

Sex Work, Hate Crime and the Criminal law

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Abstract

It has been well established at a global level that sex workers are often victims of direct violence in the course of their work, targeted by their 'perceived vulnerability' as a marginalised group. In one police force in England (Merseyside) since 2006 they have addressed this victimisation through adopting a 'hate crime' approach to policing crimes against sex workers. The aims of this paper are first, to review the implementation of the hate crime model applied to crimes against sex workers; second, to explore how police forces are adopting the policy across the UK, and the operational barriers to doing so; and third to explore the legal, theoretical and critical issues raised by treating crimes against sex workers as a type of hate crime through policing models. The conclusion weighs up some of the challenges to expanding the current law to include sex workers as a target group for increased protection, assessing that a fully funded policing approach may well be sufficient alongside law reform around decriminalisation of sex work. This article will draw on data from police forces in England. We acknowledge that much more work is needed to establish the sex work community's views on the value, if any, of the hate crime approach.

Keywords

hate crime, Merseyside, policing, sex work, violence, vulnerability

Introduction

In this paper, we adopt both theoretical and empirical approaches in examining the challenges that arise from applying the concept of hate crime to sex work, as well as the practicalities of implementing a hate-

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crime approach at an operational policing level. Given their exclusive nature, hate crimes appear to create a victim hierarchy, separating those who (apparently) deserve our protection – namely those with protected characteristics such as people with disabilities or those who experience transphobia – from those who are ‘undeserving’, such as sex workers or those who choose to identify with a subculture such as ‘goths’. There is a challenge in distinguishing between (i) hate as a motivator for violence against others, and (ii) hate as ‘othering’ and therefore producing a context of vulnerability which provides the opportunity for violence against those ‘others’. Additionally, given its exclusive nature, hate crimes appear to create a victim hierarchy, separating those (apparently) deserving and undeserving of our protection.

The individual nature of hate crime means there is little to no room afforded for intersectionality – despite the importance of adopting such a lens to truly understanding marginalisation and victimisation. Certain writers¹ are enthusiastic about the symbolic power of hate crime laws to indicate the seriousness of offences against certain groups, and a commitment to protecting them. Others are highly critical of the credibility of the concept and see hate crime as an expansion of an oppressive and violent system that is fundamentally and inherently unable to protect exactly those whom it claims to.² In this paper we grapple with these divergent views, and dovetail this with some practical insights and historical learning from Merseyside police force (and more recently Cambridgeshire and North Yorkshire), to see how hate crime approaches to crimes against sex workers have been implemented. In doing so we look at the both the advantages and direct challenges to using this approach from a policing perspective. We strongly recognise that sex workers, who in our research comprised only those working on the street, represent a more diverse group and need to be consulted further on their thoughts about this approach, both symbolically and practically.

A Note on Methods and Data

Data in this paper is drawn from two different empirical projects. The first was carried out in the summer of 2020, based on interviews with police officers (n=13) across the police forces of Merseyside, Cambridgeshire and North Yorkshire. These interviews were focused on the adoption, implementation and ongoing development of the hate crime approach in these areas. The second project, draws on data from sex workers in a study on their experiences of hate crime in 2010 in Merseyside. This data is useful as it puts the progress of the hate crime model into perspective. Both projects received ethical approval from several university ethics boards and NHS ethical approval. Before we discuss some of the empirical findings we set out a selection of the theoretical understandings around hate crime as a concept, as an operational tool and as a concept used to understand and respond to the experiences of sex workers.

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1. N Chakraborti, ‘Crimes Against the “Other”: Conceptual, Operational, and Empirical Challenges for Hate Studies’ (2010) 8(9) *Journal of Hate Studies* 9–28; J Garland and N. Chakraborti, ‘Divided by a common concept? Assessing the implications of different conceptualizations of hate crime in the European Union’ (2012) 9(1) *European Journal of Criminology* 38–51; G Mason, ‘The symbolic purpose of hate crime law: Ideal victims and emotion’ (2014) 18(1) *Theoretical Criminology* 75–92; and H Mason-Bish, ‘Examining the Boundaries of Hate Crime Policy: Considering Age and Gender’ (2011) 24(3) *Criminal Justice Policy Review* 297–316.
 2. N. Hammond, ‘Illusions of Safety: Policing Hate Crimes Won’t Make Us Safer’ (2013) *The Bilerico Project* [online], 9 June, available at: <http://bilerico.lgbtqnation.com/2013/06/illusions_of_safety_policing_hate_crimes_wont_make.php>; H. Hurd, ‘Why Liberals Should Hate “Hate Crime Legislation”’ (2001) 20(2) *Law and Philosophy* 215–232; D. Meyer, ‘Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws’ (2014) 22 *Critical Criminology* 113–125; and Y. Nair, ‘Counterpoint: Loving Hate: Why Hate Crimes Legislation is a Bad Idea’ (2009) *The Bilerico Project* [online], 8 February, available at: <http://bilerico.lgbtqnation.com/2009/02/loving_hate_why_hate_crimes_legislation.php>.

Understandings of Inclusion and 'Othering'

Both Grattet and Jenness³ and Piggot⁴ question whether the very inclusion of a group within hate crime law 'others' them, and leads to a reinforcement of their (perceived) vulnerability. Marginalised groups are already 'othered' by society, so furthering their marginalisation by highlighting their vulnerability to hate crime raises questions about whether or not such a move benefits them. Amongst the literature, hate crime is generally considered to be a violent manifestation of societal power dynamics and control.⁵ As the 'Other' is constructed as synonymous with 'lesser than', they are more likely to face violence.⁶ In the context of sex work, it is accepted that the 'othering' of sex workers by, for example, stigmatising and criminalising the work they do, bears much responsibility for their victimisation.⁷

How Do We Recognise Hate? How do we know the *hate* in hate crimes? Numerous writers have highlighted the conceptual challenge with the term 'hate', noting that it is difficult to define exact parameters.⁸ As a solution to this Chakraborti and Garland⁹ argue that a vulnerability/difference framework is a way around the current (and restrictive) identity politics of hate crime by allowing multiple aspects of the victim's being to intersect. They are careful to stress, though, that 'vulnerability' is not a literal marker of the individual's *actual* vulnerability, but rather a reflection of society's *perception* of particular groups as being vulnerable (regardless of whether or not individuals within that group actually are). This is particularly relevant for considering the applicability of the concept to sex workers, given the philosophical, practical and ethical discussions around sex work as a 'vulnerable' group and or activity.¹⁰ As Campbell *et al* state: 'Recognising a disproportionate level of victimisation is important but equally to characterise all commercial sex encounters as involving victimisation is not accurate.'¹¹ We know this because there are many sex workers who have never experienced violence in the course of their work¹² and there are different experiences across sex markets (street, escort, brothel, webcam),

