THE TERM ‘HATE CRIME’ has become embedded within the criminal justice field and the media. However, there are definitional issues with this term and it can be unclear as to what it truly entails (Walters et al, 2016a). For the purposes of this article, the term ‘hate crime’ in Scotland refers to “a crime motivated by malice or ill will towards a social group”, with five official ‘protected characteristics’: race, religion, disability, sexual orientation, and transgender identity (Police Scotland, 2016). A victim does not need to be a member of a minority community to be a victim of hate crime: the motivation of the perpetrator is the key factor in defining it as such.

Reports of hate crime in Scotland have continued to increase, with Edinburgh experiencing an increase of all reported hate crimes over the last five years. There is an emphasis on the reduction and prevention of hate crime in Scotland, with Police Scotland stating that tackling hate crime is an ‘absolute priority’ (Police Scotland, 2016); and the recent announcement of the review of existing hate crime legislation in Scotland to ensure it is fit for purpose.

Crucially, research indicates that the emotional and psychological trauma caused by hate crime is heightened compared with other types of crime due to the offending often being related to the ‘core’ of the person’s identity, and vicarious trauma can be experienced by those who share the same identity characteristics as the victim such as family or community members. Victims of hate crime are more likely to experience depression, anxiety, fear, suicidal ideation, and avoidant behaviours than victims of parallel crimes (Iganski and Lagou, 2015). As such, developing an understanding of the harms caused by hate crime (the core concept of fostering victim empathy) is viewed as an important facet of any rehabilitative intervention with hate crime offenders. Many offenders are potentially not fully aware of the harm caused by their actions at the time of committing the offence. As such, a restorative justice (RJ) approach may be well-placed to address the harms of hate crime.

There is, therefore, also a clear role for Criminal Justice Social Work (CJSW) in this area in working with the perpetrators of hate crime in order to reduce the harm caused to victims and communities, and promote the rehabilitation and reintegration of offenders. As such, CJSW in Edinburgh are seeking to undertake research into hate crime and strengthen the CJSW response to this type of offending. A literature review exploring effective interventions with hate crime offenders is currently being produced.

When exploring the existing community-based interventions for hate crime offenders in Scotland and the UK, it is notable that there are no current restorative justice hate crime interventions in Scotland. Significantly, the recent report of the Independent Advisory Group on Hate Crime, Prejudice, and Community Cohesion (2016) recommends that “the Scottish Government and partners should explore the use of restorative justice methods with victims and perpetrators of hate crime”.

Despite the growing use of RJ approaches in the rest of the UK, there has been some resistance to its widespread use with hate offences because of concerns that it will lead to further victimisation, or that it is viewed as a ‘soft option’. However, from the literature, it would appear that traditional retributive
justice’ fails to consider that seemingly isolated hate offences typically form part of a ‘process of victimisation’, with many of these incidents occurring within broader inter-personal conflicts between local community members and with several underlying causes. As such, an RJ approach may well be able to strive to resolve these complex disputes and repair the harms.

Walters et al (2016b) emphasise that due to the limited use of RJ disposals with hate crime, there has been little research into its effectiveness with this type of offending. Nonetheless, Walters’ research demonstrates the very low likelihood of victims feeling re-victimised by an RJ process, that a higher percentage of victims are satisfied with restorative interventions compared to more traditional criminal justice processes, and that RJ may be more effective in lessening the emotional trauma caused by crime. At the core of RJ processes is the development of ‘empathic connections’ between those involved, which will then engender an understanding of how the offence has impacted the person.

Victims of hate crime are more likely to experience depression, anxiety, fear, suicidal ideation, and avoidant behaviours than victims of parallel crimes

Fundamental to this is the victim being able to tell their story: how the hate offence has affected them, and the opportunity to seek clarification on why they were targeted, as well as the opportunity to challenge negative stereotypes the offender may hold. The core concept is that victims will move from feeling disempowered to empowered. Being listened to by RJ practitioners will be vital for victims, and staff must ensure that they protect against re-victimisation by ensuring all participants are thoroughly prepared for the process. To this end, it will be crucial for facilitators to meet with each participant before any direct contact occurs, and assess beforehand whether any deeply held prejudices and hostilities may arise. Including appropriate supporters will be an important facet (for both victims and offenders); these might be pro-social supporters such as a teacher or sports coach, but may also be drawn from the offender’s family or community where the prejudices have been formed. There may be benefits to safely including them as the offender will be reintegrated back into communities where the attitudes and behaviours may be challenged or modified, thereby potentially reducing the likelihood of further victimisation. Furthermore, a multi-agency approach to address hate crime is viewed as most effective, with an RJ approach being part of this. It is therefore evident that developing an RJ response to hate crime in Edinburgh would necessitate multi-agency partnerships with CJSW, Police Scotland, Victim Support, and other relevant agencies.

Noting the complexities regarding risk management with hate crime offenders, Walters et al (2016b) highlight that where an offender is categorised as ‘high risk’, victims and offenders will be separated from each other during any formal criminal processes in order to protect the victim. Whilst risk assessments must be carried out in order to protect vulnerable victims and determine the risk levels for re-offending/harm, “assessments for hate crime should not automatically mean that offenders be isolated and/or completely segregated from victims … the failure to bring offenders and victims together where possible will inhibit the workability of empathy-based and restorative practices”. Being able to fully assess risk and therefore the potential suitability for an RJ disposal would be significantly aided by access to victim/witness statements, something that does not routinely occur with CJSW in Edinburgh or Scotland at present. Formulating how this would work in practice in Edinburgh, or Scotland in general, will be vital in developing a robust RJ process.

Well-trained practitioners will be a fundamental pre-requisite for the implementation of any RJ intervention; to this end, training has been commissioned for CJSWs in Edinburgh on working with perpetrators of hate crime, the impact of hate crime on victims and communities, and in restorative justice skills.

Ultimately, the contention that in the context of RJ, “most activity is carried out by voluntary and community organisations in the shadow of the criminal justice system, not by it” (Roberts et al 2013) appears to reflect the current CJSW landscape in Edinburgh (and Scotland) in relation to RJ. As such, robust research by, and commitment from, relevant stakeholders is required in order to develop an RJ response to hate crime with the aim of reducing re-offending and ameliorating the harms caused by this type of offending.

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