetrators of homophobic hate crimes and incidents

The profile of perpetrators remains largely unclear, making it difficult for the criminal justice system to maximise their efforts to prevent homophobic hate crimes. What is known is that the perpetrators of the majority of homophobic hate crimes are unknown to the victim. A small proportion are committed by someone known to the victim, with lesbians being more likely than gay men to be the victim of a hate crime or incident perpetrated by someone they know. One in six homophobic hate crimes and incidents are perpetrated by someone in the victim's local community. However, perpetrators of homophobic hate crimes and incidents towards those aged 16 and over are most likely to be under 25 and strangers to the victim. Three out of five incidents were perpetrated by strangers under 25 (*Homophobic Hate Crime*, 2008).ⁱⁱⁱ

The problem of young people as perpetrators is corroborated by the findings on homophobic bullying in schools. The majority of teachers appear unaware of the serious nature of homophobic bullying, therefore the behaviour and the attitudes behind it often remain unchallenged (*The Teachers' Report*, 2009).

Reporting of hate crimes and incidents

Without information on who perpetrates homophobic hate crimes and why they perpetrate them, the criminal justice system cannot effectively respond to or prevent them. This intelligence-led approach is undermined by the under-reporting of homophobic hate crimes. Only a quarter of hate crimes and incidents are reported to the police. Seven in 10 victims report the incident to no one. Gay men and young people are far less likely to report incidents to the police than lesbians and older people respectively. Many police forces have attempted to capture this information via third parties, however only 6 per cent of victims report

the incident to a third party reporting service (*Homophobic Hate Crime*, 2008).

The primary reason for under-reporting does not appear to be a lack of appropriate avenues through which to report crime, although this is a factor. Fear of homophobic attitudes and treatment from the police is one explanation. One in five of LGB people say they expect discrimination from the police when reporting a homophobic hate crime (*Serves You Right*, 2008). The vast majority of those who report homophobic hate incidents report them to the police. It would appear therefore that the minority who feel confident to report hate crimes and incidents appear to understand that the



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police are the most appropriate people to report them to. The evidence suggests that the main reasons victims do not report hate crimes are that they do not think the incident is serious enough to report or they did not know that the incident perpetrated against them was an offence. Other reasons include beliefs that the police would not do anything or treat the incidents seriously (*Homophobic Hate Crime*, 2008).

Community confidence affects whether people will report crimes. Levels of confidence in the police are affected by many factors, and some are beyond their control. For example, media coverage of serious incidents of homophobic hate crimes may add to people's beliefs that the police are 'doing nothing' to tackle homophobic hate crimes. Media coverage does not often reflect capacity and procedural issues faced by the police. Improving communication with LGB people, particularly over high-profile cases being investigated, is important in raising community confidence. Demonstrating overt commitment to non-discrimination against LGB people also contributes to community confidence. If police authorities appear in Stonewall's Workplace Equality Index, LGB people report this as an indicator that a police force would treat the reporting of homophobic hate crimes seriously (*Homophobic Hate Crime*, 2008).

Investigation, charging and prosecutions of homophobic hate crime cases

Only 6 per cent of LGB victims report that someone was charged with homophobically motivated offences and only 1 per cent report that someone was convicted of the offence (*Homophobic Hate Crime*, 2008). This is a very low conviction rate. There is no clear picture regarding why and how some cases of homophobic hate crimes and incidents proceed through the criminal justice system, and some do not.

A quarter of victims who reported homophobic hate crimes to the police maintain that they were not recorded as a homophobic incident and three in 10 say they weren't informed whether they were recorded as a homophobic incident. A proportion of these cases may be explained by victims not reporting them as homophobic, though there is clear under-recording of homophobic hate incidents by the police. If incidents are not recorded as a homophobic hate crime, then they cannot be tracked through the criminal justice system and justice will not be achieved.

The CPS does collect data on the cases referred to it. In 2007, 72.8 per cent of defendants of racially and religiously aggravated crimes were charged compared with 64.6 per cent of defendants of homophobic and 69 per cent of disability crimes. In the three years ending in March 2008, over 2,400 defendants were prosecuted for crimes involving homophobia. Convictions rose from 71 per cent in 2005–06 to 78 per cent in 2007–08.



In 2007–08 the target was to reduce unsuccessful outcomes for hate crime which had been motivated by race, religion, sexual orientation and disability to 20 per cent. Performance for racially and religiously aggravated crimes exceeded this target in the final quarter at 19.7%, as did performance for disability incidents at 16.9 per cent. Performance for homophobic crime did not meet the target, reaching 22.6 per cent in the final quarter of 2006–07 and 2007–08. In 2007–08, 87 per cent of defendants were male and 79 per cent white (*Hate Crime 2007–2008*).

