Professional Committee

23 June 2020

By Skype for Business audio call

Committee Meeting 11:00 – 12:30

Committee Members	
Mike Cunningham	College CEO (Chair)
Dave Bamber	Police Federation of England and Wales
[redacted]	NPCC
[redacted]	Police Federation of England and Wales
[redacted]	[redacted]
[redacted]	Police Federation of England and Wales
[redacted]	Association of Special Constabulary Officers
[redacted]	Unison
[redacted]	NPCC
[redacted]	Organisational Development and International Chair/CPOSA
[redacted]	Academic Member (Designate)
[redacted]	Police Superintendents' Association

Non-Voting Members	
Helen Ball	Metropolitan Police
Val Harris	Metropolitan Police Trade Union Side
Stephen Mold	Northamptonshire Police and Crime Commissioner
Dan O'Mahoney	NCA
Andrew Tremayne	APCC

To present items	
[redacted]	Norfolk Constabulary
[redacted]	Crime and Criminal Justice
Rachel Tuffin	Director of Knowledge and Innovation

Staff members in attendance	
[redacted]	[redacted] Enabling Services
Richard Bennett	Uniformed Policing Faculty Lead
[redacted]	[redacted]
[redacted]	[redacted] Corporate Governance
[redacted]	PSNI
Jo Noakes	Director of Workforce Development
Bernie O'Reilly	Deputy Chief Excutive Officer
Jayshree Vekria	Portfolio & Programme Officer

Invited Observers	
[redacted]	[redacted] College of Policing Board

Apologies	
David Tucker	Crime & Criminal Justice Faculty Lead

No.	Title	Lead at meeting	Status	Timing
1.	**Minutes and Actions of the Previous Meeting** • *The previous meeting took place on 3rd March 2020*	Mike Cunningham	Paper	11:00 – 11:10 (10 mins)
2.	**Information and Records Management Code of Practice**	Rachel Tuffin	Paper	11:10 – 11:25 (15 mins)
3.	**Revised National Vulnerability Action Plan**	Mike Cunningham/ Simon Bailey	Paper	11:25 – 11:40 (15 mins)
4.	**Hate Crime Operational Guidance**	Rachel Tuffin	Paper	11:40 – 11:50 (10 mins)
5.	**Digital Intelligence and Investigations Update**	Fiona Paterson	Paper	11:50 – 12.00 (10 mins)
6.	**The Role of Professional Committee**	Mike Cunningham	Paper	12.00 – 12:15 (15 mins)

7.	**<u>To Note:</u>** **a) College Business Update** **b) Chief Constables' Council Update**	Mike Cunningham Martin Hewitt	Paper Verbal	12:15 – 12.25 (10 mins)
8.	**Any Other Business**	All	Verbal	12:25 – 12:30 (5mins)
	2020 Committee meeting dates: 15 September 2020, Location – TBC 8 December 2020, Location – TBC			

Official

Title of Meeting: **Professional Committee**
Date: 3rd March 2020
Time: 11:00 – 14:00
Venue: Broadway House Conference Centre, Tothill St, London, SW1H 9NQ.

Attending Members	**Organisation**
Mike Cunningham	Chief Executive (Chair)
Helen Ball	Metropolitan Police
Dave Bamber,	Police Federation of England and Wales
Nick Ephgrave	National Police Chiefs' Council
Gemma Fox	Police Federation of England and Wales
David Pedrick-Friend	ASCO
Val Harris	Metropolitan Police Trade Unions
Martin Hewitt,	National Police Chiefs' Council
Andrew Tremayne	APCC
Apologies: Sharon Harrison, Phil Knox, Stephen Mold, Dan O'Mahoney, Debi Potter, Andy Rhodes Jo Strong, Ian Wylie, Giles York.	
Other Attendees: Christine Elliott (Invited Observer)	
College: Richard Bennett, Ray Clare, Kate Fromant, Jo Noakes, Bernie O'Reilly, David Tucker, Rachel Tuffin, Jayshree Vekria.	

Item 1: Minutes and actions of the previous meeting (Chair)

1.1 The minutes and actions from 10th December 2019 meeting were **reviewed and agreed.**

Item 2: Draft APP for Post Incident Procedures in DSI Cases (Richard Bennett)

2.1 The Committee was asked to approve the publication of the DSI-PIP APP (and associated training guidance material) for the post incident procedure (PIP) that results from a death or serious injury (DSI) following police contact. Members were informed that the College had been in discussions with the Police Federation, Staff Associations and Unions to ensure that particular issues raised were addressed and both represented and reflected in the guidance. Discussions also considered how the professional standards would interact with the IOPC.

2.2 Committee members acknowledged the importance of the extra consultation activity that had taken place but felt that further considerations around the definition of the wording relating to when the PIP would be applied was required. They felt that this would remove any ambiguity around individual's perceptions of what's classed as life changing.

DECISION: The Committee approved the publication of the DSI-PIP APP (and associated training guidance material).

ACTION: The College to have further discussions with the IOPC to better define the wording relating to when the PIP would be applied.

Item 3: Development of Code of Practice - Digital Extraction (David Tucker)

3.1 The Committee was asked to note the development of a code of practice relating to the powers to process data obtained in a police investigation. Members were informed that the code had been developed following concerns raised by victims and witnesses who do not know, with any certainty, what will happen to the material they have provided.

3.2 Committee members highlighted the importance of developing a clear programme plan that established both a timeline and resource requirements and one that was also mindful of the current Judicial Review faced by the College, concerning a 'digital extraction' form developed by NPCC.

3.3 Members noted the complexity around delivering this programme of work that has many interconnections and interdependencies and would have a resource requirement from both inside and outside of the College to write the content and manage stakeholders. The Committee also considered options of developing a handbook, which sets out the high level principles/guidelines making it easier to understand how it would work in practise. It was also suggested for the code of practice to be discussed more widely at the National Criminal Justice Board.

DECISION: The Committee noted the progress on the development of Code of Practice – Digital Extraction.

Item 4: Amendment to Regulation 10 (Ray Clare)

4.1 The Committee noted the update on the proposed amendment to Regulation 10 around the age requirement for appointment to a police force – to allow applications from candidates under the age of 18 years in order to take up appointment on reaching the age of 18 years.

4.2 The Chair informed the Committee that he had received reservations to discuss the item with the Committee from both the Police Federation and the Superintendents' Association on the basis that the documents prepared for the Committee misrepresented their previous agreement from the College Regulatory Consultative Group meeting. The Chair stated that his understanding was that the reservations raised were not related to the regulation change but about the process of application and specifically for the testing of substance use. The Chair felt that the Regulation 10 amendment should continue to be discussed at the meeting, not for agreement but to address any concerns prior to it being approved by the College Board on 18th March 2020.

4.3 Members acknowledged the importance of the regulation changes, which they felt would help to widen the recruitment pool and agreed that this was a direct ask from Chief Constables who felt that they were being disadvantaged in the recruitment pool compared to other organisations who promoted their apprenticeships schemes particularly to school leavers.

4.4 The Committee supported the need for the regulation change but raised concerns around the legal issue of obtaining samples from candidates who are under the age of 18 and how these would be used outside of the recruitment process in the future, particularly in relation to disciplinary offences and elimination samples. Members advised that further discussions were required with the Home Office to address the legal issue to avoid a further risk of impact on the black and minority communities who already have a lower level of trust in the service.

DECISION: The Committee noted the proposed amendment to Regulation 10 around the age requirement for appointment to a police force – to allow applications from candidates under the age of 18 years in order to take up appointment on reaching the age of 18 years.

ACTION: The College to consult further with the Home Offices to address the legal issue raised by the Committee in relation to obtaining samples from candidates who are under the age of 18 and how these would be used outside of the recruitment process.

Item 5: National Law Enforcement Data Services (David Tucker)

5.1 Members noted an update for the development of a code of practice for the National Law Enforcement Database System (NLEDS). The code is being developed by the College on behalf of the Home Office NLEDS team because, following the establishment of the College, the Home Office has no general powers to issue codes of practice to policing. The College acquired the powers under Section 39A Police Act 1996 that had previously applied to the Home Secretary.

5.2 The Committee agreed that this was an important piece of work and suggested that the time frames discussed would provide the College with a good opportunity to carry out consultation activities. They also felt that the management of multiple codes would need to be considered carefully, to ensure everyone would be aware of what code they were operating against.

DECISION: The Committee noted the development of the code of practice for the National Law Enforcement Database System (NLEDS).

Item 6a: College Business update (Mike Cunningham)

6.1 The Committee noted the College business update.

6.2 The Chair informed the Committee that the College is currently going through a change in its operating model and likewise is the NPCC. He added that although the College holds the statutory right to both develop and publish codes and guidance, the work in developing these is carried out by both the College and the NPCC, which at times can cause confusion for forces as to who is responsible for what. The new operating model will help to address this issue and provide clarity of respective roles for both the College and the NPCC.

6.3 The Chair also updated the Committee on an additional resource request for the College to upskill policing in digital following the wind down of the Digital Policing

Portfolio. The College will be undertaking a resource analysis to identify what further skills will be required for delivery over the next 12 months.

Item 6b: Chief Constables' Council Update (Martin Hewitt)

6.4 The Committee noted the update from the January Chief Constables' Council meeting

Item 7: AOB

******MEETING CLOSED******

Professional Committee: Action Log					
ACTIONS: 3rd MARCH 2020 MEETING					
NO	**ITEM**	**ACTION**	**LEAD**		**COMMENT**
1.	Draft APP for Post Incident Procedures in DSI Cases	The College to have further discussions with the IOPC to better define the wording relating to when the PIP would be applied.	Richard Bennett		
3.	Amendment to Regulation 10	The College to consult further with the Home Offices to address the legal issue raised by the Committee in relation to obtaining samples from candidates who are under the age of 18 and how these would be used outside of the recruitment process.	Ray Clare		

Name of meeting:	Professional Committee
Date of meeting:	23 June 2020
Item lead at meeting:	Rachel Tuffin
Agenda item number:	2
Title of paper:	Development of a Police Service Information and Records Management Code of Practice.

1. Issue

1.1 The development of a Police Information and Records management code of practice to replace the current Management of Police Information (MoPI) Code of Practice 2005.

2. Summary

2.1 The Management of Police Information (MoPI) Code of Practice 2005 was enacted following the Bichard Inquiry and the concerns about police record keeping that surfaced during that Inquiry. The MOPI code applies to a narrow range of police records, mainly connected with crime investigation.

2.2 The Hillsborough Report 2012 and subsequent Hillsborough Families Inquiry identified gaps in record management. They also found continuing inconsistencies and a lack of transparency in Force records management. They recommended that the police come under the provisions of the Public Records Act 1958.

2.3 The Home Office initially agreed but resiled from that position because of difficulties in finding parliamentary time. In any event, closer examination of the recommendation and PRA established that adopting provisions of the Act might be prohibitively expensive and may not address the problem of missing relevant records. A code was identified as the best option and its development was supported by the College Executive.

2.4 The new proposed Code will be enacted under Section 39A of the Police Act 1996 and will impact on the way all Forces manage their records and information. It will update the current Code in line with the Data Protection Act 2018 and expand it to include corporate records. It will be supported by APP to assist to operationalise its provision.

2.5 The Code will need to be supported by a proportionate audit processes both in force and in conjunction with relevant regulatory authorities.

3. Recommendation

3.1 Professional Committee decision required: **YES**

3.2 Professional Committee is asked to

i. **APPROVE** the ongoing development of the code and the proposed way forward.

4. Supporting Information/Consideration

4.1 The Hillsborough Independent Panel (HIP) reported in 2012[i] and expressed concern that there was no requirement to retain police records even though they may be of

significant public and historical interest. The MOPI Code of Practice 2005 covers records broadly related to investigations, but does not apply to other, organisational records. These records could be relevant to public inquiries and other reviews and investigations.

4.2 The Panel also found some material that may have been of relevance was now unavailable, probably destroyed. One of the panel's recommendations was that police records are brought under legislative control and that police forces are added to Part II of the First Schedule of the Public Records Act (PRA) 1958, thereby making them subject to the supervision of the Keeper of Public Records.

4.3 This matter was brought up again in the Hillsborough Families report in 2017 by [redacted]. In it, the [redacted] described a lack of progress towards placing police forces under the PRA. He emphasised the fundamental principle of accountability, that wider public records are subject to proper rules relating to retention and inspection, and that police records should be subject to similar rules. [redacted] Jones suggested that the Home Office and Department for Culture, Media and Sport, as the department responsible for The National Archives, work together to determine and to deliver an appropriate solution.

4.4 [redacted], the lead for the Hillsborough Inquiry, completed a report on the issue. The report highlighted that teams coordinating the police evidence into the National Undercover Public Inquiry and the Independent Inquiry into Sexual Abuse identified the inconsistency of approach in the retention of force policies and senior decision making.

4.5 [redacted] concluded

'The police service, as an accountable body managing high risk activity, should be able to review and retain information under its own auspices so significant events or decisions can be examined or re-examined in the future. Discipline and consistent judgement in the management of wider policing records would be appropriately achieved by extending the current MoPI Codes of Practice and defining categories of information along with time limits for review and retention in APP'

He also stressed the importance of a proportionate audit regime to facilitate compliance. The College Executive agreed that work should start on a new code.

4.6 The proposed code, supported by APP, is intended to provide a National framework for managing police records which will support greater consistency and enhance public transparency and accountability. Compliance will also provide efficiency savings with Forces developing a greater awareness of what records are held and where they can be found.

4.7 The principles in the current draft (attached) are aligned with Data Protection Act 2018 principles and it has been considered by the CRCG and been the subject of one to one consultations with a range of stakeholders including ICO, NHS, National Archives, OCiP, APCC, IOPC, MoPAC, NCA, ICT Company, HMICFRS, ACRO, NPIRMPT, CPS. The next stage, if approved by the Professional Committee, will be to submit the draft to the NPCC Records Management Portfolio and to further engage a group of subject matter experts in forces. A full, formal consultation process will then follow, ensuring compliance with the requirements of S39A Police Act 1996.

4.8 The major change implied by the code is that some Forces' current working practices will require a more structured and consistent approach to identifying records that should be archived, beyond their usual retention periods, in the public interest and for historical purposes.

5. Annexes

5.1 **Annex A** contains a copy of the draft Information and Records Management Code of Practice

Author name: [redacted]

Author job title:

Author email:

Author tel number

Sponsor (if not Author)**:** David Tucker

[i] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229038/0581.pdf

College of Policing

college.police.uk

Police information and records management code of practice

Draft version 5.0

Contents

1. Statutory basis of the code

1.1. This Code of Practice comes into effect on XXXXXXXX.

1.2. Nothing in this Code alters the existing legal powers or responsibilities of any police and crime commissioner, chief officer of police, or other person.

1.3. The College of Policing has issued the Police Information and Records Management Code as a code of practice under section 39A of the Police Act 1996.

1.4. As a code of practice, the Information and Records Management code:

a. applies to the police forces maintained for the police areas of England and Wales as defined in section 1 of the Police Act 1996 (or as defined in any subsequent legislation)

b. relates specifically to chief officers in the discharge of their functions.

2. Purpose of the code

2.1. This code applies directly to the police forces maintained for the police areas of England and Wales defined in section 1 of the Police Act 1996, and replaces the Management of Police Information (MoPI) Code of Practice 2005.

2.2. The purpose of this code is to provide a framework to support a cohesive, ethical, effective, legitimate and efficient approach to maximise the opportunities and benefits that good information and records management provides. In turn this will build police legitimacy and increase public confidence in the way their data is managed.

2.3. It broadens the applicability of the original MoPI code beyond records that contain police information to include police corporate governance records and updates the code in light of recent legislation and other developments. The code also introduces archiving in the public interest into the Police records management regime.

2.4. It is available for adoption by other agencies including other police forces and Police and Crime Commissioners (PCC's) not covered by section 1 of the 1996 Act and law enforcement agencies within the United Kingdom that exchange information with the police service in England and Wales.

2.5. The processing of information and records management in the service is subject to a number of statutory obligations and standards. This code is not exclusive and must be considered in conjunction with all relevant legislative and regulatory requirements

such as the General Data Protection Regulations (GDPR), Data Protection Act 2018, Human Rights Act 1998, Criminal Procedure and Investigations Act 1996, Protection of Freedoms Act 2012, Regulation of Investigatory Powers Act 2000, Freedom of Information Act 2000 and other codes such as the Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.

2.6. The application of this Code must also be considered in the context of other legal and policing duties such as the Policing Code of Ethics.

2.7. This code sets national standards for police record keeping to ensure consistency across Forces, ensure police record keeping complies with the law and to ensure police records are managed ethically, efficiently and effectively. The standards within the code provide a template against which records management audits can be based.

2.8. The College of Policing will issue guidelines to Forces on how this code should be operationalised.

2.9. Role of other agencies

2.10. Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) will monitor police forces' compliance with this Code and associated guidance.

2.11. Information Commissioners Office (ICO) is the UK's independent authority for upholding information rights law, most prominently the GDPR and Data Protection Act 2018 and the FOIA 2000 under which it has powers to respond to concerns from data subjects and to take action to ensure that organisations meet their information rights obligations.

2.12. The College of Policing (CoP) published the code and is responsible for ensuring it remains 'fit for purpose'. The College will also publish the supporting guidance referred to throughout this code.

2.13. The National Police Chiefs' Council (NPCC) Professional Portfolios will oversee Police Records and Information management nationally, publishing policy and procedures as necessary.

2.14. Police and Crime Commissioners (PCCs) have a duty to hold Chief Constables to account for all their functions, this includes responsibility for ensuring Force compliance with this code.

3. Introduction

3.1. Information is a key asset to the police service. The effective management of information across all aspects of policing is vital to delivering the core priorities of the service which are to protect the public and reduce crime.

3.2. To carry out the functions of policing the service has to process personal and organisational information from a range of sources and in a number of different forms.

3.3. ISO 15489 defines a record as “information created, received, and maintained as evidence and as an asset by an organization or person, in pursuit of legal obligations or in the transaction of business”.

3.4. References to records and information in this code relates to whichever format they are created, physical (such as paper or microfiche) or digital, unless stated otherwise.

3.5. Due to the nature of policing it is essential to distinguish between information processed for a policing purpose and information required for business functions that support the service to deliver.

3.6. The two categories of records created by Forces are:

- Organisational and administrative records (also referred to as corporate) – which contain information processed to enable the discharge of police services such as financial information, policies and procedures and information relating to employees.
- Police records – contain information processed for a policing purpose namely:

1. protecting life and property
2. preserving order
3. preventing the commission of offences
4. bringing offenders to justice, and
5. any duty or responsibility of the police arising from common or statute law.

3.7. It should be noted that the policing purpose definition is wider than the Part 3 Data Protection Act 2018 (DPA 2018) definition of law enforcement purpose, which is:

‘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’.

3.8. Consequently some information recorded for a policing purpose may be processed under Part 3 of the DPA 2018 and some under Part 2.

3.9. The core principles in this Code are aligned to the data protection principles but reflect the specific needs of good records management practice.

3.10. The principles for managing all records remain the same, irrespective of the category of information they contain, other than the fact that the nature of information recorded for a policing purpose requires extra safeguards which are reflected in this code and supporting guidance.

3.11. The code and supporting guidance should promote consistency of records management across the service facilitating efficient and effective practices and enhanced transparency and accountability.

4. Key principles governing the management of police records and information

4.1. Creating and managing information according to the Principles in this Code will result in information that:

- can be located, retrieved, and accurately interpreted when needed and support effective decision making, forecasting and efficiencies
- can be trusted as complete and accurate increasing public and employee confidence
- has been ethically collected and used for the intended purpose
- is kept for an appropriate time period to ensure that it is for no longer than is required for the purpose for which it is being processed.

4.2. The value of information is often overlooked. Poor management of information can result in:

- an impact on individual rights and entitlements causing personal distress
- lost opportunities for information sharing
- poor decision making
- inconsistency of approach to the management of risk and vulnerability across the Service
- reputational damage
- unnecessary costs and inefficiencies, such as regulatory fines, time to retrieve information and the storage and preservation of redundant information
- inability to understand the level of risk that a person may present or the level of risk a person may be subjected to.

4.3. Good records management mitigates information related risks and creates opportunities.

Principle 1: Governance

4.4. Forces must have appropriate Information and Records Management governance arrangements. The Chief Constable, as data controller, is responsible for ensuring appropriate technical and organisational measures are in place to comply with this Code and these measures are updated and reviewed when necessary..

4.5. They should designate officers/staff of suitable seniority and knowledge to perform the roles of Senior Information Risk Owners (SIROs), Information Asset Owners (IAOs) and Data Protection Officers (DPOs). Force governance must incorporate information risk and include clear routes for escalation.

4.6. Forces must have in place roles responsible for records management, information security, data protection and freedom of information on a day to day basis.

4.7. Chief Constables must promote an environment and culture whereby both the benefits and the responsibility of holding the public's information are understood, ensuring access and retention is legitimate. However legislation must not be viewed as a blocker to sharing data. Police and partnerships work best when information is appropriately and legally shared.

4.8. Appropriate local policies, procedures and supporting guidance, in line with this code, must be developed and adopted which may include strategies and tactical plans to facilitate delivery and embed best practice and encourage a culture where good information management is seen as part of everyone's role.