3. R Grattet and V Jenness, 'Examining the Boundaries of Hate Crime Law: Disabilities and the "Dilemma of Difference."' (2001) 91(3) *The Journal of Criminal Law and Criminology* 653–698.
4. L Piggot, 'Prosecuting Disability Hate Crime: a disabling solution?' (2011) 5(1) *People, Place and Policy Online* 25–34.
5. N Chakraborti, 'Responding to hate crime: Escalating problems, continued failings' (2018) 18(4) *Criminology and Criminal Justice* 387–404; Mason-Bish (n 1); and B Perry, 'In the Name of Hate: Understanding Hate Crime' (London: Routledge, 2001).
6. Black and Pink, 'A Compilation of Critiques on Hate Crime Legislation' (2009) available at: <<http://www.againstequality.org/about/prison/>>. (accessed 30th June 2021); and K Gelber, 'Hate Crimes: Public Policy Implications of the Inclusion of Gender' (2000) 35(2) *Australian Journal of Political Science* 275–289.
7. R. Campbell, 'Not Getting Away With It: addressing violence against sex workers as hate crime in Merseyside' (2016) PhD Thesis, Durham University, available at: <<http://etheses.dur.ac.uk/11960/>>; Gellison and L Smith, 'Hate Crime legislation and violence against sex workers in Ireland: Lessons in Policy and Practice' (2017) Queen's University Belfast School of Law: Research Paper, available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2843869>; L Graham, 'Governing sex work through crime: Creating the context for violence and exploitation' (2017) 81(3) *The Journal of Criminal Law* 201–216; and K McCausland, R Lobo, M Lazarou, J Hallett, J Bates, B Donovan and LA Selvey, 'It is stigma that makes my work dangerous': experiences and consequences of disclosure, stigma and discrimination among sex workers in Western Australia' (2020) *Culture, Health and Sexuality* 1–16.
8. Chakraborti (n 5); N Chakraborti and J Garland 'Reconceptualizing hate crime victimization through the lens of vulnerability and 'difference'' (2012) s, 16(4): 499–514; J. Wypijewski 'Justice Shouldn't Be Tilted by 'Hate Crimes'' (2004) *Los Angeles Times* [online], 26 November, available at: <<https://www.latimes.com/archives/la-xpm-2004-nov-26-oe-wypijewski26-story.html>>; and J Jacobs and K Potter 'Hate Crimes: A Critical Perspective' (1997) 22 *Crime and Justice* 1–50.
9. Chakraborti and Garland (n 8).
10. V Munro and J Scoular, 'Abusing Vulnerability? Contemporary Law and Policy Responses to Sex Work in the UK' (2012) 20 *Feminist Legal Studies* 189–206; K Brown and T Sanders, 'Pragmatic, progressive, problematic: Addressing vulnerability through a local street sex work partnership initiative' (2017) 16 *Social Policy and Society* 429–441; and RA Hewer, 'Gossamer Consensus: Discourses of Vulnerability in the Westminster Prostitution Policy Subsystem' (2019) 28(2) *Social and Legal Studies* 227–249.
11. R Campbell, L Smith, B Leacy, M Ryan and B Stoica, 'Not collateral damage: Trends in violence and hate crimes experienced by sex workers in the Republic of Ireland' (2020) 28(3) *Irish Journal of Sociology* 280–313.
12. G Ellison, C Ni Dhónaill and E Early, 'A Review of the Criminalisation of the Payment for Sexual Services in Northern Ireland' (2019) ERin, A Review of the Criminalisation of the Payment for Sexual Services in Northern Ireland (September 19, 2019);

with some reporting much less violence than others.¹³ However, the stigma attached to doing sex work appears to be ubiquitous.¹⁴

An important question frequently raised in the literature is how exactly we distinguish, when it comes to marginalised and vulnerable groups, whether the motivation behind offences is due to actual hatred, or to 'perceived vulnerability'.¹⁵ Ellison and Smith¹⁶ suggest that sex workers are seen as legitimate, 'easy', 'disposable' targets¹⁷ building on the classic work by Lowman¹⁸ and the ideas he promoted around the 'discourses of disposability' in society. The motivation behind offences against sex workers might not necessarily be hatred but rather opportunity. It is perhaps important to note, though, that the street sex workers (majority of whom were long term street worked with Class A drug use histories) interviewed by Campbell¹⁹ identified with the concept of hate crime, feeling that such classification was reflective of the abuse they had received.²⁰ However, this identification stemmed from the fact that Campbell's informants believed their victimisation was a result of the intersection of hatred towards them, and their vulnerable position within society.

Waxman²¹ suggests that there may be overlap between hate and vulnerability arguing that whilst hate is the motivator, vulnerability provides opportunity. However, Roulstone *et al*²² express concern that an interpretation of hate crime involving vulnerability may manifest as victim blaming. The less vulnerable a person is perceived to be, the more culpable they are for their victimisation. It is especially easy to see how this problem might manifest for sex workers who are often treated with little sympathy for violence they face in the context of their sex work as the trope of 'occupational hazard' has been used by prevailing police attitudes in the past to explain away the violence directed to this group.²³ Where sexual violence is present there is often even less sympathy for the victim.²⁴

How do we recognise hate when the vast majority of hate directed at protected groups is experienced in the ordinary, everyday?²⁵ That is, the hate regularly does not manifest itself in instances of extreme physically violent or 'obvious' actions, but is often more subtle and pervasive. Sex workers often tell

and T Sanders, J Scoular, R Campbell, J Pitcher, S Cunningham, 'Internet sex work: Beyond the gaze' (Basingstoke, England: Palgrave 2018).

13. L Connelly, D Kameräde and T Sanders, 'Violent and nonviolent crimes against sex workers: The influence of the sex market on reporting practices in the United Kingdom' (2021) 36(7-8) *Journal of interpersonal violence*, NP3938-NP3963.

14. L Nencel, J Bjønness, M Skilbri (eds), 'Reconfiguring Stigma in sex work studies: Putting relationality to work' (Routledge, London, 2021).

15. A Swiffen, 'New Resistance to Hate Crime Legislation and the Concept of Law' (2018) 14(1) *Law, Culture and the Humanities* 121-139; Campbell (n 7); A Roulstone, P Thomas and S Balderston, 'Between hate and vulnerability: unpacking the British criminal justice system's construction of disablist hate crime' (2011) 26(3) *Disability and Society* 351-364; and Grattet and Jenness (n 3).

16. Ellison and Smith (n 7).

17. See also: Campbell (n 7).

18. J Lowman, 'Violence and the outlaw status of (street) prostitution in Canada' (2000) 6(9) *Violence against women* 987-1011.

19. R Campbell, 'Not getting away with it: linking sex work and hate crime in Merseyside', (2014) in Chakraborti and Garland (eds), *Responding to Hate Crime: The Case to Connecting Policy and Research*, Bristol: Policy Press, 57-72.

20. K Corteen and M Stoops, 'Sex work, hate crime and victimisation' (2016) in Corteen, Morley, Taylor and Turner (eds), *A Companion to Crime, Harm and Victimisation*, Bristol: Policy Press, 210-213; and R. Campbell and T. Sanders 'Sex Work and Hate Crime' (Palgrave: London, 2021).

21. B Waxman, 'Hatred: The Unacknowledged Dimensions in Violence Against Disabled People' (1991) *Sexuality and Disability* 185-187; and Grattet and Jenness (n 3).

22. A Roulstone, P Thomas and S Balderston, 'Between hate and vulnerability: unpacking the British criminal justice system's construction of disablist hate crime' (2011) 26(3) *Disability and Society* 351-364.

23. Campbell and Sanders (n 20).

24. DC Spencer, R Ricciardelli and A Dodge, "'Society Wants to See a True Victim": Police Interpretations of Victims of Sexual Violence' (2020) *Feminist Criminology*. <<https://doi.org/10.1177/1557085120970270>>

25. Chakraborti and Garland (n 8); S.J. Hardy and N. Chakraborti 'Blood, Threats and Fears: The Hidden Worlds of Hate Crime Victims' (Palgrave, London, 2020); Campbell and Sanders (20); and J. Jacobs and K. Potter 'Hate Crimes: A Critical Perspective' (1997) 22 *Crime and Justice* 1-50.

of the persistent and distressing insults and acts of aggression they face: verbal insults, thrown objects, threats from community, harassment of family, naming and shaming from media and authorities.²⁶ As the marginalisation of certain groups is so pervasive within society, hate directed towards them may be internalised and normalised. For hate crime to be effective, the affected groups need to identify their experience as hateful and criminal, and then report and engage with legal actors.