There is evidence that LGB people are concerned about how they might be treated in the court system. A third of LGB people would expect to be discriminated against by a magistrate and a quarter would expect to be discriminated against by a judge if they were charged with committing an offence (*Serves You Right*, 2008). There is some evidence to suggest that this contributes to the failure of cases. Over 8 per cent of homophobic hate crime cases fail because of victim non-attendance at court and over 2 per cent fail because of a victim retraction (*Homophobic Hate Crime*, 2008).

Support and advice for victims of hate crimes

Increasing the reporting of homophobic hate crimes will only be effective if the victims have a positive experience. Equally, the success of the criminal justice system in responding to hate crimes and incidents should not only be judged by the number of prosecutions, but by the impact of both the incident and the encounter with the criminal justice system on the victim's quality of life.

Providing relevant support and advice is key, however two-thirds of victims who reported homophobic hate incidents to the police were not referred to, or informed about, support and advice services available to them. In addition, nine in 10 victims did not actively seek advice and support after experiencing a hate crime or incident. The reasons for not seeking advice and support include lack of awareness that it is available, or where to obtain it, and fear of homophobia from support workers (*Homophobic Hate Crime*, 2008). Currently, there is limited provision of

support and advice services that are specific to victims of hate crime. Generic support services do aim to provide useful support to all victims of crime, regardless of the nature of the offence or sexual orientation of the victim. According to the CPS, in 2007–08, of those victims and witnesses referred to a support service or specialist agency, none were recorded as being referred to a specific 'specialist agency'. The completeness and accuracy of this information remains under development. Thirty per cent were recorded as having been referred to either a victim or witness support agency, and 70 per cent were subject to an 'other referral'.

Conclusions

Homophobic hate crimes and incidents are a serious issue that the police and their partners need to respond to. However, there remain a number of operational and strategic obstacles to successfully responding to and preventing homophobic hate crime. To date, the work by the CJS in tackling hate crimes and incidents, and specifically homophobic hate crimes, is not consistent across England, Wales and Scotland. There are continuing disparities in the law. Racially aggravated crimes are an offence under the Crime and Disorder Act 1998 while homophobia is considered under the law as an aggravating factor rather than an offence in its own right. Such disparity has an impact on the recording and response to different incidents by police forces.

It also leads to confusion among communities as to what hate crimes are. Numerous respondents in *Homophobic Hate Crime* believed that a homophobic hate crime was an offence in its own right.

The Government initiated a cross-Government consultation on hate crime in 2009, and at a strategic level there is growing opinion that hate crimes should be addressed in terms of 'cross-cutting issues' such as low confidence in the police and the poor satisfaction levels of victims. However, there are distinct differences in the nature and understanding of different types of hate crimes that extend beyond these cross-cutting issues. There is inconsistency in the focus and resources given to different types of hate crime, which would need to be rectified before it is suitable to focus on cross-cutting issues. In addition to cross-cutting issues, there are moves to prioritise strategic work around transgender, disabled, Gypsy and Traveller and refugee and asylum seeker people to improve efforts regarding particular communities. The rationale for these groups is they 'appear to be disproportionately affected by hate crime and that the hate crime affecting these communities has received less attention in the past' (Cross-Government Action Plan on Hate Crime, Version 2, 2009). It is important to tackle hate crime against all communities, including LGB communities, and it is essential that all forms are tackled and afforded equal focus and resources.

The absence of robust national, regional or local data on the size of the LGB population means that it is more difficult to convince agencies that homophobic hate crime is an operational and local priority.



To improve the reliability of police data on homophobic hate crimes, the numbers of hate crimes misrecorded needs to decrease and the numbers of hate crimes reported (as hate crimes) needs to increase.

To date, the absence of official baseline data from the BCS and SCJS have been major barriers to establishing the prevalence of, worry about, and experiences of crime if you are LGB, though this should change now that the sexual orientation of respondents is collected.

The CPS captures the gender and ethnicity of perpetrators of homophobic hate crimes, for those who are prosecuted and convicted. Better profiles and reporting of characteristics of perpetrators would be advantageous in aiding prevention and targeted tackling of homophobic hate crime.

Recommendations

The following recommendations derive from the evidence:

1. Increase reporting of homophobic hate crimes. An assessment needs to be made of the variety of initiatives currently in operation to increase reporting of all hate crimes.

All victims – not just LGB victims – should be encouraged to report hate crimes to the police. Training also needs to be given to individual police officers on how to identify and record hate crimes and how to deal sensitively with victims.

2. Educating and informing LGB people. Resources need to be developed to educate LGB people about homophobic hate crimes, and their rights in the criminal justice system.

