

<b>Economic Note</b>	<b>Number: HOEN 0022</b>
<b>Title of regulatory proposal</b>	Non-Crime Hate Incidents Code of Practice on the Recording and Retention of Personal Data
<b>Lead Department/Agency</b>	Home Office
<b>Expected date of implementation</b>	May 2023 (dependent on parliamentary timetable)
<b>Origin</b>	DOMESTIC
<b>Date</b>	17/02/2023
<b>Lead Departmental Contact</b>	HateCrimePolicy@homeoffice.gov.uk
<b>Departmental Assessment</b>	GREEN

#### Rationale for intervention, objectives and intended effects

The Non-Crime Hate Incidents (NCHI) Code of Practice on the Recording and Retention of Personal Data will provide guidance to assist police and staff at all levels of the police service in England and Wales in deciding when it is suitable to record a NCHI, and whether personal data should be processed as part of an NCHI record. The code introduces safeguards to protect better personal data and the fundamental right to freedom of expression. The code will address the 2021 Court of Appeal judgment in Miller v College of Policing (CoP) by providing the police with clarity in understanding proportionality when recording an NCHI, taking into account the right to freedom of speech.

#### Policy options (including alternatives to regulation)

**Option 1:** Do nothing.

**Option 2:** Implement the Non-Crime Hate Incidents Code of Practice on the Recording and Retention of Personal Data. This is **the Government's preferred option** as it achieves the Government's objective.

#### Costs and benefit summary

The main monetised cost associated with introduction of the code is cost of police time related to familiarisation with the new code. Additionally, a cost will result from implementation of the removal of personal data where necessary, however a national estimate hasn't been possible. Scenario analysis based on one force suggests cost will be small in scale. The main benefits from this policy measure are the expected improvements in the recording and storing of NCHIs (and relevant personal data) with the introduction of the Additional Threshold Test. Additionally, police have suggested that the code could result in fewer NCHIs being recorded. However, with no data on how many, it is currently un-monetisable. There is uncertainty in some assumptions underpinning our analysis, which poses a risk to the robustness of the estimates. The main risks relate to the lack of information on training requirements due to the College of Policing leading on development, additional time taken for police to carry out the Additional Threshold Test and the ranks of officers required to read the code.

Total Cost £m PV	Transition Cost £m	Cost to Business £m	Total Benefit £m PV
0	-0.009	0.0	0.0
NPSV (£m)	BNPV (£m)	EANDCB (£m)	BIT Score (£m)
-0.009	0	0	0
Price Base Year	PV Base Year	Appraisal period	Transition period
2022/23	2022/23	10 years	N/A

**Departmental sign-off (SCS):** Paul Regan Date: 23/02/2023

**Chief Economist sign-off:** Tim Laken Date: 24/02/2023

**Better Regulation Unit sign-off:** Jon Bray Date: 23/02/2023

# Evidence Base

## 1. Background

1. The Non-Crime Hate Incidents Code of Practice on the Recording and Retention of Personal Data (hereinafter referred to as 'the code') is designed to provide guidance to assist police officers and staff at all levels of the police service in England and Wales in deciding whether a non-crime hate incident (NCHI) record needs to be made when an incident is reported to the police, and whether and how the personal data of the person who is the subject of an NCHI report should be processed. For the avoidance of doubt, the 'subject' is the person being complained about.
2. The code introduces new safeguards, such as an Additional Threshold Test, and provides additional clarification for police officers and staff to better protect personal data and the fundamental right to freedom of expression. The code will address the concerns raised by Parliamentarians during the passage of the Police, Crime, Sentencing and Courts Act 2022<sup>1</sup> by enabling parliamentary scrutiny of the enhanced processes surrounding the recording of NCHIs and the processing of personal data in these records. The code will also address the 2021 Court of Appeal judgment in *Miller v College of Policing*<sup>2</sup> by providing clarity to ensure that police officers and staff at all levels of the police service understand when and how it is proportionate to record an NCHI, taking into account the fundamental right of freedom of speech.
3. The new code establishes the use of the Additional Threshold Test which outlines that 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, or there is a risk of a future criminal offence being committed against individuals or groups with a protected characteristic. If this threshold test is not met, personal data should be removed from the NCHI record.
4. The first iteration of the code is secondary legislation subject to the affirmative resolution procedure, meaning it will require approval from both Houses of Parliament before it passes into law. The code will enter into force 31 days after it is approved by Parliament. Any future iterations of the code will be subject to the negative resolution procedure where it is signed off by the relevant minister and then laid before parliament where it becomes law unless it is actively annulled.
5. A formal consultation was not carried out for the purposes of developing the code. However, Home Office policy officials have engaged with policing stakeholders throughout the drafting process, including the CoP, the National Police Chiefs' Council, the Metropolitan Police Service Commissioner, and the Chief Constables for Greater Manchester Police and Lancashire Police.