This self-regulation and self-identification presents a problem in the context of sex work. Campbell²⁷ describes the “problematic relationship” between sex workers and the police, and the difficulty this poses when it comes to hate crime. In the context of partial and fully criminalised sex work in the UK, where the police operate a dual role between enforcement and protection, and where their focus has often been on the former, there has been a hesitancy to engage with the law and legal actors/systems.²⁸ The distinct under-reporting of crimes experienced by sex workers to the police is well documented,²⁹ and it has been suggested by grassroots organisations that this distrust is increasing³⁰ despite official police guidance tending to move away from enforcement.³¹ Though this is not unique to sex workers – and appears to be a shared reluctance amongst marginalised groups such as those living with a disability or from minority communities³² – it makes the use of hate crime (which relies on victims identifying and reporting such offences) challenging.

Hierarchies of Hate. Rights that are ascribed on the basis of group or individual identity always risk creating exclusion. Chakraborti³³ argues that the “conceptual ambiguity” of hate crime runs the risk of creating hierarchies of (un)acceptable prejudice. Stanley *et al*³⁴ argue that rights strategies are problematic as they suggest a division between deserving and undeserving victims. The identity politics inherent in hate crime leads to victim division and hierarchy as groups are required to engage in a “competition for suffering” in order to be recognised as legitimate.³⁵ The singularising of identity within hate crime leads to divisions amongst marginalised groups rather than bringing them together through their shared experience of victimisation.³⁶ Exclusion from hate crime leads to exclusion from the protection afforded by victim status. Chakraborti and Garland³⁷ note that there are many groups in society (they highlight

26. H Kinnell, ‘Violence and sex work in Britain’ (Willan: Cullompton Devon: 2008).

27. R Campbell ‘Beyond hate: Policing sex work, protection and hate crime’ in T Sanders and M Laing (eds), *Policing the Sex Industry: Protection, Paternalism and Politics*, (Routledge Oxon, England and NY, New York; 2018).

28. R. Bowen, K. Swindells, R.Hodsdon and C. Blake, ‘Why Report? Sex Workers who use NUM Opt-Out of Sharing Victimisation with Police’ (2021) *Sexuality Research and Social Policy*; R. Campbell ‘Beyond hate: Policing sex work, protection and hate crime’ in T Sanders and M Laing (eds), *Policing the Sex Industry: Protection, Paternalism and Politics*, (Routledge Oxon, England and NY, New York; 2018); Campbell (n 7); and R. Campbell, ‘Not getting away with it: linking sex work and hate crime in Merseyside’, (2014) in Chakraborti and Garland (eds), *Responding to Hate Crime: The Case to Connecting Policy and Research*, Bristol: Policy Press, 57–72.

29. LA Sweeney and S FitzGerald, ‘A case for a health promotion framework: the psychosocial experiences of female, migrant sex workers in Ireland’ (2017) 13 *International Journal of Migration, Health and Social Care* 4; and E Klambauer, ‘Policing roulette: Sex workers’ perception of encounters with police officers in the indoor and outdoor sector in England’ (2018) 18(3) *Criminology and Criminal Justice* 255–272.

30. R Bowen, K Swindells, R Hodsdon and C Blake, ‘Why Report? Sex Workers who use NUM Opt-Out of Sharing Victimisation with Police’ (2021) *Sexuality Research and Social Policy*; and National Ugly Mugs, English Collective of Prostitutes and Umbrella Lane, ‘Sex Workers Too: Summary of Evidence for VAWG 2022 – 2024 Strategy’ (2021)

31. National Police Chiefs Council, ‘National Policing Sex Work and Prostitution Guidance’ (2019) <<http://library.college.police.uk/docs/appref/Sex-Work-and-Prostitution-Guidance-Jan-2019.pdf>>; and T Sanders, D Vajzovic, B Brooks-Gordon and N Mulvihill, ‘Policing vulnerability in sex work: the harm reduction compass model’ (2020) *Policing and Society* 1–17.

32. Chakraborti (n 5); and A. Roulstone, P. Thomas and S. Balderston, ‘Between hate and vulnerability: unpacking the British criminal justice system’s construction of disablist hate crime’ (2011) 26(3) *Disability and Society* 351–364.

33. Chakraborti (n 1).

34. E Stanley, D Spade, and Queer (In)Justice, ‘Queering Prison Abolition, Now?’ (2012) *American Quarterly* 115–127.

35. Mason-Bish (n 1); Hammond (n 2); Black and Pink (n 6).

36. Chakraborti and Garland (n 8).

37. *Ibid*.

sex workers as the prime example, but also mention, amongst others, goths and addicts) who are conceivably stigmatised and marginalised, yet are not seen as such because they are not 'worthy' victims.

For further understanding here we can turn to classic criminological thinking through Christie's ideas³⁸ as he proposes that there are ideas of 'the ideal', the 'less than ideal', and the 'non-ideal' victim and that one's victim status depends on adherence to the socially constructed victim prototype (similar to how the success of rape cases in the criminal justice system, seem to depend on adherence to 'real' rape.³⁹ This is a problem for sex workers who face a particularly uphill battle to earn victim status given they are unlikely to fit society's idea of victimhood. Indeed, Walklate⁴⁰ states that victimhood excludes "all those groups of people for whom it is presumed that victimization is endemic to their lifestyle." If sex workers are expected to be victimised, is hate crime incompatible with their position? Mason argues "it may be disproportionate moral censure limits the ability of some groups to project ideal images of *respectable* and *blameless* victims who...*deserve* the sympathy of others (emphasis added)."⁴¹ Given that discourse around sex work tends to become tangled up with morality politics, is it likely that sex workers would be able to garner the right kind of sympathy in order to benefit from inclusion within hate crime protection?

Legal norms and processes make distinctions between deserving and undeserving victims such that only those included within hate crime laws protection are perceived to be 'real' victims of hate.⁴² Meyer⁴³ believes that hate crime discourse reproduces victim stereotypes by obscuring the more marginal aspects of victim identity and highlighting the more normative ones. Hate crime laws rely on imperfect victim binaries. Thinking of hate crimes that tend to garner the most attention, it is easy to see how privilege and stereotypes play a role in determining, even within protected groups, those victims who are considered the most deserving of protection. The case of Gary Allen who murdered two sex workers and assaulted many others over a twenty year period demonstrates the lack of joined up thinking amongst a range of stakeholders to apprehend such dangerous offenders.

Intersectionality. There are substantial criticisms that the concept and operationalisation of 'hate crime' considers *one* characteristic, or identity, at a time. As a result, within this framework, intersectional experiences are stifled and often does not represent individual's lived experiences. Though this is a problem for most of those in marginalised groups, it is especially problematic in the context of sex work, where workers are likely to face compound marginalisation around ethnicity, migrant status, sexuality and so forth.⁴⁴ The murders of Asian sex workers in parlours in Atlanta in March 2021 demonstrates the targeting of sex workers because of ethnicity as well as their sex work status.⁴⁵ Indeed, Gill and Mason-Bish⁴⁶ note that the singular nature of hate crime ignores the fact that victims are often targeted because of their membership of multiple marginalised groups. How do you identify *a* (or *the*) hate

38. N Christie 'The Ideal Victim' in Fattah (ed), *From Crime Policy to Victim Policy: Reorienting the Justice System*, (Basingstoke: Macmillan Press: 1986) 17–30.