4.9. Records created and acquired during the performance of duty, and any duplicates of these records, remain the property of the Force and Forces must have in place systems and processes to ensure that they are accounted for when individuals leave the organisation.

4.10. Forces must have an Information and Records Management Strategy which sets out accountability, responsibilities and provides what measures and plans the force have to manage the information and records they create throughout their lifecycle.

Principle 2: Transparency

4.11. Forces must seek to be transparent to the Public about the nature and type of records and information they hold. Records are required to stand up to scrutiny and meet legislative and regulatory requirements including individual rights and entitlements. Transparency should not overrule necessary operational and personal confidentiality

4.12. Transparent processing is about being clear, open and honest with people from the start about who you are, and how and why you use their personal data.

When processing data for Law Enforcement purposes under part 3 of the DPA 2018 transparency requirements are different from general processing requirements, due to the potential to prejudice an ongoing investigation in certain circumstances. Whilst the transparency requirements are not as strict under Part 3 it is still necessary to be open and transparent about how personal information will be processed whenever possible.

Principle 3: Quality

4.13. Forces must ensure information and records are maintained throughout their life to ensure their authenticity, reliability, integrity and usability to ensure subsequent value is not compromised.

4.14. Force systems and process should detail who created a record, when and for what purpose. Also who has accessed it and if it has been changed, by whom, for what reason and the nature of the changes. Forces must have in place data quality audit and compliance arrangements.

4.15. All police records must conform to the data quality principles of accuracy, completeness, no duplication, conformity, relevancy and timeliness. Forces must comply with the National published data quality standards.

4.16. For records containing personal information these data quality principles are set out in part 3, chapter 2, section 37–39 of the Data Protection Act 2018 and GDPR Article 5 (c), (d) and (e).

Principle 4: Compliance

4.17. Forces must put arrangements in place to ensure information is handled in line with relevant legislative and regulatory obligations.

4.18. Information Asset Owners must be aware of their obligations to manage information appropriately including retention, disclosure, preservation and disposition. Disposition can be either transfer to an archive, gifting (eg, to a museum) or appropriate secure destruction.

4.19. Personal data must not be excessive and be relevant to the purpose for which it was collected.

4.20. The standards within this code, and associated guidelines, must be built into the design, development, procurement and functionality of IT systems and applications and any changes to existing systems.

4.21. A Data Protection by Design and default approach must be built into change projects and new IT requirements. The opportunity to implement automation of review, retention and disposition processes should also be considered.

4.22. The scope of any asset and the criteria against which personal data will be collected on to it must be clear and defined, to avoid any ambiguity or ad-hoc recording.

4.23. Where possible the existence of the asset should be publically known, along with the criteria above, and the information fully searchable/accessible to Rights of Access Requests.

4.24. Information must be suitably secured and stored, managed, handled and disposed of in accordance with the Government Security Classification Scheme.

4.25. Guidance, in line with the Code and National guidance, must be issued by Forces detailing policies, procedures and control measures that must be in place to protect information assets and personal data from unauthorised or accidental access, amendment of or loss of information in line with data protection security requirements.

4.26. Forces must have in place an audit capability and regime to review and audit the extent to which records and information management practices and processes comply with the standards detailed in this code. They should develop plans to rectify shortfalls and pursue continuous improvement.

Principle 5: Accessibility

4.27. Force systems used to manage information and records must have the functionality necessary for adherence to the principles in this code.

4.28. Access to information must only be allowed to individuals who need access for their lawful function.A Force must ensure it knows the information assets it holds and they are stored in a way that ensures their efficient retrieval.

4.29. Forces must have in place appropriate arrangements for allowing public access to documents archived in the public interest or for statistical, scientific and historical purposes.

4.30. Business continuity arrangements must be in place to ensure any loss of information is appropriately managed and control measures are in place to minimise risk and disruption to day to day business.

Principle 6: Review and retention

4.31. Forces should implement the appropriate review and retention procedures and periods in line with Guidance published under this code and any retention schedule published by the NPCC.

4.32. The main purposes of review, retention and disposal procedures of police information (information required for a policing purpose) is to;

- protect the public and help manage the risks posed by known offenders and other potentially dangerous individuals.
- ensure compliance with the relevant legislation.

4.33. Police records should be retained for as long as they serve an organisational or policing purpose whilst being cognisant of records where wider public interest, statistical, scientific or historical purposes may necessitate extended or permanent retention.

4.34. Records that need to be preserved for the future should be migrated to newer formats and or systems when the current ones become obsolete ensuring that the migration includes all relevant metadata so the context is not lost.

4.35. Where a decision is made to retain a record for longer than the designated retention period, the justification for the extended timescale must be recorded.

4.36. Forces must put in place arrangements for the selection of records for permanent preservation and records subject to ongoing public inquiries in line with published guidance.

4.37. Under the Inquiries Act 2005 Forces have an obligation to preserve relevant records for the Inquiry for as long as necessary. The obligation to retain documents will remain throughout the duration of the Inquiry.

Principle 7: Disposition

4.38. When information and records are no longer required or have reached the end of their designated retention period, arrangements must be in place to ensure appropriate methods are used for their secure disposition.

4.39. Where physical destruction is not possible, for example where an IT system does not have a delete functionality, methods of minimising the risk to further use or exposure should be considered (ie, putting beyond use, or restricting access).

4.40. Forces must have in place arrangements to archive documents selected for permanent preservation which are no longer required for an organisational or policing purpose. This may be in partnership with an external archive service.

4.41. Archived physical records (paper, microfiche etc) should comply with the relevant care and conservation British Standards detailed in the published guidance.

4.42. In the case of digital records that are intended to be archived care must be taken to ensure long term accessibility, integrity, usability, reliability and authenticity in the case of format obsolescence, including minimising quality loss/data loss.

4.43. Forces that choose to archive their records with an outside provider should agree governance arrangements, through an information sharing agreement, including who is the data controller, who has the Freedom of Information and Data Protection Act obligations and the criteria by which Forces can recall records.

4.44. When a record has been selected for archiving a decision has to be made as to whether the record should be available to the public. This will be the subject of a sensitivity review to decide if all or part of the information in a record can be made available to the public or if the information should be exempt from disclosure under the Freedom of Information Act 2000 (FoIA).

4.45. Forces must keep a ‘catalogue’ of records permanently archived including detail relating to the nature of the record, their context and their location.

4.46. Forces’ archiving and redaction arrangements, whether in-house or external, must include:

- arrangements that keep collections, in all formats, safe and accessible

- resource commitments (people, facilities, finance, IT) necessary to maintain the arrangements
- coherent policies, plans and procedures
- an appraisal, selection and sensitivity review process
- arrangements that build in data protection legislation safeguards
- a disaster recovery plan.

5. Supporting issues

5.1. Personnel capability

5.2. Chief Officers must identify key posts for the management of police records and ensure that the posts are filled and the function suitably resourced. They should arrange the selection, training and professional development of those to be appointed to such posts so as to ensure standards of competence.

5.3. All officers and staff employed by Forces will be involved in the creating of records and processing of information and consequently Forces must ensure they are given the necessary training consistent with their role. This training should emphasise each person's individual responsibility for how they process and handle information.

5.4. Training for managing records and information management is not only to ensure compliance with this code and the legal framework but also to ensure the consistency of procedures throughout the police service.

5.5. Organisational capability

5.6. Chief Officers must ensure that staff have the appropriate equipment, accommodation and systems to comply with this code.

5.7. Creation of police records

5.8. Information must be recorded and records created when it is necessary for a policing purpose or for organisational governance. Forces must capture sufficient technical and contextual information (metadata) to be able to handle and control Force information and determine access as well as manage, find and understand that information in the future. Metadata must be kept in such a way that it remains reliable and accessible for as long as it is required.

5.9. Recording police information must adhere to the Guidelines issued under this Code.

5.10. Evaluating police information

5.11. Police information must undergo evaluation appropriate to the policing purpose for which it was collected and recorded. All police information must be evaluated to determine:

- threat, risk harm and/or vulnerability
- provenance
- quality (which includes, conformity, completeness, duplication, accuracy)

- continuing relevance to a policing purpose
- what action, if any, should be taken.

6. Information sharing

6.1. Sharing of police information within the UK police service

6.2. Guidance under this Code may specify a protocol for sharing information.

6.3. Subject to any constraints arising from guidance based on section XX below, the content and the assessment of the reliability of information recorded for police purposes should be made available to any other police force in England and Wales which requires the information for police purposes.

6.4. Subject to any constraints arising from guidance based on section XXX below, the same degree of access to information recorded for police purposes by police forces in England and Wales should be afforded to other police forces in the United Kingdom provided that the chief officer responsible for the record is satisfied that the police force seeking access to the information applies the principles set out in this Code.

6.5. Chief officers may arrange for the sharing of information with other police forces in the UK, in accordance with the two preceding paragraphs, to be carried out either:

a. by response to bilateral or multilateral requests for information to police forces, or

b. by holding such information on IT systems to which police forces referred to above may be given direct access.

6.6. Sharing of police information outside the UK police service

6.7. Police Chief Officers will continue to comply with any statutory obligations to share information with bodies other than police forces in England and Wales.

6.8. In addition, chief officers may arrange for other persons or bodies within the UK or European Union to receive police information where the chief officer is satisfied that it is reasonable and lawful to do so for a policing purpose. In deciding what is reasonable, chief officers must have regard to any guidance issued under this Code.

6.9. The procedures for making such information available, and the extent to which it is made available, must comply with guidance to be made under this code, and with

any protocol (whether at national or local level) which may be agreed with persons or bodies needing to receive such information.

6.10. In circumstances not covered by any such protocol, a chief officer may give access to police information in response to a request from any person or body to the extent that the chief officer believes this request to be lawful and reasonable for a policing purpose, and have regard to the Data Protection Act 2018 and to the guidance issued under this Code.

6.11. Where a request is made to transfer personal data to forces outside the European Union, for a law enforcement purpose, then Chief Officers should apply the criteria contained within Sections 72-78 DPA 2018 before agreeing such a request.

6.12. Protection of sensitive police information and sources

6.13. Guidance under this Code may provide for special procedures to be applied to a request for access to information recorded for police purposes, in any case where it is necessary to protect the source of sensitive information or the procedures used to obtain it.

6.14. Obligations of those receiving police information

6.15. In making national or local agreements and protocols for the sharing of police information with persons or bodies other than police forces, or in responding to individual requests for information outside such agreements or protocols, chief officers must require those to whom information is made available to comply with the following obligations:

a. Police information made available in response to such a request should be used only for the purpose for which the request was made.

b. If other information available, at the time or later, to the person or body requesting police information tends to suggest that police information is inaccurate or incomplete, they should at the earliest possible moment inform the chief officer concerned of such inaccuracy or incompleteness, either directly or by reporting the details to the managers of the central police system through which the information was provided.

6.16. The chief officer responsible for the police information concerned should then consider, and if necessary record, any additions or changes to the recorded police information.

Name of meeting: Professional Committee
Date of meeting: 23 June 2020
Item lead at meeting: Mike Cunningham/Simon Bailey
Agenda item number: 3
Title of paper: Revised National Vulnerability Action Plan (NVAP)

1. Issue

1.1 Committee to agree co-branding and adoption of the plan.

2. Summary

2.1 The NVAP seeks to provide an evidence based national plan for policing to draw together its response to vulnerability in a more holistic manner. The plan is designed to reduce duplicative national asks, bring greater focus to cross cutting issues and support wider required behavioral and practice change across all levels of policing in one of its highest threat, harm and risk areas.

2.2 The first iteration received NPCC endorsement in 2018 with all 43 forces across England and Wales committing to adoption with implementation supported and benchmarked by the newly established NPCC Vulnerability Knowledge Practice Programme (VKPP).

2.3 Following benchmarking and wider developments in the available evidence base, CC Simon Bailey (head of the NPCC Violence and Public Protection Portfolio (VPP)) commissioned a refresh of the NVAP.

2.4 The refreshed plan has been underpinned by key evidence including the College perennial challenges, recent HMICFRS reviews and learning from statutory reviews drawn out by the VKPP.

2.5 The plan has been tested against the development of new structures for the NPCC and deemed to be fit for purpose to transition into the new model.

2.6 It has been developed after wide consultation, including the national leads for Local Policing, CT, NCA, Mental Health, the Violence and Public Protection Portfolio as a whole (13 strands of public protection), CC Andy Cooke (crime business lead), College, HMICFRS and the Home Office. A key ongoing work stream involves reducing the number of actions in individual national thematic action plans and greater coordination of activity at a national level.

2.7 The College of Policing is a key partner in supporting the delivery of the NVAP actions and currently owns two actions. The College is the standard setter and lead in developing the key training products with forces that will drive the behavioural change that is needed to address the perennial challenges the service has faced for years.

3. Recommendation

3.1 Professional Committee decision required: **YES**

3.2 Professional Committee asked to

i. **NOTE** the detail and evidence-based revision of NVAP and alignment of future workstreams to strategic directions detailed within.
ii. **APPROVE** the co-branding of the NVAP with College of Policing branding alongside the NPCC.

4. Supporting Information/Consideration

4.1 Work to develop the NVAP began in late 2016 with [redacted] commissioned to lead by CC Simon Bailey as head of the NPCC VPP portfolio. [redacted] worked with national policing leads across the VPP and College of Policing to produce the first iteration of the NVAP which received NPCC endorsement in early 2018. The VPP includes the individual national policing leads for the 13 strands of public protection as well as a number of serious violence areas including county lines, gangs and knife crime.

4.2 Following receipt of an initial two-year police transformation fund grant, a joint programme of work between the College of Policing and NPCC commenced to develop the evidence base around vulnerability and violent crime. As part of this the VKPP, the NPCC component of this programme, was specifically charged with supporting and tracking local and national implementation of the NVAP. In 2019, VKPP launched a national self-assessment benchmarking exercise which garnered a near complete response and enabled local, regional and national implementation progress, assessment of gaps and potentially innovative practice to be identified and shared. The VKPP has also sought to draw out learning systematically from a range of statutory reviews including child serious case reviews, safeguarding adult reviews and a small sample of domestic homicide reviews where there is police involvement prior to the serious harm or homicide.

4.3 In October 2019, the Violence and Public Protection (VPP) lead commissioned a refresh of the plan. The revised NVAP needed to reflect:

- Findings of the national benchmarking exercise
- Developments in NPCC
- College of Policing work on perennial challenges
- Views of key national leads and VPP portfolio holders
- Home Office perspective
- New evidence drawn from VKPP including learning from statutory reviews
- Engagement with public protection leads
- Views of HMICFRS
- Inclusion of radicalisation supported by CTPHQ.

4.4 NVAP reflects the NPCC vision to deliver a new core operating model with a dedicated strategic function, a dedicated decision-making body and leadership at the national level being held to account on delivery against core capabilities.

4.5 A key piece of College of Policing analysis titled Perennial Challenges in Policing provides a sound evidence base of those issues generically not being resolved in policing. Together with behavioural insights work which questions the current way we

deliver training and information to staff; the challenges are being used by the College to shape product development and delivery to get to the heart of behaviour change. The Perennial Challenges are a striking piece of work that evidences clearly how the current way we deliver stranded public protection work, especially training, does not change the hearts and minds of staff in the long term.

4.6 A two-day workshop with the staff officers to the national VPP leads, College and HMICFRS representatives, resulted in the redesign of NVAP aligned to the perennial challenges areas. The VPP national lead plans are currently being redesigned in the same image with proposals for problem solving work to be initiated against cross cutting actions. This activity is key for future prioritisation and joint working in the newly proposed NVAP governance model and support is requested from the College to support and align future activity accordingly. There are currently two specific actions in the plan for the College to lead at a national level.

4.7 Further enhancement of the revised NVAP includes incorporating ongoing academic evidence from VKPP, HMICFRS and other bodies. The aspiration is that NVAP will be a living document requiring a minimum 6 monthly review as new evidence is produced, actions are delivered and new actions identified. The VKPP, which has received further Home Office baseline funding till at least March 2021, will lead on this review process. In NVAP and the supporting national leads' plans, forces will have a set of comprehensive documents with all the evidence at the tap of a key. It removes the need for forces to do their own research and starts to maximise the utilisation of the VKPP work and online products.

4.8 There has been wide consultation conducted across the police service landscape regarding the content, evidence base and layout on the revised NVAP, including:

- Relevant NPCC Operational Committee chairs
- Home Office
- National portfolio leads in local policing, mental health and the Information Management Operational Requirement Coordinating Committee (IMORCC).
- VPP national leads and CC Bailey
- Regional Public Protection meetings
- National reference group teleconference – over 20 participants
- College of Policing
- Workshop event and consultation with Metropolitan Police safeguarding lead and lead responsible officers for public protection
- Individual force consultations

4.9 There is widespread recognition and support for the new evidence-based layout of NVAP, aligned to the perennial challenges in policing. The plan is viewed as being easy to read and navigate, with a reduced number of force/regional level actions with clear objectives. However, there has been a recurring discussion throughout the consultation period about the importance of tracking delivery. The question has been raised as to how forces should measure the impact of delivering the actions including 'what does good look like' from a policing outputs and outcomes perspective. As can be seen from the plan, this measurement work is in its infancy. The aim is to create a working group to develop measures under VKPP in collaboration with the College of Policing.

4.10 The VKPP is committed to continuing to support local and national implementation efforts of the plan in collaboration with the College for as long as funding is provided by the Home Office. This includes leading further national benchmarking exercises, developing a peer review support offer, problem solving workshops on cross cutting issues with national policing leads and cross Government policy join up. The VKPP will also seek to maintain the plan itself and ensure it remains current against

developments in evidence, HMICFRS findings and changes in threat picture and new requests/ work streams within the College.

5. Annexes

5.1 **Annex A** contains a copy of the revised National Vulnerability Action Plan

Author job title: [redacted]

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Author tel number: [Full telephone number]

Sponsor (if not Author)**:** Rachel Tuffin

National Vulnerability Action Plan (NVAP) Revised
2020-2022

Authorised By: [redacted] **NPCC**
Review date:
Source location: [redacted]

Version	Date Issued	Author	Update information

NVAP Themes

The National Action Plan is aimed at providing support to policing to deliver 7 identified key themes that have specific actions:

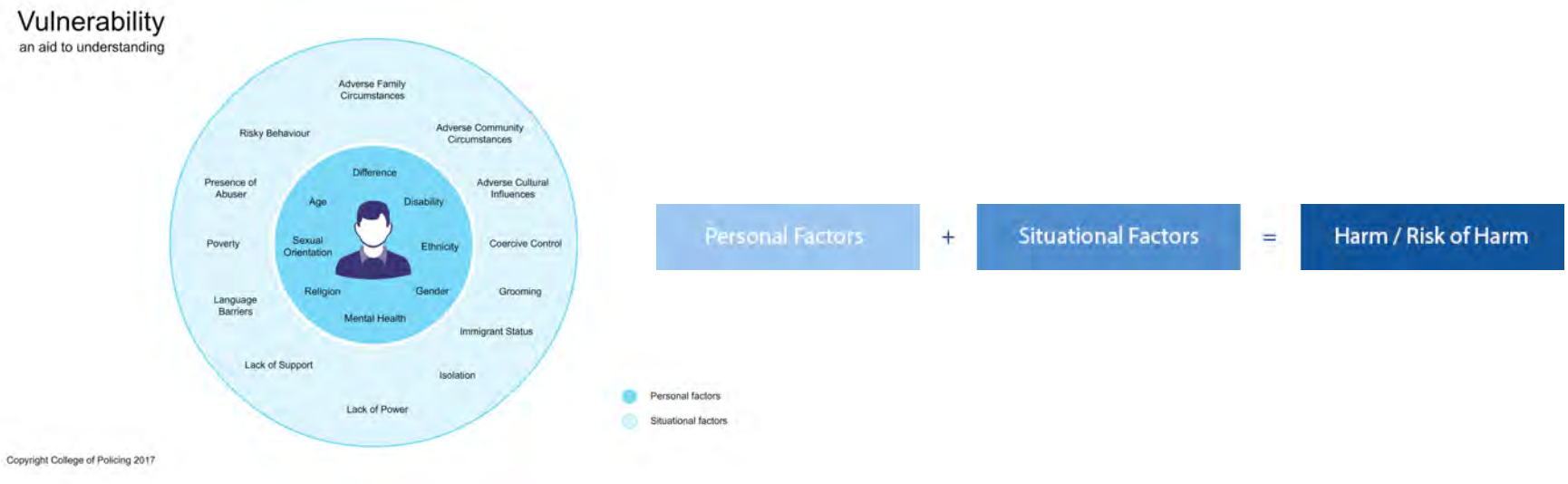
1. Early Intervention and Prevention	By adopting the principle of professional curiosity, potential indicators of vulnerability can be identified at an early stage, presenting an opportunity for early intervention with partners so that the risk of harm is reduced. This does not always mean referral to other statutory agencies but does mean taking a caring approach to reduce the risk of further harm. E.g. this could be as little as knowing what local and national support services are available and signposting accordingly.
2. Protecting, Supporting, Safeguarding and Managing Risk	All staff and officers to use professional curiosity and an investigative mindset to recognise and respond to vulnerability. Any one incident can have layers of complexity including domestic abuse, alcohol/drug abuse, elder abuse, child emotional abuse and neglect that can lead to other risks such as criminal exploitation, sexual exploitation and vulnerability to radicalisation. The first step is to recognise fully the extent and level of risk present in order that police and partners take effective action to manage the risk.
3. Information, Intelligence, Data Collection and Management of Information	Forces have effective processes in place to gather information and intelligence, especially multi-agency data. Officers and staff use the tools to assess risk effectively in order to consider an appropriate and proportionate response. Each force develops appropriate data and related evidence to ensure that its response to vulnerability is as effective as possible.
4. Effective Investigation and Outcomes	To ensure an effective investigation, staff and officers must engage with vulnerable people in a sensitive and supportive way; maintain an open mindset, responding to the vulnerability, rather than a stereotype (particularly among the young and old). Ensuring the right supportive interventions are in place will lead to appropriate and better outcomes; this is especially important for young people defined as "hard to reach" who are engaged in gangs, knife carrying etc, or victims of modern day slavery.
5. Leadership	Leadership is not rank specific! All officers and staff should recognise they are leaders and be empowered to exercise their professional judgement in determining the most appropriate response and support to vulnerable people. Leadership includes ensuring that the correct governance is in place to manage risk relating to vulnerability effectively.
6. Learning and Development	Officers and staff are supported to attain and maintain their wellbeing and the skills and knowledge that they need to recognise and respond effectively to all forms of vulnerability. The outcome will be that staff will be able to work in partnership to take a problem solving approach in addressing vulnerability.
7. Communications	Use sophisticated communication techniques to understand the needs of all internal and external audiences. Utilise information to ensure that people understand how to reduce potential risks, and our officers and staff understand what is expected of them. Vulnerability should be recognised as relating to witnesses, victims, suspects and our staff.

