

*Paper to lie before both Houses of Parliament until approved by a resolution of each House*



Home Office

# **Non-Crime Hate Incidents**

## **Draft Code of Practice on the Recording and Retention of Personal Data**

March 2023



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## **Draft Code of Practice on the Recording and Retention of Personal Data**

Presented to Parliament pursuant to Section 61(1) of the Police,  
Crime, Sentencing and Courts Act 2022

March 2023



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# 1. Introduction

## About this Code of Practice

1. This code of practice is designed to assist police officers and staff (see Annex 2) in England and Wales in making decisions about the recording and retention of personal data<sup>1</sup> relating to non-crime hate incidents (NCHIs). The code covers how police officers and staff (**‘the recording authority’**) should decide whether an NCHI record needs to be made, as well as whether and how the personal data of an individual who is the subject of an NCHI report (**‘the subject’**<sup>2</sup>) should be processed<sup>3</sup>, emphasising that a common-sense<sup>4</sup> approach to policing should be applied whilst due consideration should be given to upholding the fundamental right to freedom of expression. The code does not cover how the personal data of any person other than the subject<sup>5</sup> should be processed.
2. The College of Policing produce Authorised Professional Practice (APP) on NCHIs, which can be found [here](#). The College will update this APP to ensure it is compliant with this code.
3. This code will:
  - ensure police officers and staff understand when and how it is appropriate to record an NCHI (including correct and proportionate NCHI recording and data retention practices);
  - ensure police officers and staff understand how free speech considerations should be taken into account when deciding whether to record an NCHI and whether to include personal data in the record;
  - ensure the processes behind the recording and retention of NCHI-related personal data are in line with the Human Rights Act 1998, case law, the Data Protection Act 2018, UK General Data Protection Regulation, and all other relevant legislation;

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<sup>1</sup> “Personal data” is defined in Annex 1 of this code. Where the code references personal data, it means the personal data of the individual who is the subject of the NCHI record, unless otherwise stated.

<sup>2</sup> For absolute clarity, for the purposes of this code, the ‘subject’ is the person being complained about.

<sup>3</sup> “Processing” is defined in Annex 1 of this code.

<sup>4</sup> *McQuire v Western Morning News* (1903) - Lord Bowen introduced the concept of the man on the Clapham omnibus. Recording authorities should consider the objective test of what this hypothetical ordinary and reasonable person would think in the given situation to ensure they are making a common-sense decision.

<sup>5</sup> A “person other than the subject” is defined in paragraph 18.

- increase public trust and understanding about the process of NCHI recording and corresponding personal data processing;
  - increase transparency about what NCHI-related information can be held on individuals, and how it is stored and used; and
  - enable parliamentary scrutiny of the processes surrounding the recording of NCHIs and corresponding processing of personal data.
4. All those listed in Annex 2 must have regard to this code of practice. This means that whenever they are taking relevant decisions, they must give due consideration to what the code says.
  5. This code will be kept under review and will be updated if necessary.
  6. This code may be cited as the Non-Crime Hate Incidents Code of Practice on the Recording and Retention of Personal Data and comes into force 31 days after it is approved by Parliament.

## History of NCHIs

7. Non-crime hate incidents (NCHIs) are recorded by the police to collect information on 'hate incidents' that could escalate into more serious harm or indicate heightened community tensions, but which do not constitute a criminal offence.
8. NCHI recording stems from the murder of Stephen Lawrence in 1993. The 1999 [Stephen Lawrence Inquiry Report](#) called for Codes of Practice to create "a comprehensive system of reporting and recording of all racist incidents and crimes". NCHI recording has since expanded to cover all the protected characteristics covered by hate crime laws in England and Wales: race, religion, disability, sexual orientation and transgender identity. This data is vital for helping the police to understand where they must target resources to prevent serious crimes which may later occur.
9. In 2000, the Association of Chief Police Officers (ACPO) responded to the Stephen Lawrence Inquiry Report by publishing their 'Guide to Identifying and Combating Hate Crime'. 'Good Practice and Tactical Guidance' on hate crime, including NCHI recording, was published jointly by the Home Office and ACPO in March 2005. The College of Policing updated the 2005 guidance and published Hate Crime Operational Guidance, which included NCHI-related guidance, in 2014.
10. Following increasing scrutiny of NCHIs in more recent years, and a lack of parliamentary scrutiny afforded to the College's existing guidance, Parliament legislated in the Police, Crime, Sentencing and Courts (PCSC) Act 2022<sup>6</sup> to publish this

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<sup>6</sup> The PCSC Act 2022 received Royal Assent in April 2022. The relevant provisions can be found in [sections 60 and 61](#).

code in order to enhance transparency surrounding the decision-making processes involved in the recording and retention of personal data in NCHI records.



## 2. Definitions

### Definition of a Non-Crime Hate Incident

11. A **non-crime hate incident** (NCHI) means an **incident** or alleged incident which involves or is alleged to involve an act by a person (**‘the subject’**) which is perceived by a **person other than the subject** to be motivated - wholly or partly - by **hostility or prejudice** towards persons with a **particular characteristic**.
12. The following section provides further information relating to the meaning of the words used within the above definition. It also includes information about an **Additional Threshold Test** that the recording authority should consider if they are seeking to include a subject’s personal data in an NCHI record. Section 3 sets out further considerations that the recording authority should take into account when deciding whether to record an NCHI record. Section 4 sets out vital freedom of speech considerations that the recording authority should take into account.
13. The recording authority should also refer to Annex 3, which provides a summary of all of the considerations that should be taken into account during the decision-making process.

#### **“Incident”**

14. An “incident” is defined in the National Standard for Incident Recording (NSIR) as “a single distinct event or occurrence which disturbs an individual, group or community’s quality of life or causes them concern”. The NSIR covers all crime and non-crime incidents.
15. However, this threshold, in and of itself, is not sufficient to warrant a non-crime *hate* incident record being made. When an incident occurs, a non-crime incident is recorded on policing systems, as set out in the NSIR, but this code sets out other considerations that should be taken into account in order to determine whether the incident should be recorded as an NCHI<sup>7</sup>.

#### **A “particular characteristic”**

16. A **“particular characteristic”**, for the purposes of NCHI recording, means a characteristic that is protected under hate crime legislation:

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<sup>7</sup> Once the recording authority determines that a non-crime incident is a non-crime *hate* incident, a hate qualifier is added on police recording systems to enable them to be easily identified.