39. S Estrich 'Real rape' (Harvard University Press: California: 1987).

40. S Walklate 'Imagining the Victim of Crime' (2007) Maidenhead: Open University Press. In Corteen, K., 'New victimisations: female sex worker hate crime and the 'ideal victim'' in Duggan (ed), *Revisiting the "Ideal Victim": Developments in Critical Victimology*, (Bristol: Policy Press: 2018) at 107.

41. Mason (n 1): 75–92 at 85.

42. A. Swiffen, 'New Resistance to Hate Crime Legislation and the Concept of Law' (2018) 14(1) *Law, Culture and the Humanities* 121–139.

43. D Meyer, 'Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws' (2014) 22 *Critical Criminology* 113–125.

44. E Lam, E Shih, K Chin and K Zen, 'The Double-Edged Sword of Health and Safety: COVID-19 and the Policing and Exclusion of Migrant Asian Massage Workers in North America' (2021) 10(5) *Social Sciences* 157. doi:10.3390/socsci10050157

45. T Quan, 'Don't forget — the Georgia shootings are a hate crime against sex workers' (2021) *Los Angeles Times* 19th March.

46. A Gill and H Mason-Bish, 'Addressing violence against women as a form of hate crime: limitations and possibilities' (2013) 105 *Feminist Review* 1–20.

crime when an individual has multiple aspects of self, any one or combination of which could be the target [or object] of hate? Intersectionality is an essential lens through which to understand sex workers experiences, particularly with the multiple experiences of racism, xenophobia and exclusionary attitudes towards migrant sex workers in the UK⁴⁷ which increased as a result of Brexit.⁴⁸

Meyer⁴⁹ stresses the importance of an intersectional approach to hate crime, suggesting that without such a lens, hate crime discourse is driven from the perspective of the (otherwise) privileged members of marginalised groups (e.g. white, gay men as the 'face' of LGBT community). Complications arise in the context of sex work and hate crime given that the experiences of sex workers are not universal particularly in relation to who experiences violence and in what forms.⁵⁰ We know specifically that those working online either through indirect provisions of sexualised services such as webcamming experience different types of crimes – those which are digitally facilitated such as unwanted contact, harassment and stalking.⁵¹ Therefore, 'hate' is not experienced in the same way by every sex worker, and indeed different sex workers will sit at different intersections of marginalisation.

Policing Crimes Against Sex Workers Through a Hate Crime Model

In England and Wales the Crown Prosecution Service and the police have agreed the following definition for identifying and flagging hate crime: *'Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation; or transgender identity or perceived transgender identity'*. All police forces record hate crimes and incidents based on these five characteristics, also known as 'protected characteristics'. These are covered by legislation (sections 28–32 of the Crime and Disorder Act 1998 and sections 145 and 146 of the Criminal Justice Act 2003) which allows prosecutors to apply for an uplift in sentence for those convicted of a hate crime.

Do sex workers fit hate crime criteria? Police participants in our research from all three forces were of the view that sex workers fitted hate crime criteria. This suggests that the police interpret the definitions of hate crime in relation to the marginalised communities they encounter, assist and in a broader attempt to prevent violent crime. Officers in this research expressed two core reasons why they considered sex workers to be on the same spectrum as those with 'protected characteristics'. Firstly, the case of vulnerability was highlighted and secondly they considered this group (of mainly women) were subject to discrimination, stigma and targeted hostility. Police witnessed that sex workers experience a range of vulnerabilities that lead to them being targets of crime. Some offenders target these vulnerabilities and think they will get away with their crimes. Police officers articulated the close fit as follows:

I think sex workers fit ...sex workers are a marginalised group, a marginalised community and they fit the hate crime definition perfectly. They are targeted because of what they are doing, we know the stigma is a real issues and it's not just stigma it's real hostility and violence around that. So it absolutely for me fits the hate crime definition (Chief Inspector Merseyside).

47. S Hanks, 'Increased Vulnerabilities: Considering the Effects of Xeno-Racist Ordering for Romanian Migrant Sex Workers in the United Kingdom' (2020) 9(4) International Journal for Crime, Justice and Social Democracy.

48. L Connelly and English Collective of Prostitutes, 'EU-Migrant Sex Work in the UK Post-Referendum' (2021) <<https://prostitutescollective.net/eu-migrant-sex-work-in-the-uk-post-referendum/>> (accessed 30th June 2021).

49. D Meyer, 'Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws' (2014) 22 Critical Criminology 113–125.

50. Connelly et al, (n 13); Ellison and Smith (n 7); and Campbell (n 7).

51. R Campbell, T Sanders, J Scoular, J Pitcher and S Cunningham, 'Risking safety and rights: online sex work, crimes and 'blended safety repertoires'' (2019) 70(4) The British journal of sociology 1539–1560; and S Jiao, V Bungay and E Jenkins, 'Information and Communication Technologies in Commercial Sex Work: A Double-Edged Sword for Occupational Health and Safety' (2021) 10(1) Social Sciences 23.

If we can show that they are targeted because they are a sex worker then we would consider them as a victim of hate crime. So they would receive such things as enhanced services from our victim hub for example, the motivation for that was if we can include that as a hate crime then we can show, it could help with sentencing discretion for example. (Response Investigations Detective Inspector Cambridgeshire)

There are additional benefits within the policing and investigation system for crimes that come under the hate crime umbrella.

Because we have greater tracking of hate crime it enables us to give greater priority to the incidents and offences that are committed, what I think the hate incident or hate crime does it's allows that greater focus.....it allows us to do a couple of things that are best practice in hate crime... We have a single point of contact, an officer who will go and engage the community and we work more on long term relationship building with the people as opposed to individual officers picking up individual jobs (Operations Chief Inspector Cambridgeshire)

National police guidance in this context, first included reference to hate crime in 2011 when Merseyside's inclusion of sex workers in hate crime policy was highlighted as best practice and it is still referred to in the current National Police Chiefs Council *'National Policing Sex Work and Prostitution Guidance'*.⁵² This guidance describes the targeting of sex workers by offenders and the persistent high level of under-reporting to the police by sex worker victims of crime. In relation to sex work and hate crime it states: *'It is clear that some sex workers are targeted because of their occupation and these offences should be treated as hate crimes'*.⁵³ With this backing from senior police officers and officially approved guidance, there has been some momentum for other forces to adopt the hate crime model.

By way of background, the hate crime model was originally adopted by Merseyside police in 2006. What led to this was a number of sex worker murders in Merseyside during the 1980s and 1990s which made the police acutely aware of the serious crime sex workers faced.⁵⁴ There was recognition that sex workers in Merseyside experienced high levels of targeted hostility, violence and other crimes, the majority of which was unreported to the police. It was acknowledged that poor community relations between the police and sex workers, because of police involvement in enforcement activity (particularly related to street sex work), contributed to mistrust and fear of the police amongst sex workers. Those committing crimes against sex workers were not being investigated and prosecuted, but were instead continuing to target sex workers, who were not receiving access to justice. In 2005 the murder of Anne Marie Foy, who worked on-street in Liverpool, led to renewed concern about crimes against sex workers and triggered a review of the way in which crimes against sex workers were policed.⁵⁵ It was under the victims of assault/crime section that a hate crime policy in relation to sex workers states:

If any sex worker is the victim of an assault, or other crime that would appear to be motivated by the fact that they are a sex worker, such incidents are recorded as a hate crime and follow the area strategy in dealing with such cases. (Merseyside Police 2006:2).⁵⁶

In terms of policing procedure, this meant that:

The case is allocated in accordance with the Area Crime Screening and Allocation Policy, that the area Hate Crime Coordinator is notified and that a dedicated Detective Sergeant will be notified to review the initial

52. National Police Chiefs Council, *'National Policing Sex Work and Prostitution Guidance'* (2019) <<http://library.college.police.uk/docs/appref/Sex-Work-and-Prostitution-Guidance-Jan-2019.pdf>>

53. Ibid at 6.

54. Campbell and Sanders (n 20).

55. Merseyside Police, *'Sex Workers in Merseyside: review of process - Liverpool North memorandum'* (2006) 15th December 2006, Liverpool: Merseyside Police.