Defining Vulnerability

The College has adopted the THRIVE definition of vulnerability, which states that:

'A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation.'

The following infographic and formula underpins their approach with the definition recognising that any person could be vulnerable but it is extrinsic factors acting with intrinsic factors that can make someone suffer or be at risk of harm:



Source: http://www.college.police.uk/News/College-news/Pages/police_transformation_fund.aspx

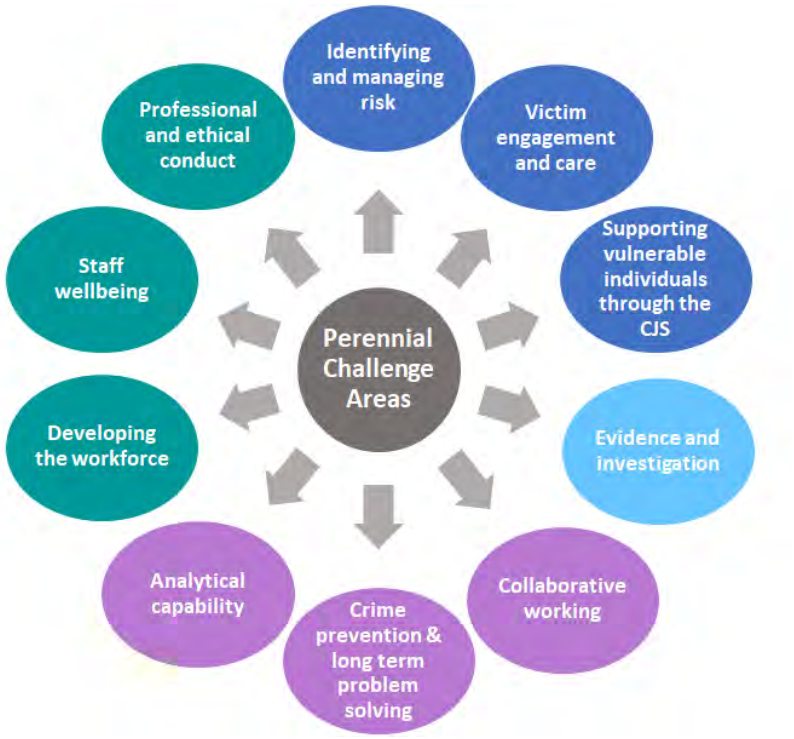
The NPCC is working towards this definition but recognises the challenges this presents from a strategic perspective. In the development of this plan the following national policing working groups were specifically engaged as members of the NPCC Violence and Public Protection Portfolio and so should be considered in scope:

Missing, Child Protection Abuse Investigation (incl. CSA/E), Vulnerability to Radicalisation, Multi Agency Safeguarding Hubs (MASH), Domestic Abuse, Honour Based Abuse/ Forced Marriage/ Female Genital Mutilation, Stalking & Harassment, Management of Sexual Offenders and Violent Offenders (MOSOVO), Adult Sexual Offences, Adults at Risk (including Elder Abuse), Modern Day Slavery and Human Trafficking, Gangs, County Lines, Knife Crime and Sex Working & Prostitution

Perennial Challenges in Policing

The College of Policing has undertaken research to obtain a rounded view of priorities for improvement in, or support to, policing over the short to medium term. The research sought to identify the recurring 'perennial challenges' in policing where action is needed to drive improvement for the public across a range of contexts, rather than for a particular crime type or operational area of policing. This approach was aimed at identifying how the College can best support policing practitioners to develop the professional skills which will enable them to respond to current, new and unforeseen challenges.

The research identified the following 10 recurring areas where improvement is required. All these areas can be considered as 'systemic' issues, requiring system-wide solutions and can occur at the frontline, in supervision and development, in processes, tools and equipment, within partnerships and collaboration and in the organisational culture.



Diagnosis of underlying system issues:

Identifying and Managing Risk: Failure to successfully identify and protect individuals at risk of harm

Victim Engagement and Care: Failure to effectively engage and care for victims/witnesses

Supporting Vulnerable People: Failure to support vulnerable individuals through the Criminal Justice System

Evidence and Investigation: Failure to make effective use of evidence and investigation

Collaborative Working: Failure of police, partners and other agencies to work together effectively to protect the public

Crime Prevention and Long Term Problem Solving: Failure to focus on prevention and longer term problem solving

Analytical Capability: Superficial understanding of problems/demands and/or impact of policing activity

Developing the Workforce: Individuals failing to reach their potential owing to insufficient supervision and leadership

Staff Wellbeing: Failure to identify and respond to cumulative impact of organisational change/resourcing decisions on staff wellbeing

Professional and Ethical Conduct: Failure to scrutinise professional conduct and inconsistent compliance with national processes

For further information please contact: [redacted]

National Vulnerability Action Plan v2 2020-2022

NVAP Theme	Action No.	Perennial Challenge	Action	Action Detail	Objective	Action Owner	Reference / Current Evidence	Suggested Measures	Action Sheet
Protecting, Supporting, Safeguarding and Managing Risk	1.2.1	Identifying and managing risk	**National Risk Work**	Develop and publish evidence-based guidelines on vulnerability-related risk assessment	1. To support all in policing to carry out the best risk assessments for people with vulnerabilities 2. To support all in policing to identify and implement the best proportionate risk management measures that are possible in the circumstances being dealt with 3. To engage other organisations and individuals so that they can make their contribution to making vulnerable people safe, thereby ensuring that policing addresses those issues that it is most suitable to address and other organisations and individuals address those areas where it is most suitable for them to do so	**College of Policing**	Evidence will be available as part of the evidence-based guidelines		
Leadership	1.5.1	Collaborative Working; Developing the Workforce	**Leadership Development in the Vulnerability Space**	Ensure that there are sufficient leadership development materials for all those in relevant policing leadership roles	1. To support policing leaders to support colleagues in service delivery roles to respond effectively to the needs of vulnerable people 2. To work with communities, statutory organisations and charities/voluntary organisations so that all resources are used in the most effective way to support vulnerable people and make them safer 3. To develop the skills of leaders so that they can challenge constructively their force's way of doing things and their own ways of working so that arrangements to make vulnerable people safer are constantly evolving and improving	**College of Policing**	Evidence will be available as part of the evidence-based guidelines		

National Vulnerability Action Plan v2 2020-2022

NVAP Theme	Action No.	Perennial Challenge	Action	Action Detail	Objective	Action Owner	Reference / Current Evidence	Suggested Measures	Action Sheet
Early Intervention & Prevention	2.1.1	Identifying and Managing Risk; Developing the Workforce	**Recognition and Response**	Ensure that recognising and responding to vulnerability is everyone's business, especially at first point of contact	1. To ensure staff are equipped to identify and manage risk and assess needs, as well as support and safeguard those requiring it 2. To identify vulnerable people, communities (including victims and perpetrators) and related threat, risk and harm at an early stage 3. To ensure that key threats are identified and (where possible) activity planned for and delivered to reduce such threats 4. To have cognisance of and raise awareness of the identified regional and national threats and cross-cutting themes 5. Where appropriate employ a trauma informed approach	**Forces, NCA & Regional Teams**	Action 2.1.1 Evidence	Under Development	Click Here
	2.1.2	Identifying and Managing Risk; Developing the Workforce	**Mental Health**	Acknowledging that mental health (MH) can impact across all forms of vulnerability. Forces to consider any links to MH as part of their vulnerability assessment, differentiating from other vulnerabilities where possible and ensuring individuals receive appropriate signposting, guidance and care	1. Appropriate use of the NPCC definition of a MH-related incident (MHRI) and collate relevant data 2. Understanding the cause of an incident in order to identify specific MH issues or determine links to other vulnerabilities within THRIVE 3. To consider any MH indicators when dealing with victims, offenders or members of the public and signpost to the appropriate organisations	**Forces, NCA & Regional Teams**	Action 2.1.2 Evidence	Under Development	Click Here
	2.1.3	Collaborative Working; Supporting Vulnerable Individuals	**Access to Services**	Ensure all staff know where and how to access service provision for all strands of vulnerability, especially at the local neighbourhood level	1. To improve awareness amongst police officers, staff and volunteers as to what service provision exists and what it does in order that they can advise/signpost people accordingly 2. For staff and officers to develop good working relationships with services and community groups, developing a sound knowledge of the services provided to enable a good information exchange both ways	**Forces, NCA & Regional Teams**	Action 2.1.3 Evidence	Under Development	Click Here
Protecting, Supporting, Safeguarding and Managing Risk	2.2.1	Collaborative Working; Identifying and Managing Risk	**Appropriate Action**	In response to identified risk, ensure staff understand and utilise appropriate referral pathways including how to access partner provisions and are empowered to challenge or escalate decisions	1. To ensure appropriate action is taken and that the right referral is made 2. To monitor if there is a satisfactory response to the referral, both for adults and children 3. To understand and feel empowered to use escalation policies 4. To ensure that you are satisfied with the outcome to your referral	**Forces, NCA & Regional Teams**	Action 2.2.1 Evidence	Under Development	Click Here
Information, Intelligence, Data Collection and Management of Information	2.3.1	Analytical Capability; Crime Prevention and Long Term Problem Solving	**Tasking and Review Process**	To ensure that strategies and force management statements cover all strands of vulnerability	1. To identify vulnerable people and related threat, risk and harm at an early stage 2. To ensure, at a strategic level, that key threats are identified and (where possible) activity planned for and delivered to reduce such threats 3. To have cognisance of and raise awareness of the identified regional and national threats and cross-cutting themes 4. To develop tools to better understand community profiles in alignment to vulnerability groups	**Forces, NCA & Regional Teams**	Action 2.3.1 Evidence	Under Development	Click Here
	2.3.2	Analytical Capability; Identifying and Managing Risk	**Data Collection**	Data collected in support of local responses to vulnerability is of high quality, supported by policy, training and accountability	1. To have a comprehensive data collection plan which must include multi-agency data that supports the identification of our most vulnerable with a complete view of the risks inherent 2. To ensure that data collected, either through human intelligence or other systems, is assessed for quality and drives intelligence uplift and tasking processes 3. To use the data to support the force management statement 4. To understand the scale and nature of the collective threat through working with our partners	**Forces, NCA & Regional Teams**	Action 2.3.2 Evidence	Under Development	Click Here
	2.3.3	Analytical Capability	**Analytical Capability**	Develop analytical capability and capacity to identify high risk areas of vulnerability in order to target intervention/prevention activity, including identification of emerging threats such as cyber, elder abuse, modern day slavery, transitional safeguarding and vulnerability to radicalisation	1. To enable early intervention before criminality occurs 2. Recognition that vulnerability to becoming involved in crime or a victim of crime can increase due to social determinants such as association, geography, school, family etc. 3. To enable agencies working in partnership to target local contexts and problems effectively and monitor shifting patterns e.g. criminal exploitation 4. To predict future risk and therefore enable a multi-agency approach to early intervention and prevention and where appropriate diversion and exit strategies for offenders	**Forces, NCA & Regional Teams**	Action 2.3.3 Evidence	Under Development	Click Here

NVAP Theme	Action No.	Perennial Challenge	Action	Action Detail	Objective	Action Owner	Reference / Current Evidence	Suggested Measures	Action Sheet
Effective Investigation and Outcomes	2.4.1	Victim Engagement & Care	**Voice of the Victim**	Develop clear processes to ensure that 'the voices of vulnerable victims and witnesses' are heard	1. To ensure that 'the voices of vulnerable victims and witnesses' are heard relating to service provision and victim/witness feedback 2. To understand if existing practice is meeting the need of the victim/witness and in line with the Victims' Code of Practice 3. To seek feedback and use the voice of the victim to shape and plan future service design	**Forces, NCA & Regional Teams**	Action 2.4.1 Evidence	Under Development	Click Here
	2.4.2	Evidence & Investigation	**Evidence and Investigation**	Develop competent front line police and staff responders who use professional curiosity to ensure that the early investigation is maximised to gather best evidence	1. To ensure call handlers have an investigative mindset, ask open questions and try to understand what is happening and why 2. To ensure good quality information is recorded which could be used in evidence-led prosecutions 3. To ensure the response or neighbourhood officer takes a similarly inquisitive approach in their interactions, likely to be recorded on Body Warn Video. All vulnerable victims and witnesses, especially children, must be given the time and safe space to feel able to give their account 4. To ensure that crimes are allocated to those investigators with the most appropriate skills 5. To ensure supervisors have the skills to review and manage investigations competently, ensuring due consideration is given to the appropriateness of prosecution. Where there are issues of exploitation/vulnerability (e.g. Modern Day Slavery, County Lines and Vulnerability to Radicalisation) it may not always be appropriate to prosecute	**Forces, NCA & Regional Teams**	Action 2.4.2 Evidence	Under Development	Click Here
	2.4.3	Supporting Vulnerable Individuals; Evidence & Investigation	**Evidence-Led Prosecutions**	Develop and utilise in more effective ways early evidence gathering techniques and the use of 'evidence-led' prosecutions in all appropriate cases (wider than DA & child abuse)	1. Ensure officers and staff are aware of the principles of evidence-led prosecution and that it should be considered for a range of crimes other than DA, including Modern Day Slavery, Honour Based Violence, Elder Abuse and Child Sexual and/or Criminal Exploitation 2. To ensure first responders are trained, equipped and able to collect evidence options other than victim testimony, particularly where the victim is vulnerable 3. Where it is thought that the case may become an evidence-led prosecution, to ensure that officers and staff consult with the CPS at the earliest opportunity for investigative advice	**Forces, NCA & Regional Teams**	Action 2.4.3 Evidence	Under Development	Click Here
Leadership	2.5.1	Collaborative Working; Professional and Ethical Conduct	**Governance**	To optimise governance arrangements regarding vulnerability (in-house and multi-agency) to ensure synergy regarding understanding of threat, barriers, good practice, gaps and related forward work plans	1. To ensure the implementation, in England, of the reforms to Multi Agency Safeguarding Children Partnerships from Local Safeguarding Children's Boards are incorporated into governance arrangements 2. To ensure there is effective interoperability between Local Safeguarding Children Partnerships, Safeguarding Adults Boards and Community Safety Partnerships 3. To develop robust audit, peer review and independent scrutiny both within force and at a multi-agency level 4. To ensure integration of the learning and recommendations from national briefings and local and national learning reviews 5. To ensure the delegation of responsibility as the safeguarding partner from Chief Officer to another appropriate person in the force is subject to monitoring, evaluation and review	**Forces, NCA & Regional Teams**	Action 2.5.1 Evidence	Under Development	Click Here
	2.5.2	Staff Wellbeing; Professional and Ethical Conduct	**Resilient Staff**	Instil a supervisory approach at all levels throughout the organisation that encourages debriefing/review and a learning culture with a mindset of 'What did we do well?'	To ensure police officers and staff feel confident in the level of support they receive, have the ability to challenge and know who to go to if there is a problem	**Forces, NCA & Regional Teams**	Action 2.5.2 Evidence	Under Development	Click Here

NVAP Theme	Action No.	Perennial Challenge	Action	Action Detail	Objective	Action Owner	Reference / Current Evidence	Suggested Measures	Action Sheet
Learning and Development	2.6.1	Developing the Workforce; Collaborative Working	**Multi-Agency Hubs**	Ensure that MASH/Multi-agency unit staff (where implemented) fully understand the principles relating to vulnerability and professional curiosity and that it is embedded within MASH/multi-agency processes	1. To ensure that the principles relating to vulnerability and professional curiosity are well embedded within MASH/Multi-agency units. 2. To ensure these staff have the training and skills necessary for the role. 3. To ensure MASH/Multi-agency staff work collaboratively.	**Forces, NCA & Regional Teams**	Action 2.6.1 Evidence	Under Development	Click Here
	2.6.2	Developing the Workforce; Staff Wellbeing	**Officer Norms**	Recognise that officer norms will change from exposure to aspects of criminality/vulnerability and that these need to be re-set so that thresholds of acceptability are maintained	To redefine thresholds through training, supervision, leadership and briefings ensuring officers are better equipped to recognise and respond to vulnerability consistently.	**Forces, NCA & Regional Teams**	Action 2.6.2 Evidence	Under Development	Click Here
	2.6.3	Developing the Workforce; Professional and Ethical Conduct	**Recruitment**	To ensure recruitment processes show/test understanding of vulnerability for potential new employees entering the service	1. To have a workforce that understands, and is motivated to understand, the importance and complex nature of vulnerability from the moment they join the service and the role they perform within the service to deliver. 2. To ensure the police officers and staff have aligned values in relation to vulnerability.	**Forces, NCA & Regional Teams**	Action 2.6.3 Evidence	Under Development	Click Here
Communication	2.7.1	Collaborative Working; Crime Prevention and Long Term Problem Solving	**Working with Communities**	To work with communities to build confidence, improve understanding and increase reporting especially with marginalised groups	1. To work with communities, community groups and in collaboration with PCCs to increase reporting of those groups that are under-reporting. 2. To have recognition of the risk that a vulnerable person, marginalised group or even a community might experience when reporting and what support mechanisms are in place. 3. To increase ease of access, third sector reporting and gateways to services. 4. To ensure staff recognise that a community as a whole, or sections of it, can be vulnerable.	**Forces, NCA & Regional Teams**	Action 2.7.1 Evidence	Under Development	Click Here

Action 2.1.1 Recognition & Response

Return to Action Plan

Action Detail

Ensure that recognising and responding to vulnerability is everyone's business, especially at first point of contact

Objective

1. To ensure staff are equipped to identify and manage risk and assess needs, as well as support and safeguard those requiring it
2. To identify vulnerable people, communities (including victims and perpetrators) and related threat, risk and harm at an early stage
3. To ensure that key threats are identified and (where possible) activity planned for and delivered to reduce such threats
4. To have cognisance of and raise awareness of the identified regional and national threats and cross-cutting themes
5. Where appropriate employ a trauma informed approach

Reference / Evidence Gaps

Recognising and responding to vulnerability is everyone's business, including front line police officers and staff who often come into contact with vulnerable people, either in crisis or have suffered or at risk of harm. First responders are in a position to identify risk at an early stage and provide the opportunity for protection, however this requires the ability to recognise vulnerabilities and risks of harm, displaying professional curiosity and knowing the most appropriate action to take.

Training in the different strands of vulnerability and referral mechanisms is needed for frontline staff to ensure the vulnerable person receives the appropriate support, such as risk management plans for older victims, or to provide confidence in identifying vulnerabilities such as modern slavery, human trafficking and vulnerability to radicalisation.

Although risk assessment tools can be used to help frontline staff identify vulnerability, these need to be completed accurately and consistently and requires the officer/staff to have good communication skills to elicit the information and a good understanding of vulnerability. This is needed for both victim and offender, especially where the offender is a child, as they are entitled to the same safeguards as other children. A possible way of dealing with identified vulnerability, particularly with young perpetrators is to take a trauma informed approach to assessing risk, such as considering adverse childhood experiences.

Useful Links

Understanding and Use of Trauma Informed Practice

Making Safeguarding Personal: What might 'good' look like for the police?

Stolen Freedom: The policing response to modern slavery and human trafficking

The Poor Relation: The police and CPS response to crimes against older people

Vulnerability: A review of reviews

Lets Talk About It - Working Together To Prevent Terrorism

Suggested Measures

Action 2.1.2 Mental Health

Return to Action Plan

Action Detail

Acknowledging that mental health (MH) can impact across all forms of vulnerability. Forces to consider any links to MH as part of their vulnerability assessment, differentiating from other vulnerabilities where possible and ensuring individuals receive appropriate signposting, guidance and care

Objective

1. Appropriate use of the NPCC definition of a MH related incident (MHRI) and collate relevant data
2. Understanding the cause of an incident in order to identify specific MH issues or determine links to other vulnerabilities within THRIVE
3. To consider any MH indicators when dealing with victims, offenders or members of the public and signpost to the appropriate organisations

Reference / Evidence Gaps

Police respond to people in crisis or those suffering from mental health conditions every day.