- race or perceived race - a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.<sup>8</sup>
- religion or perceived religion - a group of persons defined by reference to religious belief or lack of religious belief.<sup>9</sup>
- sexual orientation or perceived sexual orientation - a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).<sup>10</sup>
- disability or perceived disability - references to a disability means any physical or mental impairment.<sup>11</sup>
- transgender identity or perceived transgender identity - references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.<sup>12</sup>

17. This code applies specifically to incidents involving the characteristics set out above, but there may be instances where a force deems it necessary to record an incident involving a different characteristic that is not covered by hate crime legislation. Although outside the scope of this code, in this instance, the recording authority should apply the same considerations as set out in this code, particularly in the context of the need to protect the right to freedom of expression and in relation to whether the personal data of the subject of the report should be recorded.

### **A “person other than the subject”**

18. A “**person other than the subject**” may be the individual who has experienced the incident, or alleged incident, and reported it to the police, or any other person who has first-hand knowledge of the incident (for instance, someone who has witnessed the incident or alleged incident). For the avoidance of doubt, where an individual is making, or has made, a complaint about another person, this code refers to them as the ‘**complainant**’. The person being complained about is referred to as the ‘**subject**’. These are neutral terms with no criminal connotations. The recording authority should similarly always ensure that neutral, non-criminal terminology is used when making enquiries about an incident or when recording an NCHI.

### **“Hostility” and “Prejudice”**

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<sup>8</sup> As defined in section 28(4) of the Crime and Disorder Act 1998.

<sup>9</sup> As defined in section 28(5) of the Crime and Disorder Act 1998.

<sup>10</sup> As defined in section 29AB of the Public Order Act 1986.

<sup>11</sup> As defined in section 66(6)(d) of the Sentencing Code.

<sup>12</sup> As defined in Section 66(6)(e) of the Sentencing Code.

19. “**Hostility**” and “**prejudice**” have no specific legal definition. Hostility represents the legal threshold for prosecuting hate crimes in law, whereas prejudice only features in NCHI recording. For the purposes of NCHI recording, either factor may be present, in line with the ordinarily understood sense of these terms. The Crown Prosecution Service state that, for hostility, “we use the everyday understanding of the word which includes ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.”<sup>13</sup> The recording authority should give due regard to the CPS’s definition when considering whether hostility or prejudice has been exhibited.
20. The perception of hostility or prejudice by a complainant or any other person alone is not enough, in and of itself, to warrant an NCHI record being made. The recording authority should take other specific considerations into account, as set out in this code, when deciding whether it is appropriate to record an NCHI.

### **Additional Threshold Test for the Recording of Personal Data**

21. There are two subsets of NCHI record: those that include personal data of the subject, and those that do not (see paragraph 25). **Personal data may only be included in an NCHI record if the event presents a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s).** The recording authority should utilise judgement to determine if this threshold has been met. This may include examples where the behaviour of the subject falls short of criminal conduct but may later be evidence of a course of criminal conduct (for instance, harassment).
22. The recording authority should also bear in mind that the risk of significant harm may be greater if the individual(s) who has experienced the incident is considered to be vulnerable. Further information on recognising vulnerability-related risk can be found on the College of Policing’s website [here](#).
23. If an incident does not pass this threshold test, but all the other criteria required to record an NCHI are met, an NCHI without personal data may be recorded instead. In these instances, the recording authority should ensure that any personal data that may previously have been recorded on policing systems in relation to the initial incident report is removed. For example, if personal information relating to the subject was recorded by the call taker when the initial report was made, this personal information should be deleted from the relevant policing system by the recording authority once it has been determined that the threshold test has not been met.
24. If the criteria needed to record an NCHI are not met more generally, the recording authority will be required to close the original non-crime incident record. The recording authority should ensure that the non-crime incident record does not include any

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<sup>13</sup> The Crown Prosecution Service’s definition of hostility can be found on the CPS website:  
<https://www.cps.gov.uk/crime-info/hate-crime>

personal data before closing it. As set out in paragraph 23, if personal data has previously been recorded (for example, by the call taker during the initial report), this should be removed from the relevant policing system by the recording authority once it has been determined that the criteria needed to record an NCHI have not been met.

## The Two Subsets of NCHI Records

25. There are two possible subsets of NCHI records:

### 1. **NCHI records that only include non-personal data.**

This record may include:

- locational data of the incident<sup>14</sup>; and/or
- a general description or overview of the circumstances surrounding the incident which contains no data that could identify any individual(s).

In many cases, this information may be all that is required in order to identify patterns of behaviour, identify incident hot spots, or monitor community tensions.

Recording an NCHI without personal data may, in some cases, be the only available option: there may be circumstances where the complainant does not have access to personal information related to the subject, or may not be willing to disclose it.

The recording authority should always consider whether this type of NCHI record is sufficient in meeting operational needs before recording any personal data. This type of record can represent a more proportionate and less intrusive response than recording personal data.

It should be noted that the personal data of the complainant may be included as part of normal police recording procedures.

### 2. **NCHI records that include the personal data of the subject of the complaint.**

Personal data may only be recorded where the recording authority deems that, alongside fulfilling the other criteria set out in this code, there is also a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s).

Given this form of NCHI record contains the personal data of the subject, it is a more sensitive record. If personal data is to be recorded, officers and

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<sup>14</sup> For the purposes of the code, 'locational data' may be considered to be non-personal data if it is sufficiently broad so as to ensure that it could not be used to identify an individual (e.g. road names, junctions, public areas, shopping centres). The recording authority should utilise judgement and common sense to determine if the location data stored in an NCHI is broad enough to ensure an individual is not identifiable. See Annex 1 for further information.

police staff should seek the least intrusive method (covered in paragraph 31(IV)) to do so and comply fully with the contents of this code to ensure the individual is notified appropriately.

26. In line with the legislation governing this code<sup>15</sup>, as well as a recognition that the recording of personal data in NCHIs brings particular sensitivities, the code primarily addresses the second type of NCHI record. Further information relating to NCHI records that do not include personal data is covered in the [College of Policing's APP](#).

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<sup>15</sup> The relevant provisions can be found in [sections 60 and 61](#) of the PCSC Act 2022.