56. Ibid at 2.

report, confirm appropriate allocation, be available for advice/guidance and then review again prior to finalisation. (Merseyside Police 2006:2)⁵⁷

Campbell⁵⁸ identified several strands to the initial Merseyside model to sex work and hate crime, noting that the sex work and hate crime approach was not simply the inclusion of sex workers in police hate crime policy/procedure. Other initiatives and principles were included in the model, including prioritising protection over enforcement, close partnerships with support services, and improvements in victim support with the introduction of the first specialist sex work Independent Sexual Violence Advisor.⁵⁹

Sex Workers in Merseyside Speak Out Sex workers in the Merseyside area during this time engaged with the hate crime approach and demonstrated clear understanding of why their experiences of crimes, particularly violent crimes, should be considered hate crimes.⁶⁰ For Corin the policy was about recognition of the crimes committed against sex workers and highlighting that such offences should not be ignored:

It's amazing! It's powerful. It shows the police are now taking a more hands-on approach. They can't pretend anymore that these crimes don't exist, end of story, they do exist! ... It's about time, that's all I've got to say. (Corin)

Other sex workers who had worked on the streets for many years immediately connected with the targeted element of a hate crime:

Yeah, it does make sense, they are targeted. Girls walk down the streets, one of the working girls get fucking egged, get beaten up: "Oh we'll just go and twat her because she is a working girl"... They should put that in that category, I agree totally! (Ella)

No, I've not heard about it being a hate crime but I can identify with that, you know, stigma. You get all that... people need to recognise that we are human beings. (Bev)

One woman described how she saw the policy as part of wider positive change amongst the police:

I think it sounds dead positive because times are changing aren't they... Maybe they've got new police in and now and got rid of all the idiots. Because you look back to when I started and the police were a bit bullyish, a bit taking the piss and using their authority and stuff and now I look at it and it's more supportive. (Laurie)

The approach gained considerable interest nationally due to an increase of reporting by sex workers and successful prosecution of offenders, with high levels of guilty convictions for rape and serious sexual offences. In June 2017, Merseyside received a grant from the Home Office for the provision of the Red Umbrella Initiative, which aimed to restore some good practice elements previously innovated in Merseyside but which had been eroded. A full-time Police Sex Work Liaison Officer (SWLO) came into post within Merseyside Police in November 2017, funded by the Home office until end of March 2020, and now maintained by Merseyside Police. The PSWLO is located in the Protecting Vulnerable Persons Unit, within Central investigations. The unit covers all hate crime investigations and domestic abuse. The SWLO has no role in enforcement in relation to sex work, is an experienced detective

57. Ibid.

58. R Campbell, 'Not getting away with it: linking sex work and hate crime in Merseyside', (2014) in Chakraborti and Garland (eds), *Responding to Hate Crime: The Case to Connecting Policy and Research*, Bristol: Policy Press, 57–72.

59. R Campbell and S Stoops, 'Responding to violence against sex workers in Liverpool: an analysis of the Armistead Street Ugly Mugs scheme data and an overview of the Independent Sexual Violence Advisor role' (2008) Liverpool: Liverpool Primary Care Trust.

60. Campbell (n 7); and Campbell and Sanders (n 20).

with experience of investigating hate crimes, and is a subject matter expert for hate crime. During the period Red Umbrella funding was in place sex workers became more integrated into sex work hate crime, policies and procedures, with changes to and greater alignment with wider hate crime reporting, recording and intelligence systems. Merseyside Police identified the following strands of activity as constituting their current approach:

- Proactively building trust and confidence to encourage reporting, with the sex work liaison officer playing a key role. An evaluation of the Red Umbrella initiative (Campbell 2020)⁶¹ found there had been an increase in reports of crimes against sex workers to the police, with increased and enhanced intelligence to the police about crimes against sex worker victims. Merseyside Police reported 500 intelligence reports have been created and 28 reports shared with National Ugly Mugs between December 2017 (when PSWLO came into post) to 12 February 2020 (Campbell 2020).⁶² In terms of convictions six perpetrators were convicted of offences. These included; seven rape convictions, eight assault charges, one robbery, one public order, one revenge porn and one harassment conviction. One of the cases that went to court and convictions were obtained, involved the conviction of a serial rapist who raped three women over an 18 day period; the prison sentence received was one of the longest ever imposed for rape charges. Another involved convictions for revenge porn and harassment offences committed against an online escort.
- Close partnership with specialist sex work outreach and support services and wider third sector and statutory partners including drugs and homelessness services
- Specialist Sex Work Independent Sexual violence advisor (SW ISVA) and other measures to Improve victim support.
- Crown Prosecution Service engagement
- Public protection ethos to policing sex work and crimes against sex workers: priority bringing to justice perpetrators of serious crime
- Ongoing awareness raising, training and professional development events relating to the approach.
- The further mainstreaming of sex workers in hate crime policies and procedures e.g. hate crime coordinator role now more routinely involves sex workers. Sex workers now incorporated into hate crime Joint Action Groups (the multi-agency groups which can support victims of hate crime and aim to prevent repeat victimisation).

In their refresh of the hate crime approach, Merseyside Police were keen to reach out to all sex workers including a large online sector of sex workers. With the knowledge that so much of sex work is facilitated online, there was a move to reach out to sex workers in these markets through 'netreach' activities. Red Umbrella developed their digital engagement with sex workers showing Merseyside Police how to communicate appropriately in online spaces. This work was inspired by North Yorkshire Police who following research consultation with local online sex workers, created online promotional material to raise awareness of the hate crime approach and to build trust amongst online sex workers. There are no evaluations of these online communication efforts to reach out to sex workers who may be experiencing hate crimes – further evidencing the need for national consultation with the sex work community.⁶³

Building Trust within the Sex Work Community. The goal of increasing reporting was a core motivation for other forces to take the hate crime approach. North Yorkshire, after being influenced by the work of Beyond the Gaze⁶⁴ and the evidence gathered around different types of crimes experienced across the

61. R Campbell, 'Red Umbrella: final evaluation report' (2020) Changing Lives.

62. Ibid.

63. Campbell and Sanders (n 20).

64. T. Sanders, J. Scoular, R. Campbell, J. Pitcher, S. Cunningham, 'Internet sex work: Beyond the gaze' (Basingstoke, England: Palgrave 2018).

sex markets, adopted the hate crime approach as a model to reach out to the sex work community in their rural county:

The aim for me is to increase the trust and confidence of sex workers in the police and to increase the reporting of crimes against sex workers to North Yorkshire police' (Inspector with sex work portfolio, North Yorkshire).

North Yorkshire Force pointed out that sex work in its area was predominantly online, with no visible street sex work scene. This and the relatively small sex worker population, was identified as a contribution to the small number of reports by sex workers. There were considerable issues with online sex workers reporting issues to the police,⁶⁵ as increasingly crimes that are facilitated online are not always considered crimes by sex workers.⁶⁶ Indeed the policing responses to issues such as mis-use of images, blackmail and extortion are in their infancy. The presence of street sex work in a police force was seen as bringing regular contact between the police and workers, and sex workers were more visible and contactable by officers for community liaison and engagement activities. Also street sex workers were identified as experiencing high levels of targeted victimisation, including higher risk of serious sexual and physical assault.