Police forces and their partners have a central role in educating LBG people regarding the intelligence value of reporting all hate incidents. Establishing LGB liaison officers in every British policeforce would be a valuable contribution to this work.

3. Improve investigation and conviction rates. The police and CPS should increase the number of hate crimes and incidents they investigate and prosecute. They should also improve the information provided to victims about whether the case will be investigated and/or prosecuted. The publicising of successful cases would promote the action the police and the CPS are taking on hate crimes.

4. Improve recording mechanisms. Data collection should be improved. This will mean strategies to improve the numbers reporting, in order to gain a better idea of homophobic hate crimes experienced. Police forces must train all police to identify and record hate crimes and the BCS should include questions about homophobic hate crimes. Better data needs to be collected on the perpetrators of homophobic hate crimes and we need to gain a better understanding of the causes. Data collection methods should be consistent across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis.

5. Tackle homophobic bullying in schools. Police and their partners should work with schools and local authorities to tackle homophobic bullying and educate young people about homophobic hate crimes. Police and their partners should also undertake specific work to encourage young LGB people to report hate crimes.

6. Improve support and information to victims. Police need to refer all victims of hate crimes and incidents to relevant support services. Such services will need to be adequately funded. All victims need to be told whether their case will be investigated and/or prosecuted, including regular updates on the progress of any investigation or prosecution.

7. Provide specific initiatives. All individuals who have experienced or witnessed a hate crime, including heterosexual people and work colleagues, should be encouraged to report them. Support needs to be provided to the victim's families.

8. Work with employers. Employers need to tackle the homophobic bullying of and by employees. The police and their partners need to work with employers to identify incidents in the workplace that may constitute hate crimes.

9. Be a good employer. Police should undertake work to become more LGB-friendly employers to support their work as LGB-friendly service providers. The implementation of a single equality duty should encourage more police forces to become both LGB-friendly employers and service deliverers.

10. Improve equality and diversity in the justice system. The judiciary needs to be more reflective of the community it serves, including LGB people. Judges and magistrates, as well as victims and witnesses accessing the justice system, should be made aware of the equal treatment bench book.

Endnotes

- i This is the first transgender-inclusive hate crime bill in Europe, and has the most inclusive definition of transgender identity in any European legislation.
- ii The British Crime Survey (BCS) only records worry about three types of crime – burglary, violent crime and car crime – so data is not directly comparable.
- iii It is important to note that respondents will not necessarily consider the homophobic bullying they experienced at school to be a homophobic hate incident or crime.

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Contacts

England

Arndale House
The Arndale Centre
Manchester M4 3AQ

Helpline:

Telephone
0845 604 6610

Textphone
0845 604 6620

Fax
0845 604 6630

Scotland

The Optima Building
58 Robertson Street
Glasgow G2 8DU

Helpline:

Telephone
0845 604 5510

Textphone
0845 604 5520

Fax
0845 604 5530

Wales

3rd Floor
3 Callaghan Square
Cardiff CF10 5BT

Helpline:

Telephone
0845 604 8810

Textphone
0845 604 8820

Fax
0845 604 8830

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This summary highlights new insights into homophobic hate crime and hate incidents. It draws upon a range of sources, in particular Stonewall's latest research *Homophobic Hate Crime: The British Gay Crime Survey 2008*.

What is already known on this topic

- It has been extremely difficult to obtain an accurate picture of the prevalence of homophobic hate crime and incidents in Britain, as the collection and publication of official data is relatively recent and under-developed.
- A high proportion of homophobic hate crimes and incidents are not reported or recorded.

What this study adds

- This is the most comprehensive study of homophobic hate crimes and incidents to date.
- Seven in 10 lesbian, gay and bisexual (LGB) people think they are at greater risk of being insulted and harassed, and half think they are at greater risk of being physically assaulted than someone who is heterosexual.
- The law is uneven regarding different types of hate crime. Perpetrators of racially and religiously motivated hate crimes can be charged with specific offences such as racially or religiously aggravated harassment or assault, whereas perpetrators of homophobic hate crimes are charged with existing offences, such as assault, and the homophobic motivation is taken into account during sentencing.
- The official estimates of the number of LGB people who have experienced homophobic hate crimes and incidents have been unreliable to date. The findings from *Homophobic Hate Crime 2008* suggest that one in eight lesbians and gay men and one in 20 bisexuals had experienced a hate crime or incident in the year to February 2008.
- The British Crime Survey and the Scottish Crime and Justice Survey do not ask about experiences of homophobic hate crimes and incidents and have only recently begun to collect the sexual orientation of some respondents.
- Only a quarter of homophobic hate crimes and incidents are reported to the police. Seven in 10 victims report the incident to no one.