### 3. Necessary Considerations – Proportionality, Common-Sense Approach, and Least Intrusive Method

27. On 20 December 2021, the Court of Appeal published its judgment in the case of [Miller v The College of Policing \[2021\]](#), which focused on the recording of NCHIs. The Court concluded that the recording of an NCHI interferes with the right to freedom of expression, and that additional safeguards were needed so that “the incursion into freedom of expression is no more than is strictly necessary”. It found such interference is only lawful if it can be justified as seeking to achieve a legitimate aim - namely the prevention of crime or disorder or the protection of the rights of others - and if the recording is proportionate, made in accordance with a ‘common sense approach’, and if only necessary information is recorded.
28. When a report of an NCHI is received, the recording authority should therefore actively consider a number of elements before deciding a) whether it is necessary to record the incident as an NCHI, and b) whether the personal data of the subject should be recorded as part of the NCHI record. A summary of these considerations is set out in Annex 3.
29. The starting point for recording authorities is that not all reported incidents – as perceived by the complainant or any other person – should necessarily be recorded as an NCHI. In the first instance, a report may be recorded as a non-crime incident in line with the NSIR, but it should only be classified as an NCHI once the following principles in this section have been taken into consideration. As noted above, if the criteria needed to record an NCHI are not met more generally, the recording authority is required to close the original non-crime incident report. The recording authority should ensure that the non-crime incident record does not include any personal data before closing it.

#### A proportionate, necessary, and common-sense approach.

30. An NCHI – and relevant personal data - should only be recorded if it is deemed **proportionate** and **necessary** to do so in order to mitigate a real risk of harm. The recording authority is also required to utilise **judgement** and **common sense** when considering whether it is objectively reasonable to record an incident. All steps taken in the process should be done using the **least intrusive method**. This should include consideration to ensure that making an NCHI record would not conflict with **freedom of expression** protections.
31. Once a report of a non-crime incident is received, the recording authority should follow these steps to determine if the incident is a non-crime hate incident:

- I. Consider, using common sense reasoning and drawing on supporting information where available, whether the subject involved in the incident in question was motivated by intentional hostility or prejudice towards a particular characteristic. If neither hostility nor prejudice are demonstrated, or the recording authority believes that any hostility or prejudice demonstrated is unintentional, the incident should not be recorded as an NCHI.

Example A:

A report is made about an individual (the subject) who used derogatory language when referring to a politician with a particular characteristic in a tweet. A non-crime incident record is made on the force's command and control system. A community police officer is tasked with following up on the incident to determine if it constitutes a non-crime hate incident. The officer determines that the subject is a refugee who does not speak English as a first language. As such, the officer is of the view that while the language used usually denotes hostility, in this instance, the hostility exhibited in the tweet was unintentional because the subject did not fully understand the language they had used. The incident therefore is not recorded as an NCHI, and the personal data of the subject is not recorded. The personal data of the subject (in the form of the subject's twitter handle) that was initially recorded by the call taker is also removed from the policing system.

Example B:

A religious person (the complainant) reports an online post that contains an interpretation of their religion that differs from their own beliefs. The complainant is offended by the text and ask the police to order its removal and speak to the person who posted it. The police record the incident as a non-crime incident, but decide that there is no evidence of 'hostility' and it is therefore not an NCHI. They notify the complainant that they will not intervene. The incident therefore is not recorded as an NCHI, and the personal data of the subject is not recorded. The personal data of the subject (in the form of the subject's name) that was initially recorded by the call taker is also removed from the policing system.

- II. Consider whether there is a **common-sense reason** not to record an NCHI - for example if the complaint is trivial, irrational and/or malicious. If the recording authority judges this to be the case, an NCHI should not be recorded. As part of determining if the complaint is trivial, irrational or malicious, the recording authority should pay particular attention to the **context** of the incident in order to determine if the complaint was made in good faith.<sup>16</sup>

Example C:

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<sup>16</sup> In some cases, malicious reports may constitute harassment or threatening behaviour on the part of the complainant. This should be dealt with in line with the NSIR.



On Twitter, an individual (the subject) expresses their belief that a person's biological sex is more important than self-identified gender, and that biological sex should be prioritised when decisions are made about access to single-sex spaces. The tweet is not directed at any individual. However, another individual (the complainant) believes it to be transphobic and reports it to the police. The reviewing officer assesses that the perception of hostility is irrational - the expression of a view that conflicts with those of other people is not an indication of hostility without further evidence. The subject's views are an example of a person exercising their freedom of expression to outline a personally held belief and a reasonable person would accept the discussion as a contribution to a lawful debate, even if they found it offensive or disagreed with it. An NCHI is not recorded, and the personal data of the subject is not recorded. The personal data of the subject (in the form of the subject's twitter handle) that was initially recorded by the call taker is also removed from the policing system.

#### Example D:

An NCHI report is made to the police by an individual (the complainant) who alleges that their neighbour (the subject) has committed multiple NCHIs against them. The police initially record this incident as a non-crime incident. Upon further investigation, it becomes apparent that the complainant and subject have been embroiled in arguments for many years over rights to a parking space. There is no evidence that the incidents are motivated by hostility towards a particular characteristic, and given the context, the recording officer judges that it is a malicious report that was not made in good faith. As such, the incident is not recorded as an NCHI, and the personal data of the subject is not recorded. The personal data of the subject (in the form of the subject's name and address) that was initially recorded by the call taker is also removed from the policing system.

- III. Consider whether the recording of an NCHI would interfere with the subject's right to **freedom of expression**. All recording authorities have a duty to balance the right to free expression with the need to record NCHIs in order to mitigate a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s). All efforts should be made to avoid a chilling effect<sup>17</sup> on free speech (including, but not limited to, lawful debate, humour, satire and personally held views). The recording authority should bear in mind that disagreement, debate or the expression of unpopular or controversial views, opinions or humour are not, by themselves, grounds for an NCHI. Even where the speech is potentially offensive, a person has the right to express personally-held views in a lawful manner. This includes the right to engage in legitimate debate on political speech or speech discussing political or social issues where there is likely to be strong differences of opinion. Further information on freedom of expression can be found in Section 4.

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<sup>17</sup> See paragraphs 44 and 45 for further information on a "chilling effect".

#### Example E:

An influencer (the subject) publishes recordings of 'one-liner' jokes on a popular video streaming site. This includes material which plays on identity-based stereotypes – the individual claims their jokes are 'ironic' and 'satirical'. The jokes are not directed at any individual and would not meet the threshold for inciting racial hatred. Nonetheless, a reasonable person may find the humour distasteful and offensive. A person (the complainant) views the recordings and reports them to the police as being motivated by hostility, claiming that they “foment a culture that accepts and promotes racism and abuse”. The recording officer assesses that the perception of hostility may be valid. However, the material does not present a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s): there is no evidence that the influencer intended to incite hatred or target any one individual or group specifically, and the material itself is in no way inciteful. The recording officer also determines, giving due regard to the content and the low risk it presents, that it would be disproportionate to infringe on the subject's freedom of expression in this case. As such, the personal data of the subject is not recorded and, given there is no locational data to record (and it is judged that an overview of the circumstances would not provide any intelligence value), an NCHI is not recorded. The personal data of the subject (in the form of the subject's name) that was initially recorded by the call taker is also removed from the policing system.

#### Example F:

A journalist (the subject) has written an article in which they express their views on immigration. An individual (the complainant) is offended by these views and reports the journalist to the police, claiming that the journalist's views are xenophobic. The recording authority determines that no hostility is present, and that the journalist was expressing lawfully held personal views whilst writing an opinion piece on immigration. The recording authority decides that recording the incident as an NCHI would represent a clear chilling effect on free speech. The recording authority also determines that there is no real risk of significant harm to individuals or groups with a particular characteristic(s), nor is there a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s) because of the views expressed by the subject. As such, the incident is not recorded as an NCHI, and the personal data of the subject is not recorded. The personal data of the subject (in the form of the subject's name) that was initially recorded by the call taker is also removed from the policing system.

- IV. If the decision is taken to record an NCHI, the recording authority should consider what type of data needs to be included in the record in order to ensure the response is proportionate.

As set out in paragraph 25, there are two subsets of NCHI records – NCHI records with and without personal data included in them. Recording an NCHI record *without* personal data should always be considered first as an option for achieving the purposes of recording **proportionately**, using **the least intrusive method**. The least intrusive method should be applied as a consideration throughout the decision-making process and means only taking actions which are strictly necessary for achieving the recording purpose, and which will result in a minimal personal impact on the subject.

The police should also ensure that any enquiries related to NCHIs are proportionate. For instance, the police may choose not to undertake extensive investigations to identify the subject of an NCHI report if to do so would require a disproportionate amount of police time. More generally, recording authorities are also required to assess the threat, harm and risk of every reported incident and accordingly allocate resources to ensure that the most serious incidents and crimes are prioritised.

Example G:

A heterosexual individual (the complainant) is verbally abused leaving a venue popular with LGBT people. They report the incident to the police. A record of the incident is made on the force's command and control system. A community police officer is tasked with following up the report, and determines that the incident did not constitute a public order offence. The officer confirms that the incident was motivated by hostility towards LGBT people and is therefore an NCHI (albeit based on a misconception that the complainant was LGBT). However, no personal details of the subject are recorded because the police officer judges that recording the location data of the incident will be sufficient to ensure that police patrols are increased in the area to prevent future occurrences of this type of abuse, and it would not be a proportionate use of police resources to investigate further. An NCHI record with only locational data is therefore recorded.

Example H:

A police officer witnesses an individual (the subject) express hostility towards a Muslim woman and intervenes. The officer's judgement that hostility was present is confirmed during the follow-up conversation they have with the subject. Whilst the subject's behaviour does not constitute criminal activity, the surrounding circumstances suggest that the behaviour could potentially contribute to or become evidence of a course of criminal conduct – for example, harassment. The incident therefore passes the Additional Threshold Test. As such, the officer records the personal information of the subject, and creates an NCHI record. In accordance with the code, the officer notifies the subject that their personal data has been processed in an NCHI record.

## Other considerations

32. **Online Content** – NCHIs are sometimes recorded based on incidents that occurred in an online context. In such cases, the recording authority should consider if it is appropriate to record an NCHI when a report is made about an incident that has occurred online.

33. **Multiple Reports** - in the event that the police receive more than one report about the same incident, the recording authority should ensure that this information forms part of a single record. The recording authority should not make multiple records about the same incident.

### Example I:

A football supporter (the subject) tagged a high-profile footballer (the complainant) in a tweet which the complainant views as racist. A further two reports are made to the police by members of the public who saw the tweet and are also of the view that the tweet is racist. The reviewing police officer assesses that the three complainants' perception of hostility is valid, but the tweet does not constitute a crime because it does not meet the threshold set out in the Malicious Communications Act 1988. In line with the Additional Threshold Test, the reviewing officer is of the view that due to the racist nature of the tweet, it presents a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s). The police officer accordingly flags the reported incident as being motivated by hostility – despite the fact that three reports were received, only one NCHI is recorded on policing systems because the reports related to the same incident. The NCHI record will contain the subject's personal data in the form of the subject's twitter handle. The incident information will also be shared with a specialist officer who works to address hate in football in order to determine if any further action should be taken.

34. **Private dwellings** - some parts of hate crime legislation do not apply where hostile conduct takes place in a private dwelling. This means that such conduct cannot always be prosecuted as a crime.<sup>18</sup> Where this is the case, an NCHI should be recorded instead.

### Example J:

An individual who uses a wheelchair reports to the police that a man approached her during a house party and threatened her in circumstances that could amount to a crime under section 4 of the Public Order Act 1986. In doing so, the man also made derogatory comments about her disability.

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<sup>18</sup> See section 4(2), 4A(2) and 5(2), as well as section 18(2) and 29B(2) of the Public Order Act 1986.

A police officer is of the view that this incident would have been recorded as a disability hate crime had this occurred in a public place given the demonstrable threat and hostility that was evident.

However, given that the incident did not occur in a public place, and the potential offence is not enforceable in a private dwelling, this should instead be investigated as an NCHI. The officer decides that a proportionate response would be to record the incident as an NCHI, and that it is proportionate and necessary to record the personal information of the subject, given the threatening language that was used and the potential for this behaviour to escalate in the future. In line with this code, the man is notified that his personal data has been processed as part of an NCHI record.

- 35. The characteristics of the subject, including age** - in deciding whether an NCHI should be recorded, the recording authority should take into account the personal characteristics of the individuals involved in the incident. This includes the characteristics of the subject as well as the complainant. In particular, the recording authority should consider age, and should bear in mind that a child who is the subject of a report may have lower appreciation of the impact of their words or behaviour – accordingly, they may be less likely to have breached the Additional Threshold Test, and recording their personal data may be a disproportionate response. Recording authorities should also consider that Section 11 of the Children Act 2004 requires that the chief officer of police for the police area makes arrangements for ensuring their functions are discharged having regard to the need to safeguard and promote the welfare of children. This responsibility, although expressed as applying to chief officers, also applies to officers and staff carrying out functions on behalf of the force – this includes the function of recording personal data for inclusion in an NCHI record (see paragraph 50 for further information on data controllers).
- 36. Incidents in schools** - if a report is made to the police about an incident that occurs in a school and does not amount to a crime, the appropriate police response would be to refer the matter to the school management team, and to offer advice to the complainant about available support<sup>19</sup>. An NCHI record should not be made on policing systems, and the personal data of the subject should not be recorded. The school management team will assess the risk and decide on a proportionate response. For the avoidance of doubt, this may include incidents that occur between school-aged children, or incidents involving an employee of the school. This may include complaints about incidents on school premises (both within and outside the classroom setting) and content or forms of expression that are provided by teaching staff as part of the school curriculum. When considering resolution of such incidents, the school management team should implement safeguarding measures for any children involved, and in appropriate circumstances ensure that a parent or guardian is notified and present when a child

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<sup>19</sup> If there is a concern that the school may not be in a position to adequately address the concern, or there is a risk that the incident may escalate further or result in criminal conduct (either within or outside the school), this may warrant further police involvement.

may be questioned. For further information, see section 1.9 of the National Standard for Incident Recording, and Annex B - Crime Recording (Schools Protocol) - of the [Home Office Counting Rules for Recorded Crime](#).

Example K:

A school-aged complainant reports to the police that she was called a derogatory name referring to her religion during a lesson by a fellow pupil. The appropriate police response would be to refer the matter to the school management team, and to offer advice to the complainant about available support. The school should assess the risk and decide on a proportionate response. The recording authority should record the incident, recording the police interactions and the results of those actions. However, this would not be recorded on a police database as an NCHI. The recording authority therefore ensures that the personal data of the subject (in the form of their name) that was initially recorded by the call taker is removed from the policing system.

37. The recording authority should also bear in mind that, when recording an NCHI, the particular characteristic that was targeted should be recorded, even if the characteristic does not align with the actual characteristic of the complainant. For instance, if an individual is mistakenly assumed to be Muslim, and experiences an NCHI on this basis, then an NCHI motivated by anti-Muslim hostility should be recorded, regardless of the individual's actual religion (or lack of religion).
38. If a criminal offence or suspected criminal offence is identified – for example, a racially-aggravated assault - the incident should be recorded as a hate crime, in line with the [College of Policing's Authorised Professional Practice on hate crime recording](#).
39. If an NCHI, criminal offence or suspected criminal offence is identified, the recording authority should consider whether it would be beneficial to signpost or refer the complainant to relevant local services that can provide additional support.

## 4. Freedom of Expression

### Context of Freedom of Speech in relation to NCHIs

40. In England and Wales, hate crime legislation includes so-called ‘free speech’ provisions which recognise that certain views and opinions on political speech or speech discussing political or social issues would not, by themselves, amount to a criminal offence. These provisions are designed to make a distinction between strongly held but lawful views and forms of expression which are intended to stir up hatred, and which therefore constitute a criminal offence. These provisions were included in hate crime legislation to recognise the importance of individuals having an opportunity to engage in legitimate debate on important social or political issues where there is likely to be strong differences of opinion. This includes opinions related to, for example, same-sex marriage<sup>20</sup> and criticism of religion<sup>21</sup>.

41. Freedom of expression in relation to the recording of NCHIs has recently been considered by the Court of Appeal in the case of [Miller v The College of Policing \[2021\]](#). On 20 December 2021, the Court ruled that the College of Policing’s 2014 operational guidance on NCHIs interfered with an individual’s right to freedom of expression in a ‘real and significant’ manner. To be lawful, such interference could only be justified if it pursued the legitimate aims of: (a) preventing crime, and (b) protecting the rights of others, so long as these two aims were achieved in a proportionate way. The Court expressed a particular concern that the 2014 guidance interfered with the right to freedom of expression in a way that was not proportionate, expressing that the legitimate aims of the guidance could have been achieved in a less intrusive way. The overall impact of the 2014 guidance on freedom of expression was ruled to be disproportionate. In particular, although there were some exceptions, the 2014 guidance in general provided that all complaints should be recorded (including irrational complaints or those with no evidence of hostility). As a result, the College published interim guidance on 21 July 2022 to address these concerns, prior to the publication of this code.

42. The importance of freedom of expression has also been recognised in case law as it concerns discussion or debate on topics related to certain protected characteristics.

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<sup>20</sup> Section 29JA of the Public Order Act 1986, concerning the stirring up of hatred on grounds of sexual orientation states that: ‘any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.’

<sup>21</sup> Section 29J of the Public Order Act 1986 recognises that, in the context of the stirring up of hatred on grounds of religion, certain acts of expression would not constitute an offence: ‘nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system’.

For example, in the employment law context in the case of [Maya Forstater v CGD Europe](#), the Employment Appeal Tribunal held that the appellant's view that biological sex is immutable and not to be conflated with gender identity (described by the court as a 'gender critical' belief) was protected under 'philosophical belief' in the Equality Act, and as such, the appellant should not have been discriminated against in her work. In the context of employment rights, the judgment specified that this does not permit abusive conduct, noting 'that does not mean [...] that those with gender-critical beliefs can indiscriminately and gratuitously refer to trans persons in terms other than they would wish', and adding that 'such conduct could, depending on the circumstances, amount to harassment of, or discrimination against, a trans person.' Nonetheless, the Tribunal recognised that the mere expression of 'gender critical' beliefs, in and of themselves, are protected in law. This judgment is significant given that the beliefs expressed by the appellant (i.e. gender critical beliefs) were similar to those in the case of [Miller v The College of Policing \[2021\]](#), discussed in paragraph 41.

43. Freedom of expression is a fundamental right that is protected under the Human Rights Act (HRA) 1998, which gave effect to Article 10 of the European Convention on Human Rights (ECHR) in UK law. It is also protected under common law. Parliament has, through its legislation, sought to value free speech and enable people who wish to engage in debate to do so – regardless of whether others agree with the arguments being made. These rights apply regardless of whether the expression in question is unsophisticated, trivial, or intended to be humorous - as long as such expression does not violate the law. Freedom of expression is a qualified right which means that it can be restricted for certain purposes to the extent necessary in a democratic society, including for the prevention of disorder or crime<sup>22</sup>. However, recording authorities must note that the majority of speech that expresses political or other opinions, even if offensive or controversial, does not constitute an offence. **Fundamentally, offending someone is not, in and of itself, a criminal offence.** To constitute an offence under hate crime legislation, the speech or behaviour in question must be threatening, abusive or insulting and be intended to, or likely to, stir up hatred<sup>23</sup>. Similarly, unless the speech in question meets the Additional Threshold Test set out in this code, **offending someone is not, in and of itself, enough to warrant the recording of an**

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<sup>22</sup> Article 10(2) set out in Schedule 1 of the Human Rights Act 1998 reads: *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

<sup>23</sup> The Public Order Act 1986 criminalises stirring up hatred in respect of race, religion and sexual orientation. These offences focus on speech or behaviour that causes others to hate entire protected groups - for example, disseminating inflammatory racist material. Recording authorities should also note that indecent/racist chanting at football matches is criminalised under section 3 of the Football (Offences) Act 1991 - this relates to chanting which is threatening, abusive, or insulting by reason of race, citizenship, ethnic or national origins.



**NCHI involving personal data** – the perception of the complainant alone (including perceptions of offensiveness) is not enough to result in an NCHI including personal data being recorded.

## Freedom of Speech - NCHI Considerations

44. In accordance with the Miller ruling, special regard should always be given by the recording authority to the impact of NCHI recording on freedom of expression, including the potential risks of a record having a chilling effect on an individual's right to freedom of expression. The risk of a chilling effect extends to all forms of expression, but is of particular importance in relation to political speech or speech discussing political or social issues. This includes, but is not limited to, debate, humour, satire and personally-held views which are lawfully expressed.

### Chilling effect:

- A chilling effect, in the context of NCHIs, occurs where the police response to an incident potentially inhibits a person from expressing their views, or where that person or persons believe that lawful speech may risk criminal sanction (even where this perception is misplaced).

45. The recording authority should consider whether it is proportionate and necessary to interfere with the right to freedom of expression by recording the personal data of an individual who is the subject of an NCHI report. Efforts to avoid a chilling effect on free speech should be considered, including consideration of the least intrusive method (covered in paragraph 31(IV)).

46. The recording authority should bear in mind that disagreement, debate or the expression of unpopular or controversial views, opinions or humour are not, by themselves, grounds for an NCHI. Even where the speech is potentially offensive, a person has the right to express personally held views in a lawful manner. An NCHI record that includes personal data should not be made simply because a complainant is offended; it should only be recorded if it will mitigate a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s).

47. The recording authority should additionally consider the fact that hate crime legislation includes so-called 'free speech' provisions (discussed in paragraph 40) which recognise that certain political speech or speech discussing political or social issues do not, by themselves, represent a criminal offence. As an extension of this, these types of views and opinions would also not, by themselves, warrant an NCHI being recorded, given that they are legitimate expressions of views and opinions. However, these 'free speech' provisions are not intended to provide an exhaustive list of all forms of protected speech on a given topic. The recording authority should also consider where

NCHI recording in relation to characteristics where there are no such accompanying 'free speech provisions' in law, for example in relation to ethnicity – or other contentious topics of debate not explicitly covered by such provisions - would also represent a disproportionate chilling effect on free expression.

## 5. Guidance - How to Process NCHI-related Personal Data

### Storage of NCHI-related Personal Data

48. As set out in the [Home Office Counting Rules](#), all reports of incidents made to the police, whether from victims, witnesses or third parties and whether crime related or not, will - unless immediately recorded as a crime - result in the registration of an auditable incident/record by the police on the relevant database.
49. A report may therefore be recorded as a non-crime incident in line with the NSIR, but it should only be classified as an NCHI if the recording authority has determined that it meets the principles set out within this code.

### Data Protection Regime for Processing NCHI-related Personal Data

50. If the decision is made to record personal data, data controllers<sup>24</sup>, or those acting on behalf of the data controller, should decide - on a case-by-case basis – whether the personal data in question should be processed under **UK General Data Protection Regulation (UK GDPR)** or **Part 3 of the Data Protection Act (DPA) 2018**. In practice, this will be an operational decision, likely made by a recording authority acting on behalf of the police force. This may impact where the data will be stored and may also affect what information is disclosed if a Right of Access Request (also known as a Subject Access Request) is made to a police force.
51. The recording authority should also refer to the [Management of Police Information \(MoPI\) APP](#) which provides general information on the effective management of police information.
52. The data protection regime to be applied will depend on the purposes of the processing of the data:
- Where data for this purpose relates to normal processing, the appropriate regime will be UK GDPR and Part 2 of the DPA 2018. This would include all purposes relating to safeguarding individuals, and where there is no immediate intention of investigating the matter as a criminal offence.

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<sup>24</sup> See Annex 1. For the purposes of the code, each police force in England and Wales has a separate data controller. The controller is the Chief Officer, namely, the Chief Constable of each force or, in the case of the Metropolitan Police or City of London Police, the Commissioner. Police officers and staff act on behalf of the Chief Constable or Commissioner that they work for.

- Part 3 of the DPA 2018 should only be utilised if the data is being processed for “law enforcement purposes”, which are the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, as outlined in section 31 of the DPA 2018.

53. Data controllers should note that the regime under which the data is processed can be changed if new information becomes available.
54. Data controllers, or the recording authority acting on their behalf, should use non-crime terminology to refer to the parties involved in NCHIs - the term ‘complainant’ and ‘subject’ should be used. Terminology with criminal connotations – including ‘victim’, ‘offender’ or ‘perpetrator’ – should not be used.
55. All data controllers should consider whether they have an appropriate privacy notice in place (for example, on their website) to ensure that data subjects are clear about how their personal data will be handled. Data controllers are advised to regularly update the privacy notice and to train and/or remind front-line staff about the content of the notice.
56. All data controllers should also ensure that they have appropriate policy documents in place in accordance with Schedule 1 Part 4 Paragraph 39 of the DPA 2018 to articulate the appropriate safeguards to the complainant where processing is taking place under the UKGDPR and Part 2 of the DPA or s.35(8) of the DPA 2018 applies.
57. Where appropriate policy documents exist for either or both regimes, they should be checked to ensure that Part 4 of Schedule 1 to the DPA is satisfied and that they meet the purpose of this code, and should be amended as necessary.

## Notifying Data Subjects

58. If a subject’s personal data will be processed as part of an NCHI record, in most circumstances, the recording authority should promptly notify the individual of this.
59. The only exception is if there is a reasonable belief that such a notification could present a safeguarding risk to the complainant. Decisions not to inform the subject that their data has been processed should be agreed by the relevant police officer<sup>25</sup>, and the reason for not informing the subject should be recorded.
60. Where multiple reports are made about a single incident, only one notification to the subject is required.

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<sup>25</sup> The decision as to who is a ‘relevant officer’ should be made by Chief Officers; because of the potential impact on the right to freedom of expression, the relevant officer should be a senior police officer. Chief Officers will need to consider the appropriate level of authority within their force, and ensure that the relevant police officer understands the requirements set out in this code and wider data protection legislation.

61. When notifying an individual that they are the subject of an NCHI, the recording authority should utilise judgement and common sense, and consider **the least intrusive approach**. This may be achieved by informing the subject that their data will be processed at the time of the investigation. Where this is not possible, the recording authority or other person involved in the investigation should decide on the least intrusive way to inform the subject. Particular consideration should be given to avoiding unnecessarily alerting a third party - for example, the subject's friends, family or employer – to the complaint or the interest of the police in the incident.
62. In all cases, the recording authority should clearly state when engaging with the subject that the matter relates specifically to a non-crime hate incident and that they are not being investigated for a criminal offence. The recording authority should also explain why a record will be made of the incident, why it is necessary for their personal information to be stored, and how their personal information will be recorded and retained.
63. If this contact with the police is likely to come to the attention of another person – for example, the subject's family, friend, or employer - it is advisable for forces to provide the individual with information that they can pass to the third party in order to clarify that the police contact was about a non-criminal matter.
64. The recording authority should inform the subject about the process through which they can contest this record. If the individual contests the record, they should be invited to provide information to support their request. The record should be reviewed by someone other than the person who made the original record in order to determine whether it is necessary and appropriate to retain information that could identify the subject. The reviewer should consider whether the record was made in line with the steps set out in this code. The original information that was used by the recording authority to reach the decision to record an NCHI with personal data should be considered alongside any additional information provided by the subject. If it is judged by the Force Crime and Incident Registrar that the information is not necessary to mitigate a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s), it should be deleted.

## Retention of NCHI-related Personal Data

65. Personal data relating to NCHIs should be retained in line with all relevant legislative and regulatory requirements, including – but not limited to – the following:
- [the Management of Police Information \(MoPI\) Code of Practice 2005](#);
  - [UK GDPR and the Data Protection Act \(DPA\) 2018](#); and
  - [The Human Rights Act 1998](#).

66. The recording authority (and other police officers and staff who may later review the information) is required to give consideration to the types of information that need to be retained, the length of that retention and the practical implications of storing these records in their various formats, having regard to their retention and deletion policies and this code. For further information on retention, review and disposal of incident records, see the [College of Policing's APP on Information Management – Retention, Review and Disposal](#).
67. In practice, in line with MoPI, personal data in an NCHI record can be retained on police databases for a maximum of 6 years before being reviewed. Upon review, the record will be deleted if it is no longer relevant to mitigating a real risk of significant harm to individuals or groups with a particular characteristics) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s).

## Requests relating to NCHI personal data

68. In the event that an individual makes a Right of Access Request (under UK GDPR Article 15) to determine if a police force holds their personal information in an NCHI record, the controller is required to respond to the original request and provide details of what is held.
69. If, during the course of this process, it is determined by officers or staff that the record should not have been made in the first instance, or the data has been retained in error, it should be deleted. In line with standard Right of Access Request procedures, the individual who made the request should be notified of the data that was held, the fact it has now been deleted, and why it has been deleted. If a record is identified and personal data is retained, the individual should be informed of this in line with standard Right of Access Request procedures.

## Utilising NCHI Records

70. In any context in which police officers and staff come across an NCHI record that contains personal data (for instance, when checking an individual's record for vetting purposes, during a future investigation, when considering whether an incident should be disclosed on an enhanced criminal record certificate, or in response to a Right of Access Request), and this record was made before this code entered into effect, the first step should be to confirm whether, in line with this code, the record should have been made in the first place. If the record should not have been made, the record should be deleted and not be considered further.
71. If it is determined that the record was made in line with this code, the record may be considered further for policing purposes, in line with other appropriate guidance.

72. If the record is being considered for disclosure on an enhanced criminal record certificate issued by the Disclosure and Barring Service (DBS), the Chief Officer making the decision is required by section 113B of the Police Act 1997 to have regard to guidance issued by the Home Secretary: [Statutory Disclosure Guidance](#). Such information should be disclosed only where the Chief Officer reasonably believes it to be relevant for the purpose for which the certificate is sought and that it ought to be included.

#### **Further Information: Disclosure on Enhanced Criminal Record Certificates**

- The Statutory Disclosure Guidance makes clear that, in any case where a Chief Officer is minded to provide information for inclusion in a certificate, or is uncertain whether to do so, they should consider whether the applicant should be offered the opportunity to make representations before the information is submitted. Only in cases where there is no room for doubt that the information should be disclosed should the Chief Officer take a decision to disclose without first giving the applicant an opportunity to make representations.
- The DBS sends criminal record certificates direct to the subject of the certificate, not to any prospective or existing employer.
- If the individual is unhappy with the information which has been disclosed, they may raise a dispute with the DBS who will work with the police to resolve the issue.
- If the individual remains concerned that the police are proposing to disclose information which the individual feels is either not relevant or ought not to be disclosed, the dispute will be referred to the Independent Monitor for Disclosure and Barring, appointed by the Secretary of State under the Police Act 1997, to carry out a review of the case.

# Annex 1 – Terminology relating to the processing of personal data

73. For the purposes of this code, and in accordance with Article 4 of the UK General Data Protection Regulation (UK GDPR):

- any references to ‘personal data’ refer to the personal data of the individual who is the subject of an NCHI report i.e. the subject. Whilst records may cover personal data of other individuals (e.g. the complainant), the code does not cover how this data should be processed;
- ‘personal data’ means any information relating to an identified or identifiable natural person who is the subject of an NCHI report. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. For the specific purposes of this code, recording authorities should bear in mind that “location data” may be recorded in such a way so as **not** to allow the identification of any individual. In these cases, the record in question may be considered to be an NCHI record that only includes **non-personal** data. For example, road names, junctions, public areas or shopping areas, or other sufficiently broad locational areas may be referenced in an NCHI record and would not enable the police to identify an individual. However, if a more specific location is recorded (e.g. a specific house number), this may allow the identification of an individual, and as such may be considered to be an NCHI record that includes personal data. The recording authority should utilise judgement and common sense to determine if the location data stored in an NCHI is broad enough to ensure an individual is not identifiable;
- ‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data. For the purposes of this code, each individual police force in England and Wales is considered to be a controller. Within the police service, the controller is the Chief Officer, namely, the Chief Constable of each force or, in the case of the Metropolitan Police or City of London Police, the Commissioner. For the purpose of this code, only those in a role named in Annex 2



may process personal data for NCHI-related purposes. The recording authority will be processing the data for their respective controller (i.e. for the police force that they work in).

## Annex 2 – Who must have regard to this Code

74. The individuals listed below must have regard to this code of practice. For the avoidance of doubt, this means that if a decision is made to record personal data of an individual who is the subject of an NCHI report, this data may only be processed by the following individuals:

- a member of a police force in England and Wales;
- a special constable (appointed under section 27 of the Police Act 1996);
- a member of staff appointed by the chief officer of police of a police force in England and Wales;
- a person designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002;
- an employee of the Common Council of the City of London who is under the direction and control of a chief officer of police;
- a constable of the British Transport Police Force;
- a special constable of the British Transport Police Force appointed under section 25 of the Railways and Transport Safety Act 2003;
- an employee of the British Transport Police Authority appointed under section 27 of that Act;
- a person designated as a community support volunteer or a policing support volunteer under section 38 of the Police Reform Act 2002 as applied by section 28 of the Railways and Transport Safety Act 2003; or
- a National Crime Agency officer.

## Annex 3 - Steps that should be taken by the recording authority before recording personal data

75. If an incident which involves the perception of hostility or prejudice towards a particular characteristic is reported to the police, as perceived by a complainant or any other person, the recording authority should determine that:

- a) the event reaches the incident threshold as set out in the NSIR (i.e. it disturbs an individual, group or community's quality of life or causes them concern);
- b) a criminal offence has not occurred (i.e. the criminal threshold has not been breached, meaning that the incident should not be recorded as a crime);
- c) the perception of hostility is valid;
- d) there is no common-sense reason not to record the incident (e.g. the complaint is not irrational, trivial or malicious).

Where only conditions **a-d** are fulfilled, it may be proportionate for the recording authority to create an **NCHI record without personal data**.

A recording authority may only create an **NCHI record which includes the personal data of the subject if the above conditions (a-d) AND the below conditions (e-g) are fulfilled**.

- e) any interference with subject's right to freedom of expression is proportionate and necessary;
- f) having applied the Additional Threshold Test, the incident presents a real risk of significant harm to individuals with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s);
- g) a proportionate use of police resource is involved in determining the identity of the individual.

As outlined in paragraphs 58-64, in the event that the subject's personal data is processed, in most circumstances, the recording authority should then promptly notify the individual.

## Annex 4 - Glossary

Additional Threshold Test	Personal data may only be included in an NCHI record if the recording authority determines that the event presents a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with a particular characteristic(s).
Association of Chief Police Officers (ACPO)	The Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) led the development of policing practices in England, Wales, and Northern Ireland from 1948 until it was dissolved in 2015. ACPO was replaced by the National Police Chiefs' Council.
Authorised Professional Practice (APP)	Operational guidance - produced by the College of Policing - on how to deal with different types of crime or incident.
Authorised Professional Practice (APP) on Information Management – Retention, Review and Disposal.	This APP, produced by the College of Policing, provides guidance to forces on meeting the statutory requirements in relation to the review, retention and disposal of policing information and records.
Authorised Professional Practice (APP) on Hate Crime	This APP, produced by the College of Policing, provides guidance to forces on delivering a consistent, proportionate and robust policing response to hate crime and non-crime hate incidents.
College of Policing (CoP)	The College of Policing is a professional body for everyone working across policing. It is an operationally independent arm's-length body of the Home Office.
Complainant	The individual who has reported an NCHI.
European Convention on Human Rights (ECHR)	The ECHR protects the human rights of people in countries that belong to the Council of Europe (including the UK). The Convention guarantees specific rights and freedoms, including freedom of expression.
Home Office Counting Rules for Recorded Crime	The Home Office Counting Rules provide a national standard for the recording and counting of 'notifiable' offences recorded by police forces in England and Wales (known as 'recorded crime').
Human Rights Act (HRA) 1998	The HRA 1998 is an Act of Parliament which came into force on 2 October 2000. It incorporated into UK law the rights contained in the European Convention on Human Rights.

National Standard for Incident Recording (NSIR)	The NSIR was published by the Home Office and the Association of Chief Police Officers in 2011 to ensure that all incidents - whether crime or non-crime - are recorded by police in a consistent and accurate manner.
Non-crime hate incident (NCHI)	An incident or alleged incident which involves or is alleged to involve an act by a person ('the subject') which is perceived by a person other than the subject to be motivated - wholly or partly - by hostility or prejudice towards persons with a particular characteristic.
Police, Crime, Sentencing and Courts (PCSC) Act 2022	The Police, Crime, Sentencing and Courts Act 2022 received Royal Assent on 28 April 2022. Sections 60 and 61 enable the Home Secretary to issue this statutory code of practice to the police about the recording and retention of personal data relating to NCHIs.
Recording authority	The police officers and/or staff who decide whether an NCHI record needs to be made, as well as whether and how the personal data of an individual who is the subject of an NCHI report should be processed.
Statutory Disclosure Guidance	This statutory guidance is designed to assist chief officers of police to provide the correct information for enhanced criminal record certificates.
Subject	The individual who is the subject of an NCHI report.
UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018	The UK GDPR and DPA jointly set out the key principles, right and obligations for the processing of personal data. The legislation applies to all UK businesses, organisations and the government, and governs the fair and proper use of personal information.





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