Despite the small number of reports the PSWLO felt the work that had been carried out and the systems put in place created a more conducive environment for sex workers to report crime;

I think it's really important to do something... to try and instill that trust...if we show our commitment, we recognise why sex workers might not report to us and there are a range of factors that come into play with that, prejudice, perception and of the police amongst sex workers. If we put it all out there I would hope if a sex workers did experience some form of violence or crime, that they would have seen some of the promotion or something on social media and it might just have encouraged them at that point...we never expected to see a mass increase of figures...the only challenge is how do you really measure the success of it ...speaking to some sex workers and speaking to partners we have had positive feedback but essentially how do you measure that positivity, how do you measure the good response people have had? (PSWLO, North Yorkshire).

There were continual challenges with the operational roles needed to adopt the hate crime approach, with officers rarely having this as their sole focus. It was more usual that officers had a range of safeguarding portfolios to manage alongside sex work hate crime / liaison work. There were also problems with maintaining training around sex work on the police agenda, and even where training had been embedded there were areas of the force that were not part of this. Coupled with technical recording stumbling blocks and accessing correct data on sex worker crimes, there were considerable hurdles to overcome for new forces who were keen to take the model forward.

The evidence of the usefulness of the hate crime model from the current sex work community is scant, highlighting an urgent need for a contemporary analysis of what the sex work communities think. There has been support in the past when the Merseyside model was given the spotlight across Europe as a good practice model. Schaffauser⁶⁷ referred to the activities in Merseyside as a model of good practice: *'The work of Shelly Stoops in Liverpool is a good example: her Armistead Street outreach project and collaboration with the Merseyside police have helped to build trust between officers and sex workers, who feel now able to report crimes'*. More recently there have been concerns expressed from National Ugly Mugs about the validity of the hate crime approach and rightly point out the need to canvas input from their membership of sex workers to consider the relevance of the hate crime approach:

65. H Kinnell, 'Violence and sex work in Britain' (Willan: Cullompton Devon: 2008).

66. R Campbell 'Beyond hate: Policing sex work, protection and hate crime' in T Sanders and M Laing (eds), *Policing the Sex Industry: Protection, Paternalism and Politics*, (Routledge Oxon, England and NY, New York; 2018).

67. T Schaffauser, 'Whorephobia affects all women.' (2010) *The Guardian*, June 23rd <<https://www.theguardian.com/commentsfree/2010/jun/23/sex-workers-whorephobia>> (accessed 16/03/2021).

The jury is out on Hate Crime models, such as Merseyside and their efficacy towards reducing criminalisation and improving sex workers' access to police protections. Sex workers who are under protected categories must have opportunities to weigh in on these important policies. A national consultation with sex workers is needed to determine what strategies ought to be in place beyond decriminalisation and how members of this population can take control and regulate their industries. We will be consulting with sex workers about hate crime as it is on our report form and we suggested this in our submission to the Law Commission that conducted a consultation on hate crime laws in 2020.⁶⁸

For scholarship which has a participatory and collaborative ethos and practice, there is an urgent need for research that is led by community consultation as there has been in so many communities that routinely experience hate crime.⁶⁹ These realities are debates below in relation to what the hate crime literature says on the usefulness of the concept.

Hate Crime: How Useful and to Whom?

Abolitionists view hate crime laws as further contributing to the expansion of state systems of violence and control.⁷⁰ This is particularly harmful if one perceives (as abolitionists do) the state to be an inherently violent system and structure that tends to disproportionately target already marginalised and minority individuals within society.⁷¹ Certain LGBT rights groups in the US argued against the Gender Employment Non-discrimination Act (an anti-discrimination bill extending hate crime and employment protection) because it meant "expos[ing] our communities to more danger from prejudiced institutions... *far more powerful and pervasive* than individual bigots."⁷² Nair⁷³ points out that *state* violence directed towards groups covered by hate crime protection is not considered hate crime. And so even protected groups are not fully protected from hate. Hate crime laws increase the power and strength of the prison system. They give the appearance of being 'on side' (of addressing prejudice and hate), without actually tackling incidents or structures of violence.⁷⁴ Similarly Segura⁷⁵ states that hate crime laws represent an easy way to look tough on crime committed against marginalised members of society, but that this enthusiasm is not matched when it comes to other additional laws supporting these same marginalised groups.

68. R Bowen, K Swindells, R Hodsdon and C Blake, 'Why Report? Sex Workers who use NUM Opt-Out of Sharing Victimisation with Police' (2021) Sexuality Research and Social Policy.

69. D Wilkin, 'Disability hate crime: Experiences of everyday hostility on public transport.' (2019) Springer Nature.

70. D Meyer, 'Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws' (2014) 22 Critical Criminology: 113–125; S Lamble, 'Queer Necropolitics and the Expanding Carceral State: Interrogating Sexual Investments in Punishment' (2013) 24 Law Critique 229–253; E. Stanley, D. Spade, and Queer (In)Justice, 'Queering Prison Abolition, Now?' (2012) *American Quarterly* 115–127; Black and Pink, 'A Compilation of Critiques on Hate Crime Legislation' (2009) available at: <<http://www.againstequality.org/about/prison/>> (accessed 30th June 2021); and L. Segura, 'Do Hate Crime Laws Do Any Good?' (2009) AlterNet [online], 4 August, available at: https://www.alternet.org/2009/08/do_hate_crime_laws_do_any_good/.

71. Y. Nair, 'Counterpoint: Loving Hate: Why Hate Crimes Legislation is a Bad Idea', (2009) The Bilerico Project [online], 8 February, available at: <http://bilerico.lgbtqnation.com/2009/02/loving_hate_why_hate_crimes_legislation.php>; and L. Segura, 'Do Hate Crime Laws Do Any Good?' (2009) AlterNet [online], 4 August, available at: <https://www.alternet.org/2009/08/do_hate_crime_laws_do_any_good/>.

72. Sylvia Rivera Law Project, 'SRLP Announces Non-Support of the Gender Expression Non Discrimination Act' (2009) Accessed on January 19, 2013 from <<http://srlp.org/genda>>.

73. Y Nair, 'Counterpoint: Loving Hate: Why Hate Crimes Legislation is a Bad Idea', (2009) The Bilerico Project [online], 8 February, available at: <http://bilerico.lgbtqnation.com/2009/02/loving_hate_why_hate_crimes_legislation.php>.

74. Black and Pink, 'A Compilation of Critiques on Hate Crime Legislation' (2009) available at: <<http://www.againstequality.org/about/prison/>>. (accessed 30th June 2021).

75. L Segura, 'Do Hate Crime Laws Do Any Good?' (2009) AlterNet [online], 4 August, available at: <https://www.alternet.org/2009/08/do_hate_crime_laws_do_any_good/>.

With the case of sex workers there is concern amongst advocacy groups and allies that the criminal justice system is not the pathway to justice for sex workers as the state will ultimately act punitively and reinforce structural violence against those most marginalised.⁷⁶ We know that criminalised laws against sex workers have a direct negative effect on their experiences of welfare, health access and outcomes and policing experiences.⁷⁷ How could hate crimes law/approaches be useful when there are structural violence, oppression and marginalisation at the core of state systems?