## 2. The policy issue and rationale for government intervention

6. The code has been published because the Government recognises that there are sensitivities surrounding the recording and retention of this information by the police. The Government also recognises the considerable strength of feeling on this issue amongst parliamentarians in relation to the lack of democratic oversight that has been afforded to the process in recent years – the only guidance in existence prior to the publication of the code was the CoP's non-statutory Authorised Professional Practice (APP) guidance on hate crime<sup>3</sup>, which includes guidance on NCHIs for officers and staff at all levels of the police service and covered the procedures they

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<sup>1</sup> Police, Crime, Sentencing and Courts Act 2022: <https://www.legislation.gov.uk/ukpga/2022/32/contents/enacted>

<sup>2</sup> *Miller V The College of Policing*: <https://www.judiciary.uk/judgments/miller-v-the-college-of-policing/>

<sup>3</sup> CoP non-statutory APP guidance on hate crime: <https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime>

should follow when responding to NCHIs. The code will provide the desired democratic oversight because it is subject to parliamentary scrutiny.

7. The code will address concerns that NCHI recording infringes on the right to freedom of expression; the code emphasises this fundamental right and will ensure that it is taken into consideration by police officers and staff at all levels of the police service during the recording process. The code provides detailed information on freedom of expression, and clear case studies to illustrate how this right should be taken into account in practice. The Court of Appeal ruled, in its *Miller v College of Policing* judgment provided on 20 December 2021<sup>4</sup>, that the recording of NCHIs is lawful provided that there are robust safeguards in place so that the interference with freedom of expression is proportionate. The Court stated that safeguards protecting free speech in the CoP's then APP guidance must be made more explicit to help police officers proportionately implement recording, to ensure lawfulness of the scheme. In response, the CoP published updated APP guidance in July 2022 to address the judgment. The code is vital in further enshrining the right to freedom of expression into the recording process.
8. The CoP will publish an updated version of APP guidance once the code has been approved by Parliament. The APP guidance will align with the code and ensure coherence and consistency in terms of the code's operational application across England and Wales.

### 3. Policy objectives and intended effects

9. The aim of the code is to:
  - ensure police officers and staff at all levels of the police service 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 at all levels of the police service 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<sup>5</sup>, case law, the Data Protection Act 2018<sup>6</sup>, UK General Data Protection Regulation<sup>7</sup>, and all other relevant legislation;
  - 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. Policy options considered, non-regulatory options, implementation date

10. Two options have been considered:
  - a) Option 1: Do nothing. This option does not address the issue identified in NCHI recording and therefore doesn't fulfil the Government objectives.
  - b) Option 2: Implement the Non-Crime Hate Incidents Code of Practice on the Recording and Retention of Personal Data. **This is the Government's preferred option.**

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<sup>4</sup> *Miller v The College of Policing*: <https://www.judiciary.uk/judgments/miller-v-the-college-of-policing/>

<sup>5</sup> Human Rights Act 1998: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>6</sup> Data Protection Act 2018: <https://www.gov.uk/data-protection>

<sup>7</sup> UK GDPR: <https://uk-gdpr.org/>

11. The preferred option will address concerns that some NCHI recording infringes on the right to freedom of expression and will ensure that it is taken into consideration by police officers and staff at all levels of the police service during the recording process by setting out a standardised process across forces.

### **Non-regulatory options**

12. In the absence of the code being implemented, CoP guidance surrounding NCHI recording would remain in place. This option alone would not meet the Government objectives set out above, as the guidance lacks parliamentary supervision over the recording of NCHIs and corresponding processing of personal data.

## **5. Appraisal**

### **General assumptions and data**

13. The length of the new guidance is assumed to be around 10,600 words, based on current drafting.
14. The new code will build on the CoP interim guidance<sup>8</sup> that was updated in July 2022. The guidance was introduced to reduce the unnecessary recording of NCHIs and outlines the importance of recording and retaining personal data relating to NCHIs. As some of the processes outlined in the proposed new code are already being carried out by police forces in line with the CoP interim guidance, the number of additional burdens on release of the new code is expected to be minimal.
15. The most significant additional added process will be the need to remove a subject's personal data if it is eventually determined it is not needed following the introduction of the Additional Threshold Test. This test is expected to enhance understanding of what is required to record for a NCHI which would lead to less NCHI records having to be created in the future. It is assumed this would balance out any additional burden incurred as a result of the Additional Threshold Test being introduced.
16. There is no mandatory ask for new software resulting from the code so no cost has been modelled. Some police forces may decide to update IT but this will not be required to be compliant with the code and is unlikely.
17. The Readingsoft<sup>9</sup> calculator is used in calculating familiarisation costs. The police ranks assumed to be required to read the new guidance range from constables to sergeants. It is assumed guidance is sent to police forces to read digitally and estimates use volumes of current police workforce based on March 2022 statistics<sup>10</sup>.
18. All costs and benefits are expressed in 2022/23 prices.

### **Costs**

#### **Monetised costs**

##### **Familiarisation costs (Set-up costs)**

19. As this measure includes the implementation of new guidance, applicable to all police forces, there will be costs associated with relevant staff reading the new guidance. Costs related to this are estimated at £9,200 in the central scenario and cover 10 per cent of chief inspectors and 1 per cent of sergeants being required to read the update<sup>11</sup>. As police officers are expected to be

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<sup>8</sup> College of Policing interim guidance: <https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime/responding-non-crime-hate-incidents>

<sup>9</sup> The speed at which officers are assumed to read the guidance is taken from: <http://www.readingsoft.com/>

<sup>10</sup> According to March 2022 data published in July 2022: <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2022>

<sup>11</sup> Based on a working assumption from a single police force, and agreed with the College of Policing, which is scaled up proportionally to cover all 43 police forces.

up to date with the guidance as part of their role, this cost is expected to be absorbed within current workloads.

20. The figures assume that the length of the code will not change from the current draft at 10,600 words. However, the central estimate of costs may be an underestimation due to there being additional staff who are not officer badged required to read the guidance too (for example, police administration staff, call takers) and the fact that in some forces the relationship between the size and number of officers required to read the code will not be proportional. In the largest forces for example it is expected a larger proportion of officers will be expected to read the code. Sensitivity analysis has been conducted to account for this.
21. The range of estimated costs vary from the central estimate of £9,200 with a low estimate of £3,500, and a high estimate of £0.4 million<sup>12</sup>. The low estimate is based on the guidance consisting of 9000 words, read by the same proportion of officers as the central, and the high estimate containing 11,000 words read by half of the officers at chief inspector and sergeant rank.
22. The range of estimated time it would take to read the guidance on screen per person was found to take 0.72 hours for the central estimate, 1.3 hours for the high estimate and 0.28 hours for the low estimate. This was found by dividing the number of pages of the document by the various speeds, which were 200 wpm, 300 wpm and 600 wpm respectively for the high, central and low estimate. Next, this was added together with the re-read time and allowance time to give the total time it would take to read the guidance.
23. Table 1 indicates the number of police officers in each rank and the various time it would take each rank to read the document. The time it would take to read the document by each police officers rank was found by multiplying the time it would take to read the document on screen for each scenario by the total number of police officers in each rank. The collective hours of time for the ranks for each scenario were then multiplied by the average hourly earnings of police officers<sup>13</sup> to give the final estimated cost of £9,200 related to this burden.

**Table 1: Estimate of total number of police officers in ranks and time taken by each rank to read document in England & Wales, 2022-23**

	Sergeant	Chief Inspector
No. of Police officers by rank in all areas (high)	10,425	1,046
No. of Police officers by rank in all areas (central/low)	214	209
<b>Total time taken by rank to read the document (on screen) in hours</b>		
Central	154	151
High	13,553	1,359
Low	60	59

### Removal of Personal Data

24. Building on the CoP interim guidance, the new code establishes the use of the Additional Threshold Test, meaning personal data can only be recorded in the event that an NCHI poses risk of significant harm or future criminal offence to individuals or groups with protected characteristics. The removal of personal data is required if the incident does not pass this

<sup>12</sup> Median gross hourly wage for Police and Senior Police officers taken from Table 14.5a Annual Survey of Hourly Earnings (ASHE), 2022 revised edition:

[https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digit\\_soc2010ashtable14](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digit_soc2010ashtable14)

<sup>13</sup> For all three scenarios the Sergeant reading times were multiplied by the average hourly earnings of a police officer. Moreover, for the high estimate the Chief Inspector times were multiplied by the average hourly earnings of a senior police officer. Finally, the average hourly earnings for both police officers and senior police officers have been multiplied by the ASHE non-wage uplift to account for the non-wage costs.

threshold test. The removal of personal data from NCHIs that did not pass the threshold test is seen as an additional cost.

25. Currently, there is no data showing how long it takes police forces on average to record an NCHI. Information obtained from a police force indicated that on average it takes them 25 minutes to record an NCHI (15 minutes for response to input the NCHI on the system and 10 minutes for them to quality assure)<sup>14</sup>. Data is not currently collected on the number of NCHI reports that would require removal of personal data, however through engagement with home office policy experts it has been suggested that the introduction of the Additional Threshold Test would add an additional 5 minutes of police time per record (this includes removal of personal data if needed). Moreover, it is estimated that the cost to a police officer for removing personal data from each NCHI will be £2.02<sup>15</sup> per record.
26. Due to the lack of data on numbers of NCHIs requiring personal data removal across police forces in England and Wales, an overall estimate of the cost of adding the Additional Threshold Test has not been possible.
27. To illustrate the potential scale of additional costs, an example estimate of annual cost of removal of data was calculated<sup>16</sup> and was found that the cost of this additional burden will be on a small scale. Even though, the cost associated with this burden will look different for each police force, it is estimated that the cost incurred as a result of the Additional Threshold Test will be minimal and absorbed within existing workloads.

## **Non-monetised costs**

### **Software Costs**

28. The new guidance does not include mandatory updates to software and there is no national requirement to install standardised software programs or systems in forces across the country.
29. There is a chance that as current software systems are provided by varying suppliers across police forces with differing functionalities and some forces may decide they need to upgrade software to meet the new standards. To estimate any costs resulting from this, further engagement would be needed with both forces and suppliers to understand the potential scope of change and associated costs. The scale of these costs could vary significantly across forces depending on the changes made.

### **Training Costs**

30. With implementation of the code, there is also potential for training requirements, including force level briefings, which would carry a cost. This could vary considerably between forces depending on the extent of the staff force required to attend training. The CoP are currently in the process of determining how best to design this training and roll it out to forces. It is not possible to estimate these potential costs at this time.

## **Benefits**

### **Non-monetised benefits**

31. The new code will create democratic oversight over the recording process of NCHIs, where this previously did not exist. The code will be subject to parliamentary scrutiny, thus increasing transparency and accountability regarding the recording and storing of NCHI-related personal data.

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<sup>14</sup> This was obtained from email engagement with a police force

<sup>15</sup> This figure was estimated using ASHE Police costs:

[https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digit\\_soc2010ashetable14](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digit_soc2010ashetable14). Estimated the cost of the additional 5 minutes of police time using police officers hourly pay rather than a senior police officer as it is assumed that a senior police officer would not be involved in administrative tasks, such as removal of personal data from an NCHI report.

<sup>16</sup> The example estimate figures cannot be shared as the data is not publicly available.

32. The code will result in the adoption of a standardised recording system for NCHIs across England and Wales, which will improve clarity for forces on how NCHIs are recorded, and in turn improve public perception of the way the police handle sensitive data. This may include clarity on the length of time NCHI data is held by police forces, a topic of significant public interest.
33. Additionally, more standardised recording of data could potentially be useful to inform central Government policy formulation in the future. A better understanding of what has been recorded, and higher levels of confidence that it is being recorded consistently across England and Wales, could create a new, useful source of information with which to make policy.