Frontline staff need the skills and awareness along with suitable partnership arrangements to enable early recognition of mental health problems to help properly assess risk and vulnerability through appropriate information exchange. People suffering from poor mental health may also have other frailties such as disability, social exclusion, discrimination or poverty which can lead to unemployment, deprivation and homelessness. There may also be a range of other factors interlinked with their mental health which add to this vulnerability such as self-neglect and substance misuse.

A report by the MH charity MIND, found that people with mental health problems were more likely to be a victim of crime than the general population and reported high rates of sexual and domestic violence. Police officers should recognise that vulnerable individuals with mental health problems may need extra care and support through the investigation.

The NPCC Strategy on Policing and Mental Health sets out the principle of 'parity of esteem' which recognises that vulnerable victims are entitled to consideration of special measures and that their recollection of an event should not automatically be considered unreliable due to mental illness.

Useful Links

Policing and Mental Health: Picking up the pieces

At risk, yet dismissed: The criminal victimisation of people with mental health problems

Risks to mental health: an overview of vulnerabilities and risk factors

APP: Mental Health: Mental vulnerability and illness

Prompts / Suggested Measures

Action 2.1.3 Access to Services

Return to Action Plan

Action Detail

Ensure all staff know where and how to access service provision for all strands of vulnerability, especially at the local neighbourhood level

Objective

1. To improve awareness amongst police officers, staff and volunteers as to what service provision exists and what it does in order that they can advise/signpost people accordingly
2. For staff and officers to develop good working relationships with services and community groups, developing a sound knowledge of the services provided to enable a good information exchange both ways

Reference / Evidence Gaps

Pivotal to the effectiveness of safeguarding approaches is a knowledge of service provision within the area, and an understanding of what these services can do to assist vulnerable people. For example, police may advise or signpost an individual to IDVAs or ISVAs who are able to provide targeted professional support to victims or those at risk of abuse.

There are also a variety of third sector support agencies to which the police can consider referring vulnerable individuals, including Victim Support and community-based outreach services. Neighbourhood Policing Teams are important in identifying what service provision is available, and making initial contact with the services to ensure an effective route of communication. Working with third sector partners has a range of benefits, including the impact of their strong presence within communities, and the wealth of specific knowledge and expertise held within such services.

The VKPP briefing on Safeguarding Adult Reviews found cases where a lack of knowledge and understanding of local service provision contributed to missed opportunities to refer vulnerable individuals for support which may have helped reduce the risk that they faced. Partner and third sector agencies provide services and support which the police cannot, therefore it is essential that forces understand the options available for vulnerable people in their area, and officers, staff and volunteers are confident in signposting vulnerable people to the relevant support required.

Useful Links

Working with the third sector: A guide for neighbourhood policing teams and partners

APP Guidance: Victim safety and support

How can charities maximise their impact by working with PCCs?

Learning for the police from safeguarding adult reviews

DIVERT: MPS diversion scheme

Prompts / Suggested Measures

Action 2.2.1 Appropriate Action

Return to Action Plan

Action Detail

In response to identified risk, ensure staff understand and utilise appropriate referral pathways including how to access partner provisions and are empowered to challenge or escalate decisions

Objective

1. To ensure appropriate action is taken and that the right referral is made
2. To monitor if there is a satisfactory response to the referral, both for adults and children
3. To understand and feel empowered to use escalation policies
4. To ensure that you are satisfied with the outcome to your referral

Reference / Evidence Gaps

A referral is the passing on of information between agencies, or internally, if someone believes a child or vulnerable adult may be suffering or is at risk of suffering significant harm. Often information sharing problems can occur from the absence of effective systems for sharing information, referrals lacking relevant details or officers not making a referral even when there are concerns. In some cases, more so with vulnerable adults, issues are caused by a lack of knowledge of the relevant referral services and processes, a lack of feedback on previous referrals deterring officers from submitting further referrals, or relying on partners to share information with relevant agencies instead of sharing it themselves. In addition, there can be insufficient follow-up. For example, not always finding out what action was previously undertaken with repeat referrals or recording the outcome of the referral.

Appropriate referrals enable children or vulnerable adults to receive the right service at the right time. Therefore, arrangements should be in place setting out the processes for sharing information including clear escalation policies for staff to follow when they feel that safeguarding concerns are not being addressed within their organisation or by other agencies. Employers are also responsible for creating an environment where staff feel able to raise concerns and feel supported in their safeguarding role. Partnership working should be collaborative and receptive to 'professional challenge'. Although challenging other professionals can be difficult, it is important not to assume the lead agency has made the best decision.

Useful Links

Working Together to Safeguard Children

Information sharing: Advice for practitioners providing safeguarding services

2019 Triennial analysis of serious case reviews: Police

In harm's way: The role of the police in keeping children safe

VKPP Briefings

Prompts / Suggested Measures

Action 2.3.1 Tasking and Review Process

Return to Action Plan

Action Detail

To ensure that strategies and force management statements cover all strands of vulnerability

Objective

1. To identify vulnerable people and related threat, risk and harm at an early stage
2. To ensure, at a strategic level, that key threats are identified and (where possible) activity planned for and delivered to reduce such threats
3. To have cognisance of and raise awareness of the identified regional and national threats and cross-cutting themes
4. To develop tools to understand community profiles better in alignment to vulnerability groups

Reference / Evidence Gaps

The annual Force Management Statement (FMS) sets out expected demand, an essential process in ensuring the force is effective in meeting the demand. To support the delivery of the FMS, local profiles should be produced and used to develop a common understanding among local partners of the threats, vulnerabilities and risks providing information on which to base the local response and local action plans.

Strategic Tasking groups enable senior managers to agree strategic direction and align resources to priorities with contributions from partner agencies and community safety partnerships, whilst Tactical Tasking is undertaken by operational police managers ensuring that decisions about priorities and resources are based on the best available threat assessments. It is therefore essential that these tasking forums consider all strands of vulnerability in their planning and decision-making. Partner agencies are an important part of this process as multi-agency working provides improved information sharing, joint decision-making and co-ordination enabling the early and effective identification of risk to vulnerable people.

There are also several national strategic tasking groups around vulnerability, for example the NCA chairs strategic groups on child sexual exploitation and abuse, modern slavery and human trafficking, and organised immigration crime. These vulnerability strands often cross borders, therefore having cognisance of regional and national strategies and tasking around these vulnerabilities will ensure a joined-up approach to tackling the issues.

Useful Links

APP Tasking and Coordination

Force Management Statements

Both sides of the coin

Serious and Organised Crime Local Profiles: A guide

Supporting vulnerable people who encounter the police

Keeping Kids Safe: Improving safeguarding responses

Counter Terrorism Local Profiles

Prompts / Suggested Measures

Action 2.3.2 Data Collection

Return to Action Plan

Action Detail

Data collected in support of local responses to vulnerability is of high quality, supported by policy, training and accountability

Objective

1. To have a comprehensive data collection plan which must include multi-agency data that supports the identification of our most vulnerable with a complete view of the risks inherent
2. To ensure that data collected, either through human intelligence or other systems, is assessed for quality and drives intelligence uplift and tasking processes
3. To use the data to support the force management statement
4. To understand the scale and nature of the collective threat through working with our partners

Reference / Evidence Gaps

The Force Management Statement (FMS) is an annual self-assessment provided to HMICFRS setting out expected demand and how the force will change and improve its workforce and other assets to cope with that demand. This is important as understanding and planning resources to meet that demand is central to a force's efficiency.

As well as providing information on vulnerability in the initial response demand section, there is also a specific section on protecting vulnerable people (PVP) which covers every type of PVP demand and how your force identifies and safeguards vulnerable people. Assumptions around future demand linked to vulnerability need to be based on sound evidence and analysis. HMICFRS has reported that understanding of hidden demand has improved particularly in regards to modern slavery, county lines and cuckooing.

However, data needs to be assessed for quality as this can lead not only to misunderstanding demand but also officers being unable to assess the effectiveness of their practice. The National Intelligence Model provides a framework for the analysis and intelligence of information.

Useful Links

Force Management Statements

PEEL Spotlight Report: A system under pressure

PEEL: Police effectiveness 2015 (vulnerability)

National Intelligence Model Code of Practice

Prompts / Suggested Measures

Action 2.3.3 Analytical Capability

Return to Action Plan

Action Detail

Develop analytical capability and capacity to identify high risk areas of vulnerability in order to target intervention/prevention activity, including identification of emerging threats such as cyber, elder abuse, modern day slavery, transitional safeguarding and vulnerability to radicalisation

Objective

1. To enable early intervention before criminality occurs
2. Recognition that vulnerability to becoming involved in crime or a victim of crime can increase due to social determinants such as association, geography, school, family etc
3. To enable agencies working in partnership to target local contexts and problems effectively and monitor shifting patterns e.g. criminal exploitation
4. To predict future risk and therefore enable a multi-agency approach to early intervention and prevention and where appropriate diversion and exit strategies for offenders

Reference / Evidence Gaps

The Strategic Policing Requirement (SPR) sets out that PCCs and Chief Constables must consider the areas of threat set out in the SPR which include, serious and organised crime, including cyber, trafficking and child sexual abuse. They should understand their roles in preparing for and tackling shared threats, risks and harm; agree, and have the capacity to meet that expectation.

Analytical capability and capacity is essential to be able to identify threats and high risk areas of vulnerability, target early interventions and predict future risk. In 2015, the HMIC found that management information in forces was weak and they were ill-informed as to how well they were meeting the need of children. Improving the quality of information helps with service planning and understanding whether forces are meeting needs of communities. More recently HMICFRS have identified a lack of capacity in neighbourhood policing to analyse and use intelligence which can reduce how effective neighbourhood policing is at keeping people safe.

To understand fully and deal with the risks present it is important for forces to work in partnership with other agencies. For example, effective partnerships are needed to co-ordinate activity and build intelligence to tackle issues such as modern slavery, human trafficking and vulnerability to radicalisation, and multi-agency safeguarding hubs may provide more timely, accurate and co-ordinated intelligence leading to better informed safeguarding decisions.

Useful Links

The Strategic Policing Requirement

PEEL Spotlight Report: Diverging under pressure

In Harm's Way: The role of the police in keeping children safe

Multi-agency working and information sharing project: Final report

Protecting children from criminal exploitation, human trafficking and modern slavery

Violence Reduction Unit Interim Guidance

Prompts / Suggested Measures

Action 2.4.1 Voice of the Victim

Return to Action Plan

Action Detail

Develop clear processes to ensure that 'the voices of vulnerable victims and witnesses' are heard

Objective

1. To ensure that 'the voices of vulnerable victims and witnesses' are heard relating to service provision and victim/witness feedback
2. To understand if existing practice is meeting the need of the victim/witness and in line with the Victims' Code of Practice
3. To seek feedback and use the voice of the victim to shape and plan future service design

Reference / Evidence Gaps

Working Together to Safeguard Children promotes a child-centred approach to safeguarding where the needs of the child are put first, including speaking and listening to the child. This is also set out in legislation such as Article 12 of the United Nations Convention on the Rights of the Child and Section 11 of the Children Act 2004.

Children have the right to the full protection offered by criminal law and safeguarding risks should be considered whether the child is a victim, witness, or an offender with due regard given to their safety and welfare at all times.

APP guidance states that in relation to concern for a child the initiating officer must *"communicate with the child and keep them informed, taking into account the child's wishes as part of the decision-making process and, whenever possible, acting on them"*.

This also applies to adults with The Code of Practice for victims of crime requiring all victims to be treated in a respectful, sensitive and professional manner and that provision of information on key stages and support services available can help with victim engagement. The 2014 Care Act also states that the starting assumption should be that the individual is best-placed to judge their wellbeing and therefore their views, wishes and feelings should be listened to, for example carrying-out person centred assessments which involve and support the person.

Useful Links

Working Together to Safeguard Children

Care Act 2014

Code of Practice for Victims and Witnesses

Meeting the Needs of Victims in the CJS

Triennial Analysis of SCRs 2011-2014

Prompts / Suggested Measures

Action 2.4.2 Evidence and Investigation

Return to Action Plan

Action Detail

Develop competent front line police and staff responders who use professional curiosity to ensure that the early investigation is maximised to gather best evidence

Objective

1. To ensure call handlers have an investigative mindset, ask open questions and try to understand what is happening and why
2. To ensure good quality information is recorded which could be used in evidence-led prosecutions
3. To ensure the response or neighbourhood officer takes a similarly inquisitive approach in their interactions, likely to be recorded on Body Warn Video. All vulnerable victims and witnesses, especially children, must be given the time and safe space to feel able to give their account
4. To ensure that crimes are allocated to those investigators with the most appropriate skills
5. To ensure supervisors have the skills to review and manage investigations competently, ensuring due consideration is given to the appropriateness of prosecution. Where there are issues of exploitation/vulnerability (e.g. Modern Day Slavery, County Lines and Vulnerability to Radicalisation) it may not always be appropriate to prosecute

Reference / Evidence Gaps

All victims of crime have the right to expect that forces will allocate their crime to someone with the appropriate skills to investigate it. Most crimes reported to the police are not major incidents and usually the officer who first attends is the only resource that is required. The quality of the investigation, whether carried out in person or over the phone, is a significant factor in gathering material that leads to the detection of a crime. Positive action in the period immediately after the report of a crime minimises the amount of material that could be lost to the investigation, and maximises the chance of securing material which is admissible in court.

The CoP Perennial Challenges identified Evidence and Investigation as one of the reoccurring issues within policing. On the front line this appears as issues such as poor completion of case files, poor or missing witness care information, missed opportunities to find and collect important evidence particularly during the 'golden hour' and a lack of confidence in collecting and using evidence from social media, text messages and digital equipment.

The CoP has produced evidence and guidance on initial investigation including guidelines for first responders on how to elicit initial accounts and the use of Body Worn Video. The backdrop to this however is the need for frontline staff to display professional curiosity and be prepared to look beyond the obvious, asking questions that may glean evidence that can be used in a subsequent investigation.

Useful Links

- Professional Curiosity Learning Guide
- Home Office Police Front Line Review
- Obtaining initial accounts from victims and witnesses
- PEEL Spotlight Report: A system under pressure
- Introduction of knife crime prevention orders

Prompts / Suggested Measures

Action 2.4.3 Evidence-Led Prosecutions

Return to Action Plan

Action Detail

Develop and utilise in more effective ways early evidence gathering techniques and the use of 'evidence-led' prosecutions in all appropriate cases (wider than DA & child abuse)

Objective

1. Ensure officers and staff are aware of the principles of evidence-led prosecution and that it should be considered for a range of crimes other than DA, including Modern Day Slavery, Honour Based Violence, Elder Abuse and Child Sexual and/or Criminal Exploitation
2. To ensure first responders are trained, equipped and able to collect evidence options other than victim testimony, particularly where the victim is vulnerable
3. Where it is thought that the case may become an evidence-led prosecution, to ensure that officers and staff consult with the CPS at the earliest opportunity for investigative advice

Reference / Evidence Gaps

Evidence-led prosecutions may be used in circumstances where the victim is unable to give evidence in court, for example due to a physical or mental condition, or the victim is in fear. This suggests that evidence-led prosecutions could be considered for offences where victims are vulnerable and may be unable/unwilling to give evidence. For example, in cases of honour based crime, crimes against older people, child sexual exploitation offences or cases of modern slavery and human trafficking where *victims may not identify themselves as victims, may feel loyalty to offenders, or may be unable to support a prosecution* .

In these circumstances police are advised to use other strategies rather than relying on victim testimony. Both the annual Modern Slavery report and guidance around child sexual exploitation recommend obtaining evidence from a wide range of sources and building an intelligence picture from information from partner agencies. Cases must pass the Full Code Test for the Crown Prosecution Service (CPS) to proceed without the victim, meaning that other evidence such as a section 9 statement from the victim setting out their fears, evidence of injury, officer statements, body-worn video footage or third-party witness statements is essential.

Therefore to enable successful evidence-led prosecutions, evidence-building should be considered early on and police should work closely with the CPS.

Useful Links

The Code for Crown Prosecutors

Stolen Freedom: The policing response to modern slavery and human trafficking

The CPS Response to the Modern Slavery Act 2015

NPCC Modern Slavery Annual Report

Prompts / Suggested Measures

Action 2.5.1 Governance

Return to Action Plan

Action Detail

To optimise governance arrangements regarding vulnerability (in-house and multi-agency) to ensure synergy regarding understanding of threat, barriers, good practice, gaps and related forward work plans

Objective

1. To ensure the implementation, in England, of the reforms to Multi Agency Safeguarding Children Partnerships from Local Safeguarding Children's Boards are incorporated into governance arrangements
2. To ensure there is effective interoperability between Local Safeguarding Children Partnerships, Safeguarding Adults Boards and Community Safety Partnerships
3. To develop robust audit, peer review and independent scrutiny both within force and at a multi-agency level
4. To ensure integration of the learning and recommendations from national briefings and local and national learning reviews
5. To ensure the delegation of responsibility as the safeguarding partner from Chief Officer to another appropriate person in the force is subject to monitoring, evaluation and review

Reference / Evidence Gaps

The Children and Social Work Act 2017 introduced changes to the safeguarding arrangements for children with the chief officer of police becoming a statutory safeguarding partner along with the local authority and the clinical commissioning group in the area with a responsibility to work together to identify and respond to the needs of the children in the area. Guidance around safeguarding responsibilities is published in Working Together to Safeguard Children.

In response to this the National Police Chiefs Council adopted the The Voice of Policing statement where Chief Officers signed up to work alongside partners in the new safeguarding partnership arrangements in England and mobilise robust long term plans to reduce the prevalence and impact of adverse childhood experiences which can lead to contact with the police.

Currently the delegation of responsibility and associated governance structures is untested although Sir Alan Wood will be reviewing the progress of the implementation of the multi-agency child safeguarding partnerships.

Often the focus of learning from Serious Case Reviews (SCRs) is on other partner agencies, distilled learning specific to the police has been produced by VKPP and as part of a Triennial Analysis of SCRs funded by the Department for Education.

Useful Links

Children and Social Work Act 2017

Working Together to Safeguard Children

Wood Report: Review of the role and functions of LSCBs

Triennial Analysis of SCRs: Briefing for the police

VKPP Briefings

Prompts / Suggested Measures

Action 2.5.2 Resilient Staff

Return to Action Plan

Action Detail

Instil a supervisory approach at all levels throughout the organisation that encourages debriefing/review and a learning culture with a mindset of 'What did we do well?'

Objective

To ensure police officers and staff feel confident in the level of support they receive, have the ability to challenge and know who to go to if there is a problem

Reference / Evidence Gaps

Effective supervision can increase job satisfaction, identify training and professional development needs, leading to greater effectiveness, and enable staff to reflect on and develop their practice increasing their accountability.

Guidance from the Social Care Institute for Excellence highlights the impact that organisational culture can have on effective supervision, suggesting the importance of the police embedding a culture of learning within the organisation. Policing has seen a shift in approach, with forces becoming more able to adapt and confront new challenges, more readily learning from failings and implementing change.

However, there is inconsistency in the national delivery of leadership and supervision to front line staff. As such the College of Policing undertook a call for practice in September 2019, and aim to develop guidelines to support effective supervision based on the findings. To ensure effective supervision staff undertaking supervisory roles must have the training and skills for the role, and be supported in their own development.

Pressures of operational work however, can sometimes mean that supervisory practices such as debriefing can be overlooked and opportunities to identify good practice and areas for development are missed. Such missed opportunities highlight the need to develop a practice culture which places significant importance on supervision and learning.

Useful Links

SCIE Effective supervision in a variety of settings

Leadership Review: Recommendations for delivering leadership at all levels

NPCC Learning Leaders Report

Prompts / Suggested Measures

Action 2.6.1 Multi-Agency Hubs

Return to Action Plan

Action Detail

Ensure that MASH/Multi-agency unit staff (where implemented) fully understand the principles relating to vulnerability and professional curiosity and that it is embedded within MASH/multi-agency processes

Objective

1. To ensure that the principles relating to vulnerability and professional curiosity are well embedded within MASH/Multi-agency units
2. To ensure these staff have the training and skills necessary for the role
3. To ensure MASH/Multi-agency staff work collaboratively

Reference / Evidence Gaps

The Children and Social Work Act 2017 placed a statutory responsibility on the police to be an equal partner along with the local authority and clinical commissioning group for the safeguarding of children. The framework for embedding this multi-agency working is set out in Working Together to Safeguard Children.

The aim of a Multi-Agency Safeguarding Hub (MASH) is to improve the safeguarding of children and vulnerable adults through better information sharing and safeguarding responses.

It is important for practitioners to show professional curiosity and be able to spot signs of vulnerability as many children and adults will not readily (or be able to) disclose abuse, neglect or grooming. Professional curiosity involves looking beyond the external risk factors and understanding the relationship between home life and the presenting problem. This will allow police and other staff to challenge and explore issues whilst remaining objective and supportive rather than focusing on the presenting risk.