Mason⁷⁸ suggests that hate crime law alone is not enough to change prejudicial views. Instead there must be compassion for the marginalised.⁷⁹ This point clearly parallels with the Merseyside approach. However, compassion has a distance and therefore risks pity. Pity does not lead to social change but paternalism. For example, Ellison and Smith⁸⁰ suggest that the current deviant status of sex workers means that they are not seen as individuals (or a group) worthy of protection, but rather as those who need to be controlled. Compassion requires internal reflection. For this, Nussbaum⁸¹ proposes 'effectual compassionate thinking' which involves (i) acknowledging the seriousness of the misfortune, (ii) acknowledgment that the person does not deserve this suffering, and (iii) that the person affected is significant to you and matters. Where there is suggestions that the state is addressing the vulnerability of sex workers in the UK, it is done in a paternalistic welfarism approach which has rehabilitation at the heart for deserving victims who should be shown how to quit, otherwise undeserving sex workers are considered offenders.⁸²

Hate crime law is reactive, not proactive. As long as that is the case does anything really change? Laws that criminalise sex work continue to be damaging and govern through crime,⁸³ further othering sex workers by dealing with sex work through the criminal justice system. Abolitionists⁸⁴ are critical of the fact hate crime laws do not work to deter, do nothing to address the *root* of hate, and so therefore do nothing to stop that hate and are merely a sticking plaster. We know this from police officers who have implemented the hate crime model and muse:

We've introduced sex work into our hate crime policy. That's a positive step forward we want to break down the barriers and increase the trust in the police amongst sex workers in North Yorkshire and we know there

76. S FitzGerald M O'Neill and G Wylie, 'Social justice for sex workers as a 'politics of doing': Research, policy and practice' (2020) 28(3) *Irish Journal of Sociology* 257–279; and A Smith, D Tulk, K Snook, M Ropson and S Giwa, 'Female Sex Workers' Perceptions of Front-line Police Officer's Ability to Ensure Their Safety in St. John's, Newfoundland' (2020) 1(2) *Greenwich Social Work Review* 68–77.

77. L Platt, P Grenfell, R Meiksin, J Elmes, SG Sherman, T Sanders, P Mwangi, AM Crago, 'Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies' (2018) *PLOS Medicine* OPEN ACCESS <<https://journals.plos.org/plosmedicine/article?doi=10.1371/journal.pmed.1002680>> DOI: 10.1371/journal.pmed.1002680; and R. Stuart and P. Grenfell, 'Left out in the cold: The extreme unmet health and service needs of street sex workers in East London before and during the COVID-19 pandemic Doctors of the World' (2021) <<https://www.doctorsoftheworld.org.uk/wp-content/uploads/2021/05/Left-out-in-the-cold-full-report.pdf>> (accessed 21st May 2021).

78. Mason (n 1).

79. P. Gilroy and R. Gilmore, 'Transcript: In Conversation with Ruth Wilson Gilmore' (2020) UCL [online], 7 June, available at: <<https://www.ucl.ac.uk/racism-racialisation/transcript-conversation-ruth-wilson-gilmore>>.

80. Ellison and Smith (n 7).

81. M Nussbaum, 'Upheavals of Thought: The Intelligence of Emotion' (2001) Cambridge, UK: Cambridge University Press. In Mason 2014 (Above n. 3).

82. J Scoular and M O'Neill, 'Regulating prostitution: Social inclusion, responsabilization and the politics of prostitution reform' (2007) 47(5) *The British journal of criminology* 764–778.

83. Graham (n 7).

84. H Begum, 'Rethinking Our Justice System' (2020) Amaliah [online], 15 June, available at: <<https://www.amaliah.com/post/59631/rethinking-justice-system-understanding-abolition-uk>>; A Gill and H Mason-Bish, 'Addressing violence against women as a form of hate crime: limitations and possibilities' (2013) 105 *Feminist Review* 1–20; D Meyer, 'Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws' (2014) *Critical Criminology*, 22: 113–125; and Wypijewski (n 8).

aren't many. But it's having done that what difference does it make to the lives of sex workers in North Yorkshire? (Inspector, Hate Crime Lead North Yorkshire).

These are very important questions given the levels of stigmatised cultural discourse that persists in society against sex workers.⁸⁵ Our research and understanding of the Merseyside model goes some way to mitigate against these abolitionist perspectives as we see the interpretation of the law in action can go in sex workers favour. The Merseyside example points to the disconnect between state actors and practitioners on the ground (police) and their creative interpretation of the law which in this case is to react to crimes against sex workers in the most appropriate and resource intensive approach available to them. But we fully acknowledge that for the hate crime approach to be more effective legal reform to decriminalisation is essential.

Conclusion: Hate Crime and Decriminalisation

Despite concerns over conceptual issues surrounding the 'hate' in hate crime, there is significant evidence within the literature of the symbolic power of hate crime – both generally⁸⁶ and in the specific context of sex work.⁸⁷ Inclusion within hate crime seems to be viewed as akin to a sort of consciousness raising⁸⁸ – a symbol to wider society that such offences against certain groups are unacceptable and will be taken seriously. However, even if one accepts a symbolic power in hate crime laws, this potential is not without its limitations. Especially important in the context of sex work, Meyer⁸⁹ identifies the problem that any symbolic power of hate crime is felt only in the public sphere. This may reflect the reality that much of the hate crime approach is used with street sex workers, and not the many other groups of sex workers operating in invisible markets. Lamble⁹⁰ suggest that the state tends to over-promise and under-deliver. She is especially critical of the shift of the state from (previously acknowledged) perpetrator of, to protector from, violence within the queer community. She suggests that this shift is "contingent upon a privileged social position"⁹¹ and whilst it might be true that the 'right' kind of LGBT people have benefited from increased policing, the more marginalised and disadvantaged within the community have not. For the law to be on your side, you need to be the 'right' kind of victim. While there is still a framework of prostitution related offences, which are enforced by many police forces despite the national guidance strongly suggesting protection focused policing should prevail, the law will not be on the side of sex workers. As Scoular and O'Neill⁹² document, the paternalistic welfare approaches to managing sex workers are part of a 'creeping abolitionism', which is furthered by civil orders to exclude sex workers and rehabilitation order to force them to exit selling sex.⁹³ Some would argue that it would seem unlikely (at least not in current society) that sex workers would be considered the 'right' kind of victims.

85. L Nencel, J Bjonness, M Skilbri (eds), 'Reconfiguring Stigma in sex work studies: Putting relationality to work' (Routledge, London. 2021).

86. N Chakraborti and J. Garland, 'Hate Crime: Impact, Causes and Responses' (London: Sage.: 2009); Garland and Chakraborti (n 1); Mason (n 1); Chakraborti (n 1).

87. Campbell (n 7); K. Corteen, 'New victimisations: female sex worker hate crime and the 'ideal victim'' (2018) in Duggan (ed), *Revisiting the "Ideal Victim"*: Developments in Critical Victimology, Bristol: Policy Press, 103–122.

88. Chakraborti and Garland (n 8).

89. D Meyer, 'Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws' (2014) 22 *Critical Criminology* 113–125.

90. S Lamble, 'Queer Necropolitics and the Expanding Carceral State: Interrogating Sexual Investments in Punishment' (2013) 24 *Law Critique* 229–253.

91. *Ibid* at 241.

92. J Scoular and M O'Neill, 'Regulating prostitution: Social inclusion, responsabilization and the politics of prostitution reform' (2007) 47(5) *The British Journal of Criminology* 764–778.

93. J Scoular and A Carline, 'A critical account of a 'creeping neo-abolitionism': Regulating prostitution in England and Wales' (2014) 14(5) *Criminology and Criminal Justice* 608–626.

It is necessary to highlight the janus-faced position of the state currently in relation to sex work. Governmental policy in the mainland UK is pushing for the formal recognition of vulnerability of sex workers (which is the police framework) yet continues to criminalise their actions as it pushes to criminalise demand for commercial sex, in what could be described as a pseudo neo-abolitionist system.⁹⁴ In Northern Ireland since 2017 the legal and social discourses have strongly incorporated the ideology of abolitionism with state support that made it a crime to pay for sex as the dominant legislative framework.⁹⁵ Whilst law reform to repeal damaging laws that criminalise sex work, particularly brothel keeping laws that prevent individuals working together, seem currently out of reach despite a groundswell of support and activism⁹⁶ the inclusion of sex workers in any legal reform of hate crime could be a step forward.

In 2019 the Law Commission commenced a review of hate crime law, with the overall objective of reviewing the adequacy and parity of protection offered by the law relating to hate crime and to make recommendations for its reform. One of the terms of reference for the review is to; *'consider whether crimes motivated by, or demonstrating, hatred based on sex and gender characteristics, or hatred of older people or other potential protected characteristics should be hate crimes, with reference to underlying principle and the practical implications of changing the law'*. The Law Commission review of hate crime has heard the academic evidence and lived experience reasons why hate crime should cover this group. In September 2020 the Law Commission published their Consultation report, as well as considering whether a 'principled case' could be made for recognising gender in hate crime laws, it considered four other characteristics or groups, one of these being sex workers. Consultation question 17 specifically asks for views on whether sex workers should be recognised as a hate crime category. While the final outcomes in late 2021 did not recommend expanding specific characteristics of the law they did recognise that misogyny would be a lens through which to make legal changes. This could of course benefit some sex workers.

There is a significant chance that, despite the review recognising sex/gender as a distinctive area of victimhood (for instance misogynistic hate crime), the inclusion of sex workers will not happen. This is not because sex workers do not fit the criteria of a targeted group but more because of the purpose of the law would then need to broaden out to include many other forms of victimhood (age, homelessness, alternative subcultures), making the definitions expansive and creating a never-ending process of increasing the parameters and the need for equivalent protection. Whilst a change in law would be a significant step forward, and hopefully one which is followed by dedicated resources leading to embedded police strategies and operational responses, there is a broader demand for legal reform to address the criminalisation and victimisation of sex workers in the UK. It is probably more appropriate to enable policing to expand focus on targeted groups to utilise hate crime frameworks and the enhanced procedures and resources in order to enable sex workers to access justice through the criminal route where they choose. As Walters *et al*⁹⁷ note in their discussion of what to do with the UK law, whilst extending the categories of the offence is one option, there are other options which could be to create a new

94. Ibid.

95. G Ellison, 'Criminalizing the payment for sex in Northern Ireland: Sketching the contours of a moral panic' (2017) 57(1) British Journal of Criminology 194-214.

96. National Ugly Mugs, English Collective of Prostitutes and Umbrella Lane, 'Sex Workers Too: Summary of Evidence for VAWG 2022 - 2024 Strategy' (2021) <file://uo1.le.ac.uk/root/staff/home/t/tlms1/My%20Documents/JaneESRCViolence/Literature/Sex-Workers-Too_NUM_ECP_UL_VAWG_Consultation_Submitted_19022021.pdf> (accessed 25 February 2021).

97. M Walters S Wiedlitzka, A Owusu-Bempah and K Goodall, 'Hate Crime and the Legal Process: Options for Law Reform' (2017) <<http://dx.doi.org/10.2139/ssrn.3427984>>

Hate Crime Act which could cover all aggravated offences or to remove the test on motivation but to replace this with a new 'by reason' test.

A legal framework of decriminalisation best facilitates the safety and rights of sex workers.⁹⁸ We know that relationships between police and sex workers improve under this mode of governance.⁹⁹ We can also take forward learning from the role of police sex work liaison officer, which has played a significant role in the sex work and hate crime approach in two of the forces where we conducted interviews. We believe that there is significant strength in this dedicated role and know that the role exists in some other police forces and takes different forms. Brown *et al*¹⁰⁰ examined the role in West Yorkshire Police and whilst there were problems with excessive amounts of 'no further actions' on reported crimes, the PSWLO was a lifeline to the sex work community. In a decriminalised setting, this role would still be needed. Stigma, hostility and targeted violence does not simply go away under the decriminalised model, as Abel's *et al*¹⁰¹ work demonstrates. Cultural change takes time and works alongside a rights based governance model. With the PSWLO role, policing resources are enhanced and the sex work community would be further represented. Evidence from Merseyside police illustrates that sex worker inclusion in the hate crime approach has had a positive impact.¹⁰² For example, there was a 400% increase in reports made by sex workers to an Ugly Mugs scheme which made formal reports to the police.¹⁰³ Campbell¹⁰⁴ suggests that a hate crime framework might help to further tackle residual discrimination, prejudice and violence that sex workers face even within a decriminalised context. As decriminalisation seems unlikely to happen anytime soon in a UK context, the inclusion of sex workers within hate crime policing policy practices would be a positive step in the interim. We know that inclusive policing increases reporting rates, builds trust and relationships with stigmatised communities and allows the police to identify alternative pathways of support away from the traditional criminal justice route.¹⁰⁵ Could this be done for sex workers without a mandate in the law?

This is the question we are left with, and indeed will be working with in the near future once the law reform outcomes have been revealed. Currently we are faced with both a criminalised sets of laws to govern sex work and a highly diverse set of policing examples, but some very good practice models of improving sex worker safety and justice through the hate crime model. Whilst the hate crime model is far from perfect within a criminalised context, the potential symbolic benefits for sex

98. GM Abel, 'A decade of decriminalization: Sex work 'down under' but not underground' (2014) 14(5) *Criminology and Criminal Justice* 580–592; L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57 *British Journal of Criminology* 570–588; and B Brooks-Gordon, M Morris and T Sanders, 'Introduction to Special issue on Harm Reduction and Decriminalisation' (2021) *Sexuality Research and Social Policy*.

99. L Armstrong, 'From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry' (2017) 57 *British Journal of Criminology* 570–588; H. Brunsell-Evans, 'Conversation with Jody Raphael about "Decriminalization of Prostitution: The Soros Effect"' (2019) 4(3) *Dignity: A Journal on Sexual Exploitation and Violence* 5; and S Cunningham and M Shah, 'Decriminalizing indoor prostitution: Implications for sexual violence and public health' (2018) 85(3) *The Review of Economic Studies* 1683–1715.

100. K Brown, S Redman and S Grace, 'Policing Vulnerability: Learning from Sex Worker Liaison Officer Role in West Yorkshire Police' (2019) University of York <<https://n8prp.org.uk/wp-content/uploads/2019/11/LEARNING-FROM-SEX-WORK-LIAISON-OFFICER-ROLE-IN-WEST-YORKSHIRE-POLICE-final.pdf>>

101. GM Abel, 'A decade of decriminalization: Sex work 'down under' but not underground' (2014) 14(5) *Criminology and Criminal Justice* 580–592.

102. Campbell (n 7).

103. K Corteen, 'New victimisations: female sex worker hate crime and the 'ideal victim'' (2018) in Duggan (ed), *Revisiting the "Ideal Victim"*: Developments in Critical Victimology, Bristol: Policy Press, 103–122.

104. Campbell (n 7).

105. Chakraborti and Garland (n 8); M Fey, 'Governing sex workers through trust: Evaluating policing practices for sex workers' safety through a procedural justice lens' (2019) 12(3) *Journal of Political Power* 409–424; and SJ Hardy and N Chakraborti 'Blood, Threats and Fears: The Hidden Worlds of Hate Crime Victims' (Palgrave, London. 2020).

workers, given historic levels of violence and misrecognition, are arguably very important in the fight for justice.

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