### Increased efficiency in recording of NCHIs

34. The new code sets out the use of an Additional Threshold Test for the recording of personal data in the event of an NCHI posing as a real risk of significant harm to individuals or groups with a particular characteristic. From discussions with subject matter experts<sup>17</sup>, it is believed that the implementation of this new test would result in better standardisation and reduce the recording of unnecessary NCHIs resulting in an overall reduction in the amount of NCHIs that would require personal data to be collected. However, there is currently no data to support this claim and therefore it has not been possible to quantify and monetise this benefit.

### Value for money metrics

35. Table 3 presents the monetised costs and benefits identified in this assessment, the costs and benefits presented in this analysis indicate a net cost from this measure. However, this is driven by the fact that a robust monetised estimate cannot be calculated for the benefits to police forces from having introduced the Additional Threshold Test. This measure is expected to balance out any costs with the benefits of increased efficiencies in the recording of NCHIs which is expected to lead to less time spent recording personal data over the appraisal period.
36. As there is no monetisable benefit, and no impact to business, both the **Business Net Present Value (BNPV) and the net cost to business (EANDCB)<sup>18</sup> are zero. The NPSV is between -£3,500 to -£0.4 million with a central estimate of -£9,200.**

**Table 3: Estimate of Net Present Social Value (NPSV) 2022-23, England and Wales, £ million**

	Low	Central	High
<b>TOTAL BENEFITS (PV)</b>	0.0	0.0	0.0
<b>TOTAL COSTS (PV)</b>			
Familiarisation costs	0.004	0.009	0.4
Removal of Personal data	0.0	0.0	0.0
<b>TOTAL NPSV**</b>	<b>-0.004</b>	<b>-0.009</b>	<b>-0.4</b>

Source: Home Office own estimates, 2023.

## 6. Risks and unintended consequences

37. Updating police guidance/processes in line with the new code may take some time. The CoP's current operational guidance will remain in force until the new code enters into effect, which mitigates this risk. The CoP will ensure that they update their operational guidance as soon as the new code is approved by Parliament to ensure that police officers and staff at all levels of the police service have access to both the code and the updated APP guidance.
38. Forces may require training on the new code. This could be a time-consuming and resource-intensive process. This cannot currently be monetised as the CoP are in the process of

<sup>17</sup> Including policy professionals and police officers.

<sup>18</sup> This is defined as the Equivalent Annual Net Direct Cost to Business and is the metric used by the Regulatory Policy Committee (RPC). It is referred to as the 'net cost to business per year' in this Economic Note.

determining how best to design this training and roll it out to forces. This could pose as a potential risk towards the robustness of our current estimates.

- 39. There is a low risk that we produce a new code that then needs to be substantially revised based on a new Court ruling (that may be similar, for example, to the Miller v College of Policing judgment) in due course.
- 40. There remain some unknowns surrounding the burdens resulting from the new code, therefore the assumptions that the costs are modelled on hold a level of uncertainty. For example, the familiarisation costs assumptions have been made without the rank of police staff required to read the guidance being confirmed. Hence, assumptions have been drawn from Home Office policy subject knowledge and input from CoP.

## 7. Monitoring and evaluation

- 41. The CoP will ensure that the principles set out in the code are operationalised in their APP guidance. The APP guidance will be updated to align with the code.
- 42. The Home Office will keep the code under review to ensure it remains fit for purpose and will update the code if necessary. In the event that the code is updated, the revised code will be laid before Parliament.

### Specific Impact Test Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p><b>Statutory Equalities Duties</b></p> <p>The implementation of the new NCHI Code is considered to have a neutral impact to those with all the characteristics outlined in the EIA framework. The code is primarily designed to better protect the personal data of the subjects of NCHI reports and to better protect freedom of expression but makes it clear that if there is a risk of future significant harm or future criminal offences to those with the current characteristics protected by hate crime laws (which are race, religion, transgender identity, disability and sexual orientation) then a record can be made. This therefore has a neutral impact from a PSED perspective. These characteristics are codified in legislation and represent a sub-set of those in the Equality Act 2010.</p> <p><b>The SRO has agreed these findings.</b></p>	<p><b>Yes</b></p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this.

The checklist should be used in addition to HM Treasury's Green Book<sup>19</sup> guidance on appraisal and evaluation in central government (Green Book, 2020).

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**

<sup>19</sup> HMT Green book: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>