However, there can be a lack of challenge between professionals meaning that on occasions decision-making is led by one agency not a multi-agency approach. Setting risk-thresholds too high can lead to professional curiosity being overlooked.

Useful Links

Multi-Agency Working and Information Sharing Report

Working Together to Safeguard Children

2011 – 2014 Triennial Analysis of SCRs: Briefing for the police and criminal justice agencies

Professional Curiosity Quick Learning Guide

Making Safeguarding Personal: What might 'good' look like for the police?

Prompts / Suggested Measures

Action 2.6.2 Officer Norms

Return to Action Plan

Action Detail

Recognise that officer norms will change from exposure to aspects of criminality/vulnerability and that these need to be re-set so that thresholds of acceptability are maintained

Objective

To redefine thresholds through training, supervision, leadership and briefings ensuring officers are better equipped to recognise and respond to vulnerability consistently

Reference / Evidence Gaps

"When the public are at their lowest point, they rely on our people to turn up and be compassionate and professional in their hour of need. We can only do this if our own organisations treat us with compassion" CC Andy Rhodes, NPCC National Lead – Wellbeing & Engagement (College of Policing, 2018)

Policing has shifted to encompass more complex and emotionally demanding tasks. As a result, first responders often have to deal with stressful and traumatic situations. This can result in burnout and compassion fatigue due to dealing with situations where there is conflict or highly emotional or distressed people. It is important that officers do not become desensitised to situations and that they remain able to recognise and respond to vulnerability.

Although exposure to trauma is now part of everyday policing, there has been little focus on the impact of this on police officers' wellbeing and provision of support. As such a project by Police Care UK and Cambridge University is being conducted to identify the best way of supporting officers to process trauma and maintain resilience.

In other professions regularly exposed to trauma, such as in health and social care, clinical supervision is used as a method to reflect on practice, review professional standards, and ensure staff are working within professional codes of conduct in order to maintain professionalism when working with service users.

Useful Links

Responding to trauma in policing

Trauma resilience in frontline policing

Supporting effective clinical supervision

Police Moral Injury, Compassion Fatigue, and Compassion Satisfaction

Prompts / Suggested Measures

Action 2.6.3 Recruitment

Return to Action Plan

Action Detail

To ensure recruitment processes show/test understanding of vulnerability for potential new employees entering the service

Objective

1. To have a workforce that understands, and is motivated to understand, the importance and complex nature of vulnerability from the moment they join the service and the role they perform within the service to deliver
2. To ensure the police officers and staff have aligned values in relation to vulnerability

Reference / Evidence Gaps

Safer recruitment is a set of processes and procedures that should be followed when recruiting police officers and staff to roles where they are dealing with children or vulnerable adults. This includes processes such as vetting, pre-employment checks and appropriate training. Having a safer recruitment policy will help to make sure that everyone who is involved with the recruitment process knows how to follow the correct procedures and ensure the safety of vulnerable individuals is considered at every stage.

It is important that police officers have an understanding of vulnerability as they have a key role in supporting victims and witnesses and need to be able to see things from their perspective and tailor their approach.

To ensure that the importance and complex nature of vulnerability is understood by new recruits, the values of the organisation and staff need to be aligned. NHS Wales has produced a resource around embedding organisational values through recruitment, induction and training and performance accountability.

Findings from the first NVAP benchmarking exercise found that over half of all forces described that an understanding of vulnerability was a component of new officer and other external recruitment processes. However, a number of forces stated that there was no specific assessment of vulnerability understanding during general recruitment processes, only where it was in line with the requirements of the role.

Useful Links

NSPCC Safer recruitment

Developing and Embedding Organisational Values and Behaviours

Three Steps To Hire For Your Organizational Values

Prompts / Suggested Measures

Action 2.7.1 Working with Communities

Return to Action Plan

Action Detail

To work with communities to build confidence, improve understanding and increase reporting especially with marginalised groups

Objective

1. To work with communities, community groups and in collaboration with PCCs to increase reporting of those groups that are under-reporting
2. To have recognition of the risk that a vulnerable person, marginalised group or even a community might experience when reporting and what support mechanisms are in place
3. To increase ease of access, third sector reporting and gateways to services
4. To ensure staff recognise that a community as a whole, or sections of it, can be vulnerable

Reference / Evidence Gaps

Victimisation can often be traumatic and for some people and communities, either due to culture, experience or perception, reporting to the police may be difficult. The police are responsible for working with communities to ensure that barriers to reporting are minimised, and that communities are empowered to report and engage with police. This is particularly important for marginalised groups who can be disproportionately affected by barriers to reporting. Effectively engaging communities in policing can increase the degree of trust and the perception of police legitimacy, whilst also impacting crime levels and impressions of disorder.

Neighbourhood Policing Guidelines highlight how forces should be involved in a two-way dialogue with the public, in order to develop a better understanding of the needs, risks and threats of the community and provide an opportunity to help build confidence in the police.

Independent Advisory Groups (IAGs) and Counter Terrorism Advisory Groups (CTAGs) provide a platform for the police to engage with communities, enabling community members to challenge police approaches, and contribute to forward-thinking around increasing the ease of access to the police for the most marginalised communities.

Police responsibility also covers appropriate support for victims and witnesses. The Victims' Code of Practice states that victims who are particularly vulnerable, intimidated or persistently targeted, are entitled to an enhanced service in terms of support.

Useful Links

Independent advisory groups advice 2015

Neighbourhood policing impact and implementation 2018

Victim of the System report

Code of practice for victims of crime

Prevent Strategy

Prompts / Suggested Measures

Evidence Supporting the Actions

Return to Action Plan

Early Intervention & Prevention

2.1.1 Recognition & Response

Action 2.1.1 Recognition and Response

2.1.2 Mental Health

Action 2.1.2 Mental Health Evidence.pdf

2.1.3 Access to Services

Action 2.1.3 Access to Services Evidence.pdf

Protecting, Supporting, Safeguarding and Managing Risk

2.2.1 Appropriate Action

Action 2.2.1 Appropriate Action Evidence.pdf

Information, Intelligence, Data Collection and Management Information

2.3.1 Tasking & Review

Action 2.3.1 Tasking and Review Evidence.pdf

2.3.2 Data Collection

Action 2.3.2 Data Collection Evidence.pdf

2.3.3 Analytical Capability

Action 2.3.3 Analytical Capability Evidence.pdf

Effective Investigation and Outcomes

2.4.1 Voice of the Victim

Action 2.4.1 Voice of the Victim Evidence.pdf

2.4.2 Evidence & Investigation

Action 2.4.2 Evidence and Investigation

2.4.3 Evidence-Led Prosecutions

Action 2.4.3 Evidence-Led Prosecution

Leadership

2.5.1 Governance

Action 2.5.1 Governance Evidence.pdf

2.5.2 Resilient Staff

Action 2.5.2 Resilient Staff Evidence.pdf

Learning and Development

2.6.1 Multi-Agency Hubs

Action 2.6.1 Multi-Agency Hubs Evidence.pdf

2.6.2 Officer Norms

Action 2.6.2 Officer Norms Evidence.pdf

2.6.3 Recruitment

Action 2.6.3 Recruitment Evidence.pdf

Communication

2.7.1 Working with Communities

Action 2.7.1 Working with Communities

Name of meeting:	Professional Committee
Date of meeting:	23 June 2020
Item lead at meeting:	Rachel Tuffin
Agenda item number:	4
Title of paper:	College of Policing (2020) Hate Crime Operational Guidance

1. Issue

1.1 The College of Policing (2020) Hate Crime Authorised Professional Practice is ready for publication. This paper is to request support from the Committee to publish.

2. Summary

2.1 The College of Policing has developed revised guidance on policing hate crime. The revised guidance was produced because of an HMICFRS report recommendation and a Judicial Review (JR) of the original 2014 version.

2.2 The JR was brought challenging the College guidance and the implementation of it by Humberside Police. The Judge found in favour of the claimant for his challenge to Humberside Police but in favour of the College in respect of the guidance.

2.3 The College has updated the new version of the guidance to reflect comments in the judgement and recommendations of the HMICFRS report.

2.4 The College has been contacted by some forces because they are unclear about the status of the 2014 version. This is because the Judicial Review received wide coverage in the media but the result was less widely reported. In addition, the claimant, Mr Miller, has publicised his success in relation to the challenge to Humberside leading some to believe that he was successful in both areas of his claim.

2.5 The claimant, Mr Miller, has permission to appeal the judgement in relation to the College guidance to the Supreme Court. There is no indication of when the Court might consider the merits of the appeal, hear the case or deliver a judgement.

2.6 Publication of the revised guidance would: update it to include observations of the Judge; reflect the HMICFRS recommendations; and make the position about the validity of the guidance clear. We seek views on publication of the revised APP.

3. Recommendation

3.1. Professional Committee decision required: **YES**

3.2. Professional Committee asked to

i. **SUPPORT** the publication of the 2020 Hate Crime Operational Guidance as Authorised Professional Practice.

4. Supporting Information/Consideration

4.1 Professional Committee has been updated about the HMICFRS inspection into hate crime and the Committee supported a review of content of the College's Hate Crime Operational Guidance, in accordance with a recommendation from that inspection. The guidance was in the process of revision when it was subject of challenge through a JR.

4.2 The JR claimed that guidance on recording of non-crime hate incidents inhibited Article 8 rights to freedom of expression. The action claimed that people would be dissuaded from making lawful comment on contentious issues if the police might become involved and make a record even in circumstances where no crime had been committed or suspected. The action was crowd funded and there has been commentary in media supporting Mr Miller's case.

4.3 The circumstances leading to the JR were that Mr Miller had sent tweets on transgender issues that caused a member of the public to complain to Humberside Police. An officer attended and informed Mr Miller that a non-crime incident report would be recorded. Mr Miller complained to the force who declined to remove the record claiming they were following College guidance.

4.4 The College's defence was that the guidance supports the police to monitor intelligence and information so that actions may be taken to prevent matters becoming inflamed, if action were to become necessary. It was also presented that some offences, such as coercive control and stalking, require a course of conduct to happen before an offence is committed and that to prove an offence, evidence of previous behaviours would be required.

4.5 On 14th February 2020, the judge found in favour of the College of Policing, stating that according to statute and common law the guidance was lawful. He found against Humberside Police for their interpretation and application of the guidance following the incident involving Mr Miller.

4.6 Annex B contains the judgement. Paras 156,162, 171, 172, 174. 186, 237 are particularly relevant to the findings of the Judge regarding College guidance.

4.7 The revised guidance has now been updated to reflect key points highlighted in judgement and to reference the judgement itself. It also addresses issues raised in the HMICFRS report. It reflects feedback from legal counsel, subject matter experts, the NPCC, APCC, CPS and relevant third sector organisations. It was also subject to public consultation.

4.8 Mr Miller was been granted leave to 'leap frog' the court of Appeal and apply directly to the Supreme Court. On 6th March 2020, he submitted his appeal to the Supreme Court.

4.9 No date has been set for the hearing to consider the merits of an appeal. Should he be permitted to appeal, there would be a hearing and probably some delay before handing down of a judgement.

5. Annexes

5.1 **Annex A** contains a copy of the revised College of Policing (2020) Hate Crime Operational Guidance.

5.2 **Annex B** contains a copy of the Judgement for Miller v College of Policing and Humberside Police [2020] EWHC 225 (Admin)

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Hate Crime Operational Guidance

May 2020

Draft v1.0 final

Introduction

This guidance is for police officers and staff at all levels of the police service, working alongside partners where appropriate, to deliver a consistent, proportionate and robust policing response to hate crime and non-crime hate incidents. The guidance sets out arrangements that forces should consider to support an effective response to allegations of hate crime and non-crime hate incidents. It also includes content for those responding to these events.

These crime and non-crime incidents may have a disproportionate psychological, and in some cases physical, impact on victims and the wider community as compared to equivalent 'non-hate' crimes (Hall, 2005; Home Office (2018) Hate Crime, England and Wales, 2017/18, page 28).

Hate crimes can be socially divisive, potentially heightening tensions between communities (Hall, 2005). They are likely to involve repeated victimisation (Home Office (2018) Hate Crime, England and Wales, 2017/18, page 24), and they can increase the risk of civil disorder (Hall, 2005).

Hate crimes may be, or may become, critical incidents, regardless of how trivial an incident may initially appear.

In all cases of hate or hostility, victims should be treated sensitively in a way that is appropriate to their needs, recognising the greater impact that hate crimes and incidents may have on victims.

1 Responding to hate

Police officers and staff should respond positively to allegations, signs and perceptions of hostility and hate.

Chief officers should ensure that their force has a clear policy that sets out a standard for the priority response to, and investigation of hate crime and non-crime hate incidents ensuring the response is proportionate.

Supervisors and managers should proactively check reports of hate crime and non-crime hate incidents to ensure that the appropriate action has been taken and that allegations are investigated in a consistent and proportionate manner.

Chief officers, with the support of the police and crime commissioners (PCCs) (or deputy mayors for policing and crime in London and Greater Manchester) should ensure that supervisory, management and performance processes support an effective response to hate crimes and non-crime hate incidents.

There are five monitored strands of hate crime:

- disability
- race
- religion
- sexual orientation
- transgender

These strands are monitored as part of the annual data return. Hate crimes and non-crime hate incidents are also committed against victims who are targeted because of a non-monitored personal characteristic. This guidance also applies to those allegations.

Note: The terms 'victim' and 'suspect' are used throughout this Authorised Professional Practice (APP) to refer to the person reporting an allegation and to the alleged perpetrator. These terms do not mean that a crime has been reported or that an investigation into a crime is taking place.

Agreed definitions

The following definitions are shared by all criminal justice agencies and form the basis for national hate crime data recording. This does not deny hate as a motivating factor in other crimes.

These definitions are inclusive and apply to both majority and minority groups.

Hate motivation

Hate crimes and incidents are taken to mean any crime or incident where the perpetrator's hostility or prejudice against an identifiable group of people is a factor in determining who is victimised. This is a broad and inclusive definition.

A victim does not have to be a member of the group. In fact, anyone who is perceived to be or associated with an identifiable group of people, could be a victim of a hate crime or non-crime hate incident.

Hate incident

Any non-crime incident which is perceived by the victim or any other person to be motivated by hostility or prejudice based on:

- a person's **race** or perceived race, or
  - any racial group or ethnic background including countries within the UK and Gypsy and Traveller groups
- a person's **religion** or perceived religion, or
  - any religious group including those who have no faith
- a person's **sexual orientation** or perceived sexual orientation, or
  - any person's sexual orientation
- a person's **disability** or perceived disability, or
  - any disability including physical disability, learning disability and mental health or developmental disorders
- a person who is **transgender** or perceived to be transgender,
  - including people who are transsexual, transgender, cross dressers and those who hold a Gender Recognition Certificate under the Gender Recognition Act 2004

See also Responding to non-crime hate incidents.

Hate crime

A hate crime is any criminal offence which is perceived by the victim or any other person to be motivated by a hostility or prejudice based on:

- a person's **race** or perceived race, or
  - any racial group or ethnic background including countries within the UK and Gypsy and Traveller groups
- a person's **religion** or perceived religion, or
  - any religious group including those who have no faith
- a person's **sexual orientation** or perceived sexual orientation, or
  - any person's sexual orientation
- a person's **disability** or perceived disability, or
  - any disability including physical disability, learning disability and mental health or developmental disorders
- a person who is **transgender** or perceived to be transgender,
  - including people who are transsexual, transgender, cross dressers and those who hold a Gender Recognition Certificate under the Gender Recognition Act 2004.

While a crime may be recorded as a 'hate crime', it may only be prosecuted as such if evidence of hostility is submitted as part of the case file.

This definition is based on the 1999 Stephen Lawrence Inquiry Report.

Hate crime prosecution

A hate crime prosecution is any hate crime which has been charged by the Crown Prosecution Service (CPS) in the aggravated form or where the prosecutor has assessed that there is sufficient evidence of the hostility element to be put before the court when the offender is sentenced.

Hostility

The term 'hate' implies a high degree of animosity. The definition and the legislation it reflects requires that the crime involves demonstration of or be motivated (**wholly or partially**) by hostility or prejudice.

The CPS gives the following guidance to prosecutors:

> In the absence of a precise legal definition of hostility, consideration should be given to ordinary dictionary definitions, which include ill-will, ill-feeling, spite, contempt, prejudice, unfriendliness, antagonism, resentment, and dislike.

See also Evidencing hostility

Note:

- Racial group includes asylum seekers and migrants.
- Religion includes sectarianism.
- Sexual orientation includes lesbian, gay, bisexual and heterosexual.

Perception-based recording

Where the victim, or any other person, perceives that they have been targeted because of hate or hostility against a monitored or non-monitored personal characteristic, the incident should be recorded and flagged as a hate crime (where circumstances meet crime recording standards), or a non-crime hate incident.

The victim does not have to justify or provide evidence of their belief for the purposes of reporting, and police officers or staff should not directly challenge this perception.

Perception-based recording will help to reduce under-recording, highlight the hate element and improve understanding about hate-motivated offending.

All allegations of hate crime will be subject to investigation to identify, and where available gather evidence to demonstrate the hostility element and support a prosecution. Where supporting evidence is not found, the crime will not be charged or prosecuted as a hate crime. Where a case cannot be prosecuted as a hate crime, the flag will remain on file.

Any other person

A hate crime or non-crime hate incident should not be recorded as such if it is based on the perception of a person or group who has no knowledge of the victim, crime or area, and who may be responding to media or internet stories, or who is reporting for a political or similar motive.

Any other person could refer to any one of a number of people, including:

- police officers, staff or prosecutors

- witnesses
- family members
- members of civil society organisations who know the victim, the crime or hate crimes in the locality, such as a third-party reporting charity
- a carer or other professional who supports the victim
- someone who has knowledge of hate crime in the area – this could include professionals and experts, eg, the manager of an education centre used by people with learning disabilities who regularly receives reports of abuse from students
- a person from within the group targeted by the hostility.

Anyone can be the victim of a hate crime or non-crime hate incident, including those from majority groups and police professionals.

For example: A heterosexual man who is verbally abused leaving a venue popular with the LGBT+ community may perceive the abuse is motivated by hostility based on sexual orientation, although he himself is not gay.

Non-monitored hate crime

The five strands of monitored hate crime are the minimum categories that police officers and staff must record and flag. There are, however, other groups and individuals who may be targeted due to their personal characteristics.

Forces, agencies and partnerships can extend their local policy response to include hostility against other groups or personal characteristics, they believe are prevalent in their area or that are causing concern to their community.

Case study – Sophie Lancaster

In August 2007, Sophie Lancaster and her boyfriend Robert Maltby were attacked without provocation. Both suffered a violent and sustained attack. Sophie's injuries were so severe that she died 13 days later.

The attack was motivated by hate because Sophie and Robert looked and dressed differently. They were perceived to be Goths, and were part of an 'alternative' subculture. They wore distinctive clothing and make-up associated with their lifestyle. To their attackers they were known as 'moshers' and were, therefore, a target.

In sentencing, the judge said that he was convinced that the murder was a hate crime. The law did not provide for a specific enhanced sentencing provision, but the court was able to take into account the hostility when calculating the seriousness of the offence for sentencing purposes.

Caste-based crimes

Some communities have a historical culture of caste definition where some sections of communities are considered to be less worthy than others. This can lead to isolation of subgroups within broader communities and this may lead to discrimination. It can, on occasion, also lead to hostility within communities. These incidents can be recorded and flagged as a race or religious hate crime or non-crime hate incident. But, that may not be appropriate in all cases and each incident should be considered on its facts and the perception of the victim.

Identifying trends in hate crime

Where a trend is identified or a community reports concerns about a new type of hate crime or non-crime hate incident, in particular relating to non-monitored hate crime, action should be taken to address this. This may include:

- including it in local policy
- seeking more information on the extent of the hostility
- community engagement activity
- media strategies
- problem-solving approaches with education services or other stakeholders
- including it in the threat assessment process within the National Intelligence Model (NIM).

Case study – attacks on street sex workers

Merseyside Police and partners recognised they had a significant problem of violent attacks against street sex workers and that there were similarities with other types of hate crime. Some believed the attacks were fuelled by gender hostility, and were able to show a significant problem of under-reporting.

Merseyside Police introduced crimes against sex workers into the locally monitored strands of hate crime to demonstrate their commitment to addressing these issues. Merseyside Police led partnership activity and played a key role in providing a more victim-focused multi-agency response.

Repeat victimisation

The first time an incident or crime comes to the notice of the police is not necessarily the first time it has happened. Victims may be too frightened to report earlier incidents or may not realise that the abuse they are suffering is a crime, or an incident the police will record and/or respond to. All investigators, including first responders, should ensure they investigate circumstances fully, including any possible history of abuse.

The Home Office Circular 19/2000 on Domestic Abuse defines repeat victimisation as 'being the victim of the same type of crime (eg, hate crime) more than once in the last 12 months'. This definition is useful in understanding repeat victimisation in hate crimes and incidents.

The victim may be subject to repeated incidents by the same offender, or repeated incidents by different offenders.

Repeat incidents must be recorded as they may demonstrate a course of conduct, eg, harassment, or an escalation in behaviour or increased community tension, and are likely to increase the threat of further attacks.

Secondary victimisation

The 1999 Stephen Lawrence Inquiry highlighted that a victim may suffer further harm because of insensitive or abusive treatment from the police service or others. This may include, for example, perceived indifference or rejection from the police when reporting a hate crime or non-crime hate incident. This harm will amount to secondary victimisation.

Secondary victimisation is based on victim perception and it is immaterial whether it is reasonable or not for the victim to feel that way. An open and sensitive policing response can prevent escalation. Police decision-making and actions should be clearly explained to the victim. This is particularly important where the outcome is not what the victim was expecting.

Secondary victimisation can cause an incident to escalate into a critical incident. Where this has happened, a senior officer should be notified and the incident managed appropriately.

Legislation

Legislation provides three specific options to support the prosecution of hate crime:

- offences of inciting hatred on the grounds of race, religion and sexual orientation
- specific racially and religiously aggravated offences under the Crime and Disorder Act 1998
- enhanced sentencing under the Criminal Justice Act 2003

Note: see also The Criminal Justice (No. 2) (Northern Ireland) Order 2004 for legislation that applies in Northern Ireland only.

Racially or religiously aggravated offences

The Crime and Disorder Act 1998 (the 1998 Act) introduced racially aggravated offences. The Anti-terrorism, Crime and Security Act 2001 amended the 1998 Act to also include religiously aggravated offences.

Sections 29–32 of the 1998 Act identify a number of offences, which, if motivated by hostility, or where the offender demonstrates hostility, can be treated as racially or religiously aggravated. These offences can be the preferred charge where there is evidence of racial or religious aggravation when committing the offence.

For any other offence where there is evidence it was motivated by hate, or for any other strand of hate crime not covered by the 1998 Act, the CPS can request enhanced sentencing. See also Enhanced sentencing for other crimes motivated by hostility.

Definitions

Section 28 of the 1998 Act sets out that an offence is racially or religiously aggravated if:

> (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim, based on the victim's membership (or presumed membership) of a racial or religious group; or
>
> (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.
>
> - 'membership' includes association with members of that group
> - 'presumed' means presumed by the offender
>
> It is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in section 28 of the 1998 Act.

A racial group is any group of people defined by reference to their race, colour, nationality (including citizenship), ethnic or national origins. See R v Rogers [2007] UKHL 8 for further explanation of the term 'racial group'.

A religious group is any group of people defined by reference to religious belief or lack of religious belief. This would include sectarian hostility.

Specific hate crime offences

A number of specific offences have been created by legislation, which, when the relevant points have been proved, will always be considered as hate crime.

The 1998 Act created a number of specific offences of racially and religiously aggravated crime, based on offences of wounding, assault, criminal damage, harassment and threatening and/or abusive behaviour.

- Incitement to hatred – race; Part III of the Public Order Act 1986.
- Incitement to hatred – religion or sexual orientation; section 29B of the Public Order Act 1986.

Incitement offences contained in the Public Order Act 1986 also include offences of distribution, broadcasting, performance, public display and possession of inflammatory material.

See also Inciting hatred.

Racist chanting

Section 3 of the Football (Offences) Act 1991 makes it an offence to engage or take part in chanting of an indecent or racialist nature at a designated football match. A designated football match means an association football match or a match designated by the Secretary of State.

Chanting means the repeated uttering of any words or sounds, whether alone or in concert with one or more others.

Of a racialist nature means consisting of, or including, matter which is threatening, abusive or insulting to a person because of their colour, race, nationality (including citizenship), ethnic or national origins.

Sentencing for hate crime

Enhanced sentencing provisions allow the court to take aggravating factors into account when sentencing an offender, reflecting the seriousness of the offence and motivation of the offender.

Section 145 of the Criminal Justice Act 2003 requires the courts to consider racial or religious hostility as an aggravating factor when deciding on the sentence for any offence that has not been identified as a racially or religiously aggravated offence under the 1998 Act.

Section 146 of the Criminal Justice Act 2003 provides for increased sentences for aggravation related to sexual orientation, disability or transgender identity.

It is essential to provide supporting evidence showing motivation and/or demonstration of hostility.

Enhanced sentencing for other crimes motivated by hostility

Where the hostility is aimed, for example, at the victim's age, gender or lifestyle choice, the courts may consider the targeted nature of the crime when calculating the seriousness of the offence under section 143 of the Criminal Justice Act 2003. The Sentencing Council for England and Wales includes advice when calculating the seriousness of an offence, for example:

- offence motivated by hostility towards a minority group, or a member or members of it
- deliberate targeting of vulnerable victim(s)

In a case involving a victim with a disability, where there is evidence of targeting due to perceived vulnerability but the definition of hostility does not apply, evidence of the targeted nature of the crime can be brought to the court and may support enhanced sentencing.

Witness intimidation

Witness intimidation is an offence under section 51(1) and 51(2) of the Criminal Justice and Public Order Act 1994. It can also constitute a common law offence of perverting the course of justice.

Witness intimidation in a hate crime case is particularly damaging. Witnesses who have been subjected to, or are at risk of, intimidation should be afforded the same level of service as the original victim.

See also Risk management.

Officer discretion

It may not always be appropriate or proportionate to impose a criminal sanction where hate is a motivating factor and a crime has been committed. However, the more serious the crime, the more likely a prosecution will be required under the public interest test.

Where the victim does not support a prosecution but simply wants the criminal behaviour to stop, it is important to remember the victim's views may not be the deciding factor.

Where a victim does not support a prosecution or requests an alternative remedy, it is important that the victim's decision is properly informed and they are made aware of available support in going to court. See Victim and witness support and care.

To consider the full range of alternative remedies or sanctions available, officers should consult their local hate crime unit, community safety partnerships (CSPs) or CPS hate crime coordinator.

See also Alternative outcomes.

Under-reporting of hate crimes

Many people, particularly those in isolated communities, may find it difficult or be reluctant to report to the police directly, but may be more willing to report to a community resource. The need to provide facilities for victims to report to a third party was one of the key findings of the Stephen Lawrence Inquiry in 1999.

Chief officers should consider how to encourage increased reporting of non-crime hate incidents and hate crimes in their force.

Third-party or assisted reporting

Third-party reporting services aim to increase hate crime reporting and the flow of intelligence from a community by providing alternative methods of contacting the police and reporting a crime.

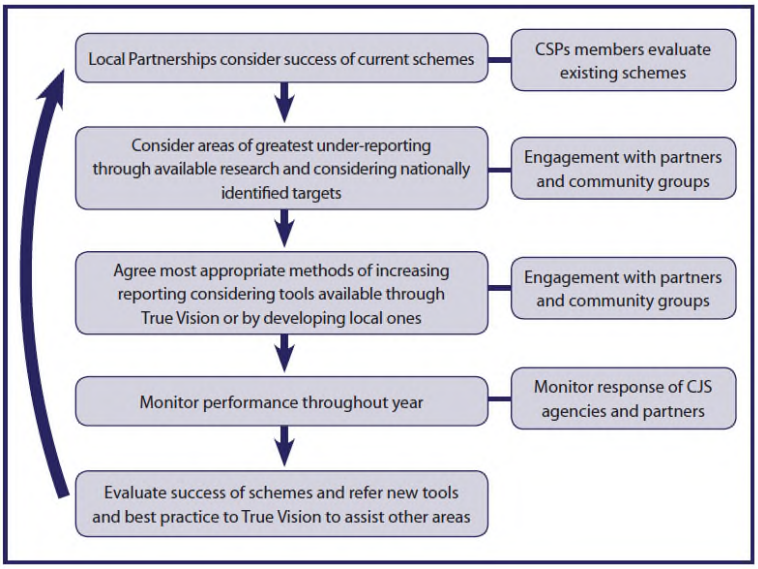
If the police are proactive and deliver effective third-party reporting services tailored to meet the needs of victims, more victims may be encouraged to come forward. Targeting schemes at individuals or groups who face the highest risk of victimisation, and/or those who are least likely to report crimes to the police, may be particularly beneficial.

Those with knowledge of the community and its challenges are best placed to decide what may be the most effective method to reach these groups/communities.

True Vision has a range of web-based and physical resources to help forces develop third-party reporting services, eg, 'easy-read' information or translated reporting forms.

The effectiveness of third-party services should be periodically measured to ensure they have and retain the expected impact. Where appropriate, different approaches may need to be tried to achieve the best effect. Community partners involved in third-party reporting services should agree on the method and timescales for monitoring performance. Victims are primarily encouraged to report crimes directly to the police, so in addition to measuring the number of reports submitted to the police through the service, it is also important to consider a scheme's impact on community confidence and the broader support it offers to victims, professionals and communities.

Recommended review process for third-party reporting services/schemes



Data sharing with third-party reporting facilities

An information sharing and data-security protocol must be established between the third-party service and the police taking into account the Data Protection Act 2018, so that those using the site are confident about what will happen to the information they provide and its security.

Specimen information-sharing agreements and other support material can be found at True Vision.

One example of a successful third-party service is the national charity Stop Hate UK, which also produces resources available in 40 languages, including: Braille, large print, words into pictures/easy read, a British Sign Language DVD and audio recording, and has a number of specific materials on sexual orientation, mental health hate crime and young people.

Data recording

All forces report hate crime data as part of the Home Office annual data requirement.

Police managers should have systems in place to monitor this process and to ensure that staff know how to report crimes and incidents accurately.

See also Performance management.

National Standard for Incident Recording

The National Standard for Incident Recording (NSIR) provides a framework for recording incidents, whether crime or non-crime, consistently and accurately. This allows the resulting data to be used at a local and national level and to meet the management and performance information needs of all stakeholders. It also allows the UK to meet its international commitments, which include transparency about the collection of hate crime data. The NSIR includes the National Incident Category List (NICL) and counting rules. It provides recording guidance for incidents where hate is identified as a qualifying element.

Where an incident record is created in accordance with the NSIR, certain information must be recorded.

Crimes

The majority of hate crimes are both recordable and notifiable. See the Home Office Counting Rules for further information.

Hate crime is not recorded as a single category of crime. Instead, it occurs as a feature of different types of crime. The counting rules include a number of crime types where the racially or religiously aggravated forms of hate crime might commonly be recorded. However, some forms of hate crime fall outside these specific categories. The Offence Classification Index 2019 includes the following specific crimes where racial or religious aggravation commonly occur:

- 8M racially or religiously aggravated harassment
- 8P racially or religiously aggravated assault with injury
- 105B racially or religiously aggravated assault without injury
- 58J racially or religiously aggravated criminal damage
- 9B racially or religiously aggravated public fear, alarm or distress

Management of police information

Under Home Office (2005) Code of Practice on Management of Police Information, the police are authorised, and should have clear guidelines, to manage information, including personal information, for a police purpose.

In making a record, particularly where the incident is a non-crime hate incident, police must also apply the Data Protection Act 2018 (DPA) and General Data Protection Regulation (GDPR). The information held must take into account the six data protection principles for law enforcement and general processing, in particular the first principle of lawfulness, fairness and transparency.

Records must be held consistently, identifying the nature of the information and its purpose. Any information must be managed in line with the Code of Practice and supporting APP on information management for the retention and disposal of police records.

2 Community engagement and tension

Police officers and staff should identify potentially 'susceptible' communities and proactively make efforts to build relationships with those communities and relevant partners. These relationships will provide a structure and network, which can be used when tensions rise, an investigation occurs or a critical incident is identified.

Effective community engagement can help to mitigate community tension caused by hate crimes or non-crime hate incidents. Conversely, failing to engage will undermine community confidence in law enforcement and make positive policing outcomes more difficult to achieve.

Ministry of Justice guidance defines a community as a group of people who interact and share certain characteristics, experiences or backgrounds, and/or are located in proximity to each other.

A community can be large or small, concentrated in a specific geographical location or widespread throughout a larger geographical community. For further information, see Engagement.

Strong relationships will also inform strategic analysis of community risks and issues, partnership development and day-to-day community policing activity.

Independent advisory groups

The purpose of an independent advisory group (IAG) is to give the community a voice in police decision-making; they can also provide advice on developing successful partnerships. They will make observations both within the force and to the communities they represent. This includes helping to address problems affecting particular groups or communities.

Effective and well-structured IAGs will enable gathering of a range of community views. See also Intelligence, Community voices

See also APP on Communication and Independent Advisory Groups: Advice and Guidance on the Role Function and Governance of IAGs.

Police and crime commissioners

PCCs will canvass the views of the public about policing in their area. They undertake consultation and engagement events with community groups to understand community views and concerns. Chief officers should work closely with their local PCC to ensure that these views are reflected in their Police and Crime Plan and the police service response to hate crime and non-crime hate incidents.

Community tension

Community tension which may give rise to hate crimes or non-crime hate incidents should be identified at the earliest opportunity – see Engagement and communication and Intelligence management.

Significant events or incidents, either within and outside the local force area, may affect or indicate increased community tension. This information should be used to inform community engagement activity, and force strategic threat, risk and harm assessments.

General indicators may include:

- incidents of disorder and a noticeable increase in critical incidents
- significant anniversaries

- public events (eg, meetings, demonstrations, carnivals, concerts, fairs)
- elections (eg, extreme candidates standing) and other significant political events
- deaths in police custody
- other police-generated events (eg, crime initiatives, raids)
- religious festivals
- extremist activity
- anti-social behaviour
- critical incidents
- unusual or serious assaults on police personnel
- use of offensive weapons against police
- hostility or resistance to normal police activity (eg, stops, patrol, arrests)

Incidents of inter-group disputes which may affect or indicate community tensions, such as:

- racially motivated incidents (eg, assaults, criminal damage)
- disputes between or within gangs with different ethnic membership
- disputes between LGBT+ communities and those who seek to condemn their sexual orientation, (eg, on religious grounds)
- disputes between or within religious groups
- disputes between different gangs, schools, colleges

Other factors which may indicate or cause changes in community tension include:

- hate crime (eg, racial and homophobic attacks)
- vigilante patrols
- police raids on sensitive premises (eg, cultural or religious buildings)
- threats to community safety (eg, potentially problematic additions to the sex offenders register)
- inter-community threats (eg, between religious sects)
- repeated incidents of serious antisocial behaviour
- strong media interest in community issues (eg, asylum seeker issues)
- global conflict, particularly where UK populations have heritage in affected regions
- political unrest or terrorist activity overseas, particularly where it affects UK-based populations or where it receives extensive media coverage

For further information, see the True Vision website.

Community impact statements

A Community Impact Statement (CIS) can describe the impact that offending has had on a community, provide context and give the community a voice.

A CIS should be prepared in hate crime cases where there is a recognisable 'community of identity' that shares the personal characteristic of the victim.

A CIS can also relate to the targeting of a building or institutions, eg, a place of worship or a day centre used by people with learning disabilities, frequented by a community.

3 Partnership working

Chief officers, alongside their PCCs, can use their influence to build effective partnership working, particularly with individuals and groups who have influence within communities.

Statutory partnerships are at the core of joint working. Statutory organisations share the same legal duties under section 149 of the Equality Act 2010, which states that:

- a public authority must, in the exercise of its functions, have due regard to the need to:
    - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
    - foster good relations between persons who share a relevant protected characteristic and persons who do not share it
    - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

See also Strategic leadership and Supervision and oversight.

Benefits

Statutory partnerships can:

- facilitate information and intelligence sharing, helping to quantify hate crime geographically or within a specific section of a local population
- prompt agencies with community safety responsibilities to develop and deliver a coordinated safety package for actual and potential victims of hate crime
- prevent duplication of service delivery by different agencies
- produce a consolidated approach to accessing additional resources

Practice example – Partnership working

Some police forces and partners have established a public protection partnership similar to the domestic abuse multi-agency risk assessment conference (MARAC) process, so that partners can work together to share information, assess risk and agree actions to reduce the risk associated with serious or repeat hate crime. This structure can be especially useful in responding to repeat victims, high-risk individuals or emerging trends in hate crimes.

Because of the nature of hate crime, particularly in serious cases, a swifter, more flexible approach may be needed than in other areas of crime reduction. Formally scheduled meetings may be too infrequent to be effective and not responsive to risks. Partnerships meetings are, however, still valuable, but may need flexibility to facilitate early intervention

Police should seek to create partnership links with all communities in their areas. The key to this is involving a spread of partners, including groups and individuals that other agencies cannot reach. This will help to achieve:

- sustainable relationships between the police and minority communities to work together to address local hate crime problems
- ongoing dialogue to increase community confidence and generate a flow of community intelligence
- openness and transparency, providing the police with a better understanding of the impact hate crime has on the community. It also helps the community to understand the constraints and legal requirements within which the police are required to work

- joint ownership of problems and solutions, providing an opportunity for partners to share hate crime initiatives, promoting further collaborative effort

Joint training and secondment opportunities can enhance understanding of all stakeholders and improve the effectiveness of the police response to hate crime. Internal staff support networks can also offer a valuable link between the police and the local communities they live in.

The True Vision website has a range of downloadable tools (based on practice developed across policing) that can assist in developing partnerships. These products include guidance on how non-statutory groups can be engaged to establish effective partnerships.

Working with the CPS

As well as routine contact with the CPS to support case building and charging decisions, police forces and the CPS should work together on hate crime.

At force level, this includes regular dialogue between chief constables and chief crown prosecutors. Force hate crime leads regularly engage with CPS Area Hate Crime Coordinators; and many force leads attend CPS Area Local Scrutiny and Involvement Panels. Nationally, the CPS attends the Hate Crime Group of force regional chairs led by the National Police Chiefs Council (NPCC) hate crime lead.

Practice example – 'Punish a Muslim' letters

In March 2018, a spate of letters that promoted a national day of extreme violence against Muslim citizens, encouraging like-minded offenders to join in, were posted on social media and received significant media coverage.

A multi-agency 'Gold Group' was established to address the potential harms caused by the letters. The Gold Group included partners, such as Tell MAMA, academics and the national Independent Advisory Group, as well as government and law enforcement representatives.

The Group determined that the most significant risk was that an unknown individual would be motivated by the letters and would commit an act of violence. It was recognised that normal mass communications seeking to reassure the Muslim community may increase the risk, and undermine the investigation to identify the perpetrator.

Drawing on advice from partners, the national lead agreed a number of actions. These included a specialist media strategy that targeted only affected communities, reducing the risk of wider media coverage. This was supported by the use of existing local police networks and community coordinators to distribute messages to affected local communities, seeking to reassure communities that the police were taking the matter seriously.

Community tension and fear was high, but using partners to shape the policing response helped to mitigate the risk and fear of harm. Subsequently the perpetrator was identified, convicted and received a lengthy prison sentence.

Problem solving in partnerships

The police need to tackle hate crime and non-crime hate incidents by seeking to address the underlying problem. Partnership approaches to the reduction of hate crime lend themselves to problem-solving methods.

Scan analysis response assessment

The scan analysis response assessment (SARA) approach is one method used for problem solving in the police service. Applying this will help to ensure that hate crime problems are effectively

identified and tackled without wasting time and resources. Its use should be explained to partners to help them work with the police to tackle local problems.

The use of intelligence can inform effective problem solving, see Intelligence.

For further information see College of Policing (2013) The effects of problem-oriented policing on crime and disorder and College of Policing (2018) Neighbourhood Policing Guidelines

Specialist advice

Officers and staff should establish and build professional relationships with those organisations and individuals who have comprehensive knowledge and expertise concerning specific aspects of the monitored or non-monitored strands relevant to their area, or even sub-sets of particular monitored strands, eg, autism as opposed to physical disabilities.

Setting up, for example, a disability independent advisory group at force or agency level, or having disability representation on independent advisory groups at basic command unit or borough level should be considered.

Local user-led organisations or voluntary sector groups can also offer expertise and independent advice.

See also Community engagement and tension.

4 Responding to hate crime

Those responding to a hate crime should:

- undertake an effective investigation to identify and bring offenders to justice
- signpost victims, and where appropriate communities to appropriate support
- reduce repeat victimisation

APP Investigation sets out a core model for an investigation. There are, however, a number of factors, which should be highlighted when an allegation of hate crime is made.

Priority response

Hate crimes should be treated as priority incidents and consideration given to the most effective response that balances the needs of the incident, police resources available and the nature of any risk.

There are occasions where an immediate response by a police officer may not be appropriate or possible. It may not be proportionate to the report received, there may be high incident workload where the response to urgent calls for service have to be prioritised, or the victim may not want a visible response, or be immediately available.

Where such delays occur, a supervisor should consider the reasons given and set out a clear plan for how and when the incident will be responded to. This should be communicated to the victim.

Positive action should be taken, not just a record made

Forces should implement policies that require the notification and/or attendance of supervisors or investigators. It is a matter for forces to develop their deployment policies, but investigations and broader problem-solving activity can be improved where there is supervisory oversight.

Specialist support

Assistance from internal and external partners may be required to provide a service that meets the victim's needs. See also partnership working.

Police officers and staff in force may have additional skills, knowledge or experience that can be used to assist the initial response or subsequent investigation. For example, the Metropolitan Police Service (MPS) Cultural and Communities Resource Unit (CCRU) uses the skills and diverse backgrounds of its police officers and staff to support investigations.

Call takers and first responders

When responding to victims of hate crime call takers and first responders should consider how their language and conduct may affect victims and witnesses.

In particular they should:

- ask the victim or witness how they wish to be addressed – do not assume gender identity
- gather information sensitively and provide reassurance, recording an accurate first account
- assess the initial risk and response required

Any hate crime that has the potential to become a critical incident should also be notified to a senior officer.

See also APP Investigation.

Risk assessment

At all stages of an investigation, police officers and staff must be aware of potential risks to the safety, vulnerability and wellbeing of victims and witnesses.

An important risk is the potential for further victimisation. Victims may be targeted either because they are perceived to be less likely to have the confidence to defend themselves physically or because they lack the confidence or ability to stand up to the offender.

Risk factors may include:

- the victim's isolation, eg, they have limited support or live alone
- they have particular personal characteristics which may increase their vulnerability
- there are particular issues that leave them susceptible to intimidation

The College of Policing is currently undertaking a review of evidence to develop evidence-based guidelines for recognising and responding to vulnerability-related risks.

These guidelines are due to be published in 2020. In the interim it is suggested that forces use a risk assessment model such as THRIVE. An infographic, Vulnerability: an aid to understanding can help forces to assess and manage risks.

(This link is available to authorised users who are logged on to the College of Policing managed learning environment (MLE))

A risk assessment should identify and enable the management of risks through appropriate actions. Victims' assessment of their own safety should be considered as this is often a good indication of likely risk. Where a victim has communication difficulties or is particularly vulnerable they should be supported to be able to explain the harm that has been caused and the risks they face.

In many cases a risk may be caused by the victim's concern that they will not be able to support a prosecution due to impairments, conditions or other factors which have not been acknowledged or addressed. This can lead to a victim's non-attendance and the case collapsing. This is a potentially high risk in hate crime cases, particularly those involving victims with disabilities, learning or development conditions.

See also Victim and witness care and support.

Risk assessment and management is a dynamic process subject to constant change. The level of risk should be reviewed regularly, along with any interventions put in place, to ensure that they remain appropriate to the situation, provide reassurance and reduce the likelihood of further victimisation.

To ensure openness and accountability, a record of this risk assessment should be kept and regularly reviewed for quality assurance purposes and identifying trends.

The following questions may help to elicit some of the information needed for effective risk assessment and management.

- Why do you think you have been targeted on this occasion? (Without sounding like the victim is being blamed.)
- Have you or your family been targeted before?
- Do you know of similar crimes in the area?
- Do you fear that the offender will repeat the behaviour?
- Do you know the offender?
- What impact has the behaviour had on you and your family?

First responders and subsequent investigation

When a hate crime is reported, the following priority actions should be considered:

- remove the victim to a safe location if appropriate – in some cases it may be more appropriate to address the risk through suspect interventions, eg, arrest or bail conditions
- use body-worn video to gather an initial account which may support enhanced sentencing
- make a record of the victim's emotional response to the incident, eg, is the victim suffering from shock? See also victim care
- identify any victim needs, for example the following, and arrange for these to be put in place where practical.
    - Do they want to speak in private?
    - Are there any confidentiality issues (eg, not disclosing the victim's sexuality)?
    - Do they need an interpreter?
- what reasonable lines of inquiry should be pursued; and what evidence might need to be immediately secured
- do relevant checks to see whether the victim is a repeat victim
- if necessary, seek advice from a specialist hate crime investigator where available
- notify neighbourhood policing teams and provide a copy of the crime report to support victim and community reassurance
- for more serious incidents, consider deploying a family liaison officer
- review risk assessment, as the victim may be more forthcoming once they have confidence in the attending officer

Evidencing hostility

To prosecute a hate crime it is necessary to demonstrate hostility. The case file must provide evidence that the suspect:

- was motivated, wholly or partially, by hostility, or
- demonstrated such hostility immediately before, during or after the crime was committed

For example, neo-Nazi material or symbols displayed or worn by the offender may provide material which can be used during interview to explore the suspect's motivation.

The following evidence will also help to demonstrate hostility:

- the exact words or phrases the victim uses when giving their initial account, in particular their account of any words or phrases used by the perpetrator
- a copy of any 999 conversation
- evidence of the offender's hostility, eg, from careful suspect interviewing and from evidence gathering during scene and other searches
- corroborative evidence where it is available, eg, social media posts

CPS hate crime coordinators, can provide access to the latest prosecutor operational guidance and assist with investigation and interview planning.

Working with victims of sexual orientation or transgender hate crime

Where a person has been the victim of sexual orientation or transgender hate crime, they should not be questioned about their sexual orientation or transgender identity unless it is relevant to the investigation. This includes providing information about their medical treatment or Gender Recognition Certificate status.

As with any other victim, it will be necessary to undertake intelligence checks to determine whether a victim is a repeat victim, and for the purpose of disclosing any bad character to the CPS. Where possible these checks should be undertaken without asking the victim for details of their previous names. Where this information isn't already known, it should be requested sensitively, explaining

why the information is required, and if appropriate allowing the victim to write their previous names on the reverse of their statement rather than having to say them.

Information about the victim's sexual orientation or gender identity must not be disclosed to their family or friends without the victim's express permission. They may not have told friends or family, and a disclosure, even inadvertently, could seriously undermine victim trust and community confidence in the police.

When contacting a victim's friends or family to notify them about an incident, simply state that the individual was a victim of a crime, rather than a hate crime. Details that may indirectly disclose the victim's sexuality, such as the incident took place in a venue popular with the LGBT+ community, should not be disclosed.

Working with disabled victims

The nature of the victim's disability may present additional challenges when gathering evidence or taking statements. The police and CPS prosecutors should never make assumptions about the competence, capacity or credibility of a victim based on their disability, or any support needs they may have. It is good practice to ask the person about support they need to give their best evidence. Also, consider the use of a witness intermediary to support interviewing.

Special measures

The CPS has appointed hate crime lead prosecutors who have received specific training and guidance on the best ways of supporting victims to provide the strongest evidence. They can also discuss the range of special measures available to assist victims and witnesses in giving their evidence.
For further information Special measures explained.

Suspect considerations

Where the evidence justifies it, taking positive action is preferable, but the decision to arrest is always a matter for officers, and should be based on the evidence available at the time. It should not be influenced by whether the victim wishes to proceed with a prosecution or not.

Where a victim is at particular risk, effective action should be taken to manage the risk.

Information and intelligence

In addition to a crime report, any intelligence and/or historical information should be recorded in line with force policy. This should include details of any previous reports concerning the same suspect, victim or location and the results of any Police National Computer searches.

Some forces have adopted hate crime forms, which include a risk assessment and action taken to remove, reduce or manage risks.

See also Perception based recording and Data recording.

Complaints against police action

Some groups or individuals may try to challenge the police service, using complaints or litigation against the police response (actions or inactions) to hate crime or non-crime hate incident allegations. They may allege political bias or disproportionate infringement of human rights. It is important that all police actions are proportionate, taking into account human rights, reflect national and local policy, and that decision-making is appropriately recorded.

Investigating officers should seek the advice of senior colleagues where they suspect a complaint may be vexatious or politically motivated. Particular care is necessary to ensure that Article 10 rights to freedom of speech are not infringed beyond that permitted by law.

In Miller v College of Policing and Humberside Police [2020] EWHC 225 (Admin), the College's operational hate crime guidance was found to be lawful. The case addressed the recording of non-crime hate incidents. The guidance requires recording of allegations of hate crime and non-crime incidents based on the perception of the victim. The judgement drew attention to the sections in the guidance that require consideration of factors that might make recording unnecessary.

See also Data recording, Responding to hate crimes, and Responding to non-crime hate incidents.

5 Responding to non-crime hate incidents

Not every reported incident is a crime. If officers are unsure whether a reported incident amounts to a crime, an initial investigation should be undertaken to establish the facts to determine whether it is a hate crime or a non-crime hate incident.

Where it is established that a criminal offence has **not** taken place, but the victim or any other person perceives that the incident was motivated wholly or partially by hostility, it should be recorded and flagged as a non-crime hate incident.

There may be an overlap between a perceived non-crime hate incident and the legitimate exercise of rights and freedoms conferred by the Human Rights Act 1998.

Police officers and staff responding to a non-crime hate incident must remember that they have limited enforcement powers in these circumstances. A disproportionate response may adversely impact on either an individual's human rights, eg, by inhibiting free speech, or on levels of hostility and tension in society (see Miller v College of Policing and Humberside Police [2020] EWHC 225 (Admin)).

While every police responder must determine for themselves the appropriate response in light of the circumstances, every response must be in accordance with the law and be proportionate.

Non-crime hate incidents should not be dismissed as unimportant; they can cause extreme distress to victims and communities. Where appropriate victims should be referred to victim support services. See Victim and Witness care and support.

They may also be the precursor to more serious or escalating criminal offending. Non-crime hate incidents may form part of a series of incidents that, together, may constitute a crime, such as harassment. Retrospective review of crimes will often highlight that earlier non-crime hate incidents that could have presented opportunities to intervene to reduce the threat.

Although police officers have limited enforcement powers, they do have a general duty with statutory partners under the Equality Act 2010. See Partnership working.

There are some actions which will be criminal if they are committed in public but not if they occur in a private dwelling, eg, some public order offences. A victim is likely to suffer the same harm, regardless of the location. Responders should seek to reassure victims and signpost them to support services.

Forces should have a system for recording non-crime hate incidents and should be able to analyse them so that preventive activity can take place, and identified community tensions can be monitored, and activity can be implemented to reduce them.

Ownership

The police do not always have primary responsibility for responding to non-crime hate incidents. Ownership will often fall to other statutory agencies. Although they may not have formal processes in place, all statutory agencies have the same legal duties under the Equality Act 2010.

It may be appropriate for the police to refer reported incidents to another agency for them to complete the task of assessing and mitigating risk or harm. For example, someone facing abuse on a

transport service to a medical facility might expect that the agency which commissions the service would have a duty to respond to and eliminate such hostility.

A proportionate response

Police officers and staff need to consider the human rights of all parties whether they are directly involved, as a victim or as the suspect, or indirectly as someone affected by the circumstances of the incident or response.

The circumstances of an incident will dictate the response, but it must always be compatible with section 6(1) of the Human Rights Act 1998. The Act states that it is unlawful for a public authority to act in a way which is incompatible with a right conferred by the European Convention on Human Rights (ECHR).

The right to respect for private and family life, the right to manifest one's religion or beliefs, freedom of expression, and freedom of assembly and association are qualified rights and require a balance to be struck between the rights of the individual and those of the wider community.

Qualified rights are usually set out in two parts. The first part sets out the right or freedom, and the second part sets out the circumstances under which the right can be restricted.

Generally, interference with a qualified right is not permitted unless it is:

- prescribed by or in accordance with the law
- necessary in a democratic society
- in pursuit of one or more legitimate aims specified in the relevant Article
- proportionate.

Contact strategy

Careful consideration should be given to the way in which officers and staff contact an individual who is the subject of a report of a non-crime hate incident. This applies to both the victim who may, for example, have personal information, such as their sexuality disclosed by inconsiderate communications, and the suspect who may face disproportionate harm from insensitive contact, for example, by unnecessarily alerting others to private information about the incident or the individual.

Officers and staff should consider whether it is proportionate to the incident, and the aim of the contact, to contact people involved in the incident at their place of work or study, or in a manner which is likely to alert a third party, eg, their friends, family or employer, to the complaint or the interest of the police (particularly where it may not be appreciated that the contact concerns a non-criminal matter).

Police should always consider the least intrusive method of contact for achieving their proportionate aims, eg, a telephone call, letter or visit.

Where the matter is likely to come to the attention of another person, such as the individual's family, friend or employer, it may be helpful to provide the individual with information in a form which they can pass to the third party to clarify the police contact.

In all cases it should be clearly stated to the person concerned that the matter is a non-crime hate incident and they are not being investigated for a criminal offence. It should also be explained why a record will be made of the incident, how that information will be recorded and retained, and the

individual's rights to that information. See also Recording non-crime hate incidents and Data recording.

The following examples illustrate a proportionate response to non-crime hate incidents.

Example 1 A victim, who is a wheelchair user, reports to the police that a man approached her in the street and threatened her in circumstances that amounted to a crime under section 4 of the Public Order Act 1986. In doing so, the man also made derogatory comments about her disability. This incident would be recorded as a crime and, given the demonstrated hostility, it should also be recorded as a disability hate crime and investigated as such.
Example 2 The victim reports the same circumstances as in Example 1, but this time the incident takes place at a party in her home. Given that the potential offence is not enforceable in a private dwelling, this should be recorded as a non-crime hate incident. The police have a primary responsibility to determine that a crime has not been committed and to record the incident. An officer should assess the incident and the risk of escalation and decide that a proportionate response would be to record the incident, offer support to the victim by referring her to victim support services, and include the incident in the intelligence processes to measure community tension. The officer would also consider whether it would be beneficial and proportionate to approach the suspect, to advise them of the distress caused and to encourage them to consider how they might avoid causing harm or committing a criminal offence. Interventions where no criminal offence has been committed must be carefully considered so that any impact on the right to freedom of expression is taken into account.
Example 3 The victim reports that she was called a derogatory name referring to her disability, but the law has not been breached. This time the incident took place during a lesson in her school and the perpetrator is another pupil. As there is no criminal offence in this circumstance, the incident would amount to a non-crime hate incident. The appropriate police response would be to refer the matter to the school management team, with the victim's agreement, and to offer any advice they may need about available victim support. The school should assess the risk and decide on a proportionate response. The police should record the incident, recording the police interactions and the results of those actions. Note: Name-calling or verbal abuse could amount to section 5 or section 4a of the Public Order Act 1986. If this behaviour took place on more than one occasion, it may amount to an offence under section 2 of the Protection from Harassment Act 1997.

Recording non-crime hate incidents

There are four key reasons why the police service would make a record of a non-crime hate incident.

- When an incident is reported to the police it is often not clear whether a crime has been committed. Circumstances are often unclear, and a record will be made to support initial investigative actions and to record any decisions.
- Where an incident is reported it may be necessary to record the information provided for intelligence purposes. This will help to identify patterns of behaviour: incident hot spots associated with a specific location, group or victim which may provide evidence of repeat victimisation, eg, antisocial behaviour directed to the same victim.
- Behaviour that falls short of criminal conduct but could later be evidence of a course of criminal conduct, eg, harassment and coercive control, or as evidence of 'motivated hostility' in a future hate crime.
- Statistical analysis to improve understanding of the type and nature of non-crime hate incidents in a locality. Once sanitised this information can, where appropriate, be shared with partners to support the development of local prevention and intervention initiatives.

Example

A heterosexual man is walking through an area near a venue popular with the LGBT+ community. He is verbally abused in a way that is offensive but does not constitute a public order offence. He reports the incident but does not believe it to be homophobic, or want it recorded as such, because he is not gay.

The officer taking the report is aware that several men have been attacked in that area over the last few weeks and the perpetrator appears to be hostile toward gay men.

The officer correctly reports this as a sexual orientation non-crime hate incident, recording the reasons in the report.

Where a hate incident is reported, it must be flagged as a hate crime or non-crime hate incident if the victim or any other person perceives that the incident was motivated wholly or partially by hostility, even if it is referred to a partner to respond.

Police officers may also identify a non-crime hate incident, even where the victim or others do not.

The recording system for local recording of non-crime hate incidents varies according to local force policy. Managers should have confidence that all incidents are being recorded correctly. See data recording for further information on how information should be managed.

Victims may be reluctant to reveal that they think they are being targeted because of their ethnicity, religion or other protected characteristic or they may not be aware that they are a victim of a non-crime hate incident, even though this is clear to others.

Disclosure and Barring Service checks

A current or prospective employer may request an enhanced Disclosure and Barring Service (DBS) check as part of their employment and/or recruitment processes. This may include records relating to non-crime hate incidents.

Chief officers must take into account the circumstances of the non-crime hate incident and whether it is relevant to the DBS check taking into account the role for which the person is applying, proportionality and human rights.

For further information on the DBS process and an individual's rights in relation to information which may be disclosed, see Disclosure and Barring Service.

6 Intelligence

Hate crime intelligence may not be as obvious as that concerning other areas of criminality, eg, burglary or robbery. Indicators can be misinterpreted. The fear of becoming a victim may be greater than the likelihood of being victimised.

See APP on Intelligence management.

Community intelligence

The value of community intelligence was detailed in the Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS) report Winning the race – embracing diversity.
HMICFRS defined community intelligence as:

> local information, direct or indirect, that when assessed provides intelligence on the quality of life experienced by individuals and groups, that informs both the strategic and operational perspectives in the policing of local communities.

Community voices

These can range from formalised meetings with community leaders to daily interaction between patrol officers and individuals in the community. The input from ordinary members of communities can be invaluable, particularly from those who while not claiming to represent a targeted group are held in esteem locally, especially by young people.
For further information see APP on Engagement and communication

Covert human intelligence source

Intelligence suggests that those targeting vulnerable communities with hate-motivated hostility may broadcast or even exaggerate their exploits. Potential sources of information for other criminality may, therefore, also have information relating to hate crime.

Open source

The following sources, although not an exhaustive list, should be considered when carrying out research as they may enhance the intelligence product:

- traditional and online newspapers (national, local and specific interest publications, such as The Voice, Asian Times, Gay Times, G3, Diva)
- the internet and other online sources
- demographic material, such as census data
- periodicals
- broadcast media
- opinion polls
- academic research
- bill posters or stickers
- partnership information

Crime pattern analysis (CPA)

Hate crime hot spots are frequently more difficult to identify as the underlying cause may not be easy to determine. For example, an increase in criminal damage to vehicles may not only constitute vandalism, but it could also represent a targeted attack on users of particular religious premises. See Crime pattern analysis

Online hate material

One of the most common forms of hate crime is material sent via the internet and/or social media. Analysis of such material can identify offenders and potential precursor activity. See Online hate crime.

The National Community Tension Team (NCTT) monitors national tensions and can provide information to forces.

7 Victim and witness care and support

Victim and witness care and support should be considered from an early stage in an investigation. This will help to build victim confidence in the criminal justice system and willingness to support the investigation and prosecution. It will also facilitate applying for special measures.

For further information see also:
Victim and witness care

Working with victims and witnesses

Investigators should consider:

- Code of Practice for Victims of Crime
- Victim personal statements (VPS), taking into account changes in the victim's emotional and physical needs. See also Community impact statements.
- Referrals to Victim Support services
- Victim information packs, which can be read after the officer has left. See the True Vision website for resources. Generic victim publications that don't address the impact of hate crime should be avoided as they may be seen as impersonal and could cause offence.
- Victim Supportline is a national 24/7 service run by Victim Support, providing confidential emotional support and practical advice to victims. Contact details: telephone 08 08 16 89 111; TextDirect access number 18001 08 08 16 89 111; they can also be contacted via email, letter or online.
- Family liaison
- Special measures
- Reasonable adjustments for victims with disabilities, under the Equality Act 2010
- Witness care units provide a single point of contact (SPoC) for victims and witnesses, minimising the stress of attending court and keeping them up to date with any news in a way that is convenient to them.

Victims should be kept informed at all stages of the investigation. In particular, they should be told if and when a suspect is released under investigation (RUI), charged and/or released on bail. Investigators should continue to review the victim's needs throughout the investigation as the victim's outlook and reaction may change over time, including their attitude towards necessary support.

Risk management

A risk assessment should not be done in isolation, it should be accompanied by appropriate risk-management interventions with regular needs assessments as the investigation progresses or the victim's needs change.

See also Risk assessment

Interventions will depend on the circumstances and the particular environment in which the hate crime is occurring. They may include:

- issue of personal attack alarms
- issue of evidence capturing devices
- use of local CCTV
- issue of mobile telephones
- introducing or maximising neighbourhood watch schemes
- rehousing victims
- obtaining civil injunctions, community protection orders (CPO) or criminal behaviour orders against offenders

Arresting suspects, where there is evidence to justify doing so, can be the most effective way to manage risk and prevent repeat incidents. Where suspects are released on pre-charge bail, conditions can be used to manage risk.

In addition to repeat victims, there may be other reoccurring factors in hate crimes, such as specific location. Early identification of trends and effective problem-solving should help to prevent future victims from being targeted.

The level of risk should be monitored and subject to regular reviews, with interventions that adapt to the prevailing situation, provide reassurance and reduce the likelihood of further victimisation. A record of this risk assessment should be kept to ensure openness and accountability.

An appropriate tool to understand and respond to risk is the RARA model.

R	Remove the risk: by arresting the suspect and obtaining a remand in custody.
A	Avoid the risk: by rehousing the victim and/or significant witnesses or placing them in a refuge or shelter in a location unknown to suspect.
R	Reduce the risk: by joint intervention or victim safety planning, target hardening and use of protective legislation.
A	Accept and manage the risk: by continued reference to the RARA model, continual multi-agency intervention planning, support and consent of the victim, and offender targeting within proactive assessment and tasking pro forma and multi-agency public protection panel format.

See also Partnership working.

Witness intimidation

If there is reason to believe that witness intimidation may occur in a specific case, proactive steps should be taken to protect the witness(es). This may include:

- home and mobile alarms
- mobile 999 telephone
- surveyed and enhanced home security
- measures to capture evidence of intimidation
- provision of escorts
- targeting of suspects
- special measures

The witness should understand what action to take, and whom to contact 24 hours a day. These measures should be discussed at an early meeting between the police and the CPS.

Note: victims and witnesses of hate crimes are more likely to feel vulnerable or intimidated because of the type of offending against them. In addition to the legal meaning of witness intimidation, the witness's feelings towards the criminal justice process should also be taken into account. The prospect of giving evidence can be intimidating in itself. It is important that the witness is made to feel as comfortable as possible with the process. See Witness care units.

Criminal justice processes

Under The Director's Guidance on Charging, crown prosecutors are responsible for making all charging decisions for any offence recorded as a hate crime, whether admitted or not. The following information will help prosecutors to make an appropriate charging decision and support a request for enhanced sentencing:

See also Prosecution and case management.

- details of the incident, accurately reflecting potential offences
- that it has been recorded by the police as a hate crime
- who perceived this offence as a hate crime
- evidence of hostility being a motivation or being demonstrated
- any additional aggravating factors
- victim personal statements
- risks identified to victims or witnesses
- risk of community tension or civil unrest
- special measures to help victims or witnesses

Other material that will assist the prosecution includes:

- previous incidents involving the victim
- previous incidents involving the defendant
- the ability and/or willingness of the victim to give evidence
- the impact of the alleged offence on the wider community
- the likelihood of recurrence
- an assessment on the safety of the victim and their family
- information from other agencies, eg, social services or housing departments
- any other orders in existence, eg, civil injunctions, community protection orders (CPO) or criminal behaviour orders
- whether the current incident breaches any existing order or injunction

Bail proceedings

Victims of hate crime may be afraid of repercussions or intimidation when a suspect is charged. To protect victims and witnesses, the CPS may apply for a remand in custody or ask the court to attach bail conditions.

The court can only remand a suspect in custody if the CPS can show that there are substantial grounds for not granting bail. The following information should support this decision-making:

- previous convictions
- previous breaches of bail conditions.

See also Victim and witness care and support and CPS interim guidance, and CPD Director's guidance.

Alternative outcomes

Out-of-court disposals are available in hate crime cases. See the CPS interim guidance for further information. However, conditional cautions for hate crime cases can only be issued in consultation with and with the authority of a crown prosecutor.

Many forces have developed alternative resolutions to 'low-level' hate crime that divert offenders away from the courts. Pilots are taking place in some force areas to use restorative justice as a response to hate crime, eg, Derbyshire.

Hate crimes may involve complex underlying issues which mean that out-of-court disposals or informal resolutions (including those using restorative justice) may not effectively manage the longer-term criminality that only formal interventions (usually court proceedings) can achieve.

Consult the local CPS before considering any alternative resolution, which would bypass the CPS referral for a charge decision.
See also Possible justice outcomes following investigation.

At court

Attending court and giving evidence can be particularly traumatic for victims and witnesses of hate crime.

Further advice and resources about court proceedings for victims and witnesses are available on the Victim Support website. See also Victim and witness care and support.

Victim withdrawal from a prosecution

In cases where a victim or witness wishes to withdraw their support for the prosecution, a statement should be taken explaining their reasons. When submitting the withdrawal statement to the CPS, the officer should also attach a report setting out:

- the reasons given by the victim
- how the victim might react to being compelled
- future risks to the safety of the victim and their family
- the impact on the wider community

See also Risk assessment and Risk management.

9 Online hate

Online hate material presents operational challenges, including:

- establishing the jurisdiction of the crime, eg, country and force area where the offender posted the material
- the anonymous nature of most offensive material
- the unwillingness of, or legal restraint on, online industry bodies to disclose user identity
- the volume of material online, and on digital devices and determining a proportionate response to this.

Online hatred can cause significant distress and can increase community tensions. This can act as a motivator to those with a propensity to commit hate crime by such means.

Many reports of online hate are from people who are offended by material posted in response to newsworthy events or where it targets a high-profile individual.

Responding to online hate crime is included in HM Government's 2014 report, Challenge it, Report it, Stop it.

See also CPS guidelines on prosecuting cases involving communications sent via social media.

Responding to online hate crimes

The responsibilities of the police when responding to online hate are the same as those for any other type of hate crime or non-crime hate incident.

Specific offences may include offences under the Malicious Communications Act 1988 and Communications Act 2003 to prosecute examples of grossly offensive messaging. Prosecutions for these offences in respect of social media require the authority of the CPS director of legal services.

If an allegation does not include a crime, the incident should be recorded as a non-crime hate incident. The victim can be encouraged to contact their internet service providers (ISP) to ask them to remove the offensive material. Most ISPs have terms of service or acceptable use policies, which prohibit users from posting hateful or illegal material online. If they report to True Vision, it will be recorded centrally as a non-crime hate incident.

True Vision provides advice to the public about how to approach hosts where offensive material is found, but it is not illegal material. See also Responding to non-crime hate incidents.

The following may be able to provide additional sources of advice for online hate:

- hate crime unit or coordinator
- digital media investigators
- digital forensic teams
- counter-terrorism unit

Most police forces also have a SPoC to liaise with ISPs and mobile device operators. This may help to establish the source of messages sent.

International jurisdiction

Online hate crime offenders are not limited by national or international boundaries. Computers or mobile devices can be accessed remotely, regardless of the location of the person who is posting,

sending, viewing or receiving information online. Wherever the computer or user is located, there will be an electronic audit trail with significant evidential value.

Many sites carrying hate messages are hosted outside the UK where their content may be protected by law, for example, protecting free speech under the First Amendment of the United States Constitution. This means that hosts may be unwilling to pass on user information without a US court order.

Court jurisdiction – England and Wales

The Court of Appeal in R v Shepherd and Whittle [2010] EWCA Crim 65 confirmed that the criminal law of England and Wales can apply to material published online even if the server is located in another country. The test the court applied was whether a 'substantial measure' of the activities took place within the jurisdiction.

Threats to individuals outside the UK

Where reported material targets an individual or group outside the UK and does not appear to have originated from within the UK, the police should refer the report to the country with jurisdiction.

For further information on transferring cases to other jurisdictions, see International APP and the International Crime Coordination Centre (ICCC). True Vision also has additional resources for cross-jurisdictional online hate crime.

Risk management

Where a force receives a complaint of online hate crime and it fits one of the criteria below, the primary concern will be the safety of targeted individuals, groups or events.

Forces should consider whether:

- this incident is part of wider offending when considered alongside existing intelligence
- the victim should be informed about the threat as part of an 'Osman' warning
- to offer support to the intended victim
- to discuss potential risks with event organisers or operational commanders responsible for policing events
- a community impact assessment is needed

See also Risk assessment and Threats to Life (this document is available to authorised users who are logged on to the College Managed learning Environment (MLE)).

Crime recording

The Home Office 2020 Counting Rules: General Rules state that the location of the suspect(s) at the time they committed the offence will determine the crime recording location. The nature of the internet means that this location is often unknown until an investigation has been undertaken.

If the location of the suspect (ie, where the offender was when the material was posted) is unclear, the crime should be recorded in the area where the victim resides.

If at the time of reporting, the location of the suspect(s) and victim cannot be determined, the crime recording location will be:

- personal crime – where the victim is normally resident
- corporate body – the location of the relevant place of business.

Generic online hate crime management

A central (NPCC and Home Office) internet hate crime team (IHCT) has been established to provide a national response to generic online hate crime.

This team manages True Vision and can be contacted through the website. The team will assess reports made through the True Vision website and:

- assess whether it amounts to a recordable crime
- record the complaint centrally, preventing large numbers of unsolvable crimes being held by forces
- keep the victim informed about the progress of an investigation and any action taken
- make provisional enquiries with the ISP to identify the offender
- where enquiries identify the location of the offence, provide an intelligence package to the force responsible for investigation
- disseminate intelligence to relevant national and local resources as appropriate
- work with national and international stakeholders to promote problem-solving solutions, including industry self-regulation

The IHCT does not proactively search the internet for hate material, it only responds to complaints made by the public through the True Vision website.

Where a complaint is made directly to a force and includes any of the following, the force should retain responsibility for the police response.

The report:

- targets an individual person with abuse of any nature
- is sent directly to any individual, including where it is posted on an individual's own personal account, such as Facebook
- targets an identified group whose location is known (eg, Muslims who attend a specific mosque)
- targets a specific event such as an LGBT+ Pride march
- refers to any other report which requires an operational police response

Traditional hate mail

The distribution of traditional hate mail does still occur, eg, offensive letters, leaflets, posters or other material delivered by hand or via the postal system.

The impact this can have on a victim should not be underestimated, and should be dealt with sensitively. Often this material is disposed of by the recipient and not reported, where it is reported, it should be treated as a forensic exhibit.

Speak to local crime scene investigators for handling and packaging advice. Package letters and envelopes separately if already separate.

10 Hate crime and counter terrorism

Not all hate crime is linked to extremism and terrorism, but it is likely that a terrorist act will be motivated by hate. The hate may be personal, ideological or the result of manipulation by others and it is important to recognise the links, particularly in respect of intelligence handling.

Many perpetrators of terrorist activity commit less serious hate crimes prior to progressing to more serious offending. Not every hate crime offender will escalate to extremist crime, and the challenge is to identify those with the potential to do so, thereby enabling counter-terrorist colleagues to reduce the risk posed.

The following features may suggest the need for a more robust and timely policing response. This list is not definitive or exhaustive:

- crimes fuelled by extremist ideologies, eg, racial supremacy or religious extremism
- crime series which are linked and escalating in seriousness
- crimes that seek to justify or glorify genocide or other war atrocities
- repeated crimes that target the same victim group (or demographic)
- perpetrators who demonstrate support for regimes responsible for genocide or extremist behaviour
- perpetrators who host, post, share or follow extremist web content (this may be, or indicate precursor activity to more serious offending)
- perpetrators who distance themselves from family and/or friends

It is important that any suspicions or relevant intelligence are fed into counter-terrorism intelligence systems.

To ensure that forces recognise and respond to risk indicators, staff should be made aware of potential risk factors and links. In addition, counter-terrorism colleagues should have oversight of reported hate crimes and associated intelligence.

Additional resources for officers and staff are available from local Prevent teams and/or CT Policing Online (accessible from a PNN address only).

11 Inciting hatred

The Public Order Act 1986 includes specific offences of inciting hatred on the grounds of race, religion and sexual orientation.

- Incitement to hatred – race; Part III of the Public Order Act 1986
- Incitement to hatred – religion or sexual orientation; section 29B of the Public Order Act 1986

All allegations of incitement must be referred to the Central Special Crime and Counter-Terrorism Division of the CPS, and require the consent of the attorney general to proceed to court.
The nature of these offences can lead to conflict between individuals and groups about the balance between human rights and an individual's protection from hatred. A religious or any other personal belief is not a defence to these offences, but the free expression or debate of a personal view is a protected human right.

Whether a particular action comes within the behaviour covered by the offences is ultimately for the court to decide. The CPS has to judge in each case whether the evidence supports a reasonable prospect of a successful prosecution.
It is important that policing decisions take into account the ECHR and Human Rights Act 1998, and officers and staff should seek advice if they are unsure.

Demonstrating incitement

The three incitement to hatred offences are not identical, and should be considered separately.

All the offences cover threatening words, behaviour or material, and are committed where the offender intended to stir up hatred. The race offence also covers abusive or insulting words and circumstances where hatred is likely to be stirred up.

Evidence submitted to the CPS for a charging decision must demonstrate that the points to prove in each variant have been clearly demonstrated.

For further information see CPS Hate crime guidance.

12 Supervision and oversight

Three levels of supervision will support an effective police response to hate crime:

- an individual who has operational oversight of individual enquiries, whether that comes from dedicated hate crime officers or a single nominated supervisor who has oversight alongside other duties
- a commander who has overall responsibility for hate crime
- a chief officer who is responsible for the strategic direction, performance measurement and establishing strategic partnerships

Forces should adopt an appropriate model for supervising hate crime in their force. Each force has different structures, and some, particularly smaller rural forces, will find it difficult to dedicate full-time staff. However, it is important that someone has oversight.

Supervising investigations

To ensure personnel involved in hate crime investigation maintain the highest standards and are adequately skilled, supervisors should take an active interest in overseeing the investigative process. They should provide support and assistance and take steps to bridge any gaps in the investigation.

A duty inspector or supervisor should consider attending the scene to assess the incident, and potentially provide advice, assistance and leadership to investigators.

It will send a clear message to the victim, witnesses and the community that the matter is being taken seriously. Repeated or serious attacks can lead to retribution, fear or even civil unrest, and it is essential that the broader implications are considered early. See Community engagement and tension.

Supervisors and managers should ensure:

- the incident or crime is accurately recorded and flagged
- the initial investigating officer is undertaking an effective investigation, has an investigative plan and is fully supporting the victim
- an initial risk assessment has been conducted and recorded, and appropriate interventions considered and implemented where appropriate
- that intelligence is fed into the force systems
- consideration is given as to whether the incident should be identified as a critical incident and, if so, attend the scene
- that if a critical incident is identified, fully brief the area commander or on-call commander at the earliest opportunity
- that, where appropriate, a decision log is opened to safeguard accountability
- that any ongoing incident is handed over to incoming shift supervisors
- that any risk assessments and safeguarding plans for the victim are reviewed
- that a community impact assessment is completed
- the local press and/or force press officer are briefed

Supervisors should also ensure:

- there is liaison with specialist hate crime investigators, the hate crime coordinator or equality/diversity staff if available
- that any training needs of the team are identified and addressed
- that all officers are aware of force or government initiatives regarding anti-social behaviour

Debriefs

Debriefing is good practice after any incident. It provides an opportunity to receive feedback and support team members, and adds value to the investigation.

See Briefing and debriefing.

Command team oversight

In addition to clear lines of supervision, it has also proved valuable in some areas to have a nominated officer responsible at command team level. This role fits well with broader responsibilities such as community cohesion, crime management or community engagement, and allows a single person to have oversight of performance, investigative quality and community confidence issues.

Strategic oversight

Adopting a force lead at executive team level helps to set clear strategic direction, offering leadership to staff and partners alike. This role fits well with broader responsibilities such as community cohesion, equality and community engagement, and allows a single person to set the strategic direction.

See also Strategic leadership and performance management.

13 Strategic leadership

Chief constables should establish a policy that clearly indicates ownership of hate crime investigations. All hate crimes should be considered for a priority response and be appropriately screened and allocated to ensure the best outcome.

The National Policing Hate Crime Strategy outlines the recommended approach to hate crime. Senior leaders should be able to assess each level of the police response to determine the overall quality of service and make necessary improvements.

Many PCCs have made tackling hate crime a priority in their police and crime plans. Chief constables should determine their strategy according to these commitments, and measure success against them.

Chief officers can review their organisation's response to hate crime by answering the following questions:

- Is hate crime given sufficient priority?
- What is the quality of response to hate crime reports?
- Are auditing processes in place to ensure that hate crimes are accurately recorded and responded to appropriately?
- Does the organisation know the extent of under-reporting of hate crime?
- Are responses tailored to the needs of the most vulnerable victims?
- Are victims and affected communities satisfied with their local police response?
- Do performance criteria support the key objectives of the National Policing Hate Crime Strategy?
- How strong are partnerships with key stakeholders and community groups?
- Do such partnerships have adequate data and intelligence sharing capabilities?

See Performance management for a range of tools which can help managers to assess the quality of service provided.

14 Performance management

The agreement of the common definition of hate crime in 2007 enabled the police to provide national data in a consistent format. Since April 2008, NPCC has regularly published data on True Vision to show the number of crimes that have been recorded by the police in each individual force area.

Hate crime forms part of the annual data requirement for the Home Office and is published as part of the national crime statistics.

Disaggregation of data

It is important that forces are able to analyse hate crime in their local area to identify trends, levels of community tension and to prepare intelligence-led deployments. They should also be able to understand other factors from the data such as offence circumstances or the age and gender of victims and offenders. Analytical products also enable managers to make more effective deployment decisions.

Performance

The extent to which hate crime is under-reported is set out in the Home Office (2018) Hate Crime, England and Wales, 2017/18; Statistical Bulletin. It shows that based on the Crime Survey of England and Wales (CSEW), overall, 53% of hate crime came to the attention of the police. This shows there is still significant work to do in encouraging victims to come forward and recognising and reporting hate crimes.

Increasing the reporting and recording of hate crime

Performance should be monitored across all recorded hate crime categories. Analysing the data will, over time, indicate whether a rise or fall in hate crime reflects efforts to increase reporting or whether the incidence of hate crime has risen or fallen in a force area.

Race or religiously aggravated offences should not be used to measure performance as the offences account for only two of the strands of monitored hate crime.

Measuring repeat victimisation

The percentage of those who become repeat victims is the best measurement of effective support for people who suffer/are affected by hate crime. The measure will be influenced by police and partnership activities, and the advice and support given to those victims who seek police support.

Figures can be compared with previous years or quarters and against those of similar forces to help understand the effectiveness of responses.

Measuring victim satisfaction

The CSEW shows that victims of hate crime are less likely to be satisfied with the police response, both in terms of effectiveness and the fairness of the services offered. Forces should, therefore, understand local victim satisfaction levels.

Forces have set mechanisms to measure victim satisfaction, and by identifying those that are hate crimes means that satisfaction levels can be compared with the CSEW data, previous periods, victims of crime in general or similar forces.

Existing victim surveys can be supplemented by the targeted use of the following hate crime diagnostic tools.

Hate crime audits

A hate crime diagnostic tool developed with police and CPS involvement is available through True Vision. It will help forces to examine how criminal justice agencies manage hate crimes. The purpose

is to provide a qualitative evaluation of service, and identify good practice and areas of concern. The audit enables agencies to examine policies, processes and operational practice to improve the service offered to victims. It will work across all five strands of monitored hate crime.

The hate crime audit is an objective of the Home Office (2018) Hate Crime Action Plan and is one in a series of diagnostic tools to help criminal justice system partners to meet their commitments to victims of crime.

15 Hate crime in sport

Sport and sporting events can often be the context within which hate crimes and non-crime hate incidents happen. These may range from racism at football matches to inflammatory comments made by sports people.

Hate crime in sport is no less important than hate crime elsewhere. In sport it attracts media interest, and has the potential to escalate individual incidents into critical incidents.

For further information see also:

- Kick It Out
- Show Racism the Red Card
- True Vision.

When tackling hate crime in sport, the police service must:

- deliver a robust and effective response, using the appropriate legislation
- work closely with communities affected
- proactively identify and combat incidents of hate crime by using the national intelligence model and tasking and coordination process
- reduce and manage any risk of public disorder.

The response must be proportionate, taking into account the different demands and priorities force areas have in relation to hate crime in sport. These will depend on the location of venues, and the range or type of sporting events, whether they are local, national or international events, and the demographics of the local community, spectators and those taking part.

Robust and effective action

It is important to build relationships with key partners, both internally and externally. This includes:

- establishing and maintaining effective links between event commanders, football intelligence and/or liaison officers, technical support and public order specialists
- building partnership links with official bodies such as football associations, England and Wales Cricket Board and rugby football unions
- building partnerships with local sports clubs, both amateur and professional, and area associations
- developing close working relationships with event stewards.

Stewards must be fully integrated into any police operation, not only from a public order perspective but also from a hate crime perspective.

Effective use of intelligence can help to identify known offenders and target resources to potential trouble spots. Although race has traditionally had the highest profile in relation to hate crime in sport, consideration should also be given to widening campaigns to address the impact on other protected groups.

Practice example

The Metropolitan Police Service has worked with Arsenal Football Club to respond to racism in and around the club's ground. This has included a training package for stewards on hate crime.

The club has also developed a text line, which is advertised in match programmes. It allows supporters to report the seat number of fans using racist or other hate language. The club can seat staff near to the person to make an independent assessment prior to any action being taken.

Where hate crimes do occur during a sporting event, it is important to use sanctions effectively. Early liaison with the CPS will ensure that the most appropriate sanction is used, eg, community protection notice (CPN) or criminal behaviour order (CBO) as punishment for antisocial behaviour, civil injunctions, banning orders or specific hate crime offences under the Public Order Act 1986 or the Football (Offences) Act 1991.

Combating hate crime should be included as a standing item for event briefings where such problems exist.

Building community confidence

To increase reporting of hate crime in sport, victims need to have confidence that the police and authorities will take complaints seriously.

A response that meets the specific needs of victims will help to increase public confidence and improve community engagement.

Intelligence-led policing operations

In addition to the standard considerations when planning the policing operation for a sporting event, the potential for hate crime should be considered specifically:

- conduct strategic and tactical assessments
- develop a control strategy to meet local demands and issues
- develop intelligence products to reinforce the control strategy, such as subject profiles, problem profiles and case analysis
- identify grounds and venues where hate crime occurs
- identify areas in the vicinity of grounds and venues where hate crime occurs
- use covert and overt methods to gather intelligence and target offenders
- gather open-source intelligence
- recognise different levels of hate crime in sport, eg, local, cross border, national or international

Football intelligence officers

The appointment and development of football intelligence officers (FIOs) has been central to the effective policing of hate crime in football. They perform a coordination role in intelligence-led operations, working with club officials, stewards and match commanders.

The FIO's role is to:

- brief and advise the match commander in line with the tactical assessment before, during and after the event
- ensure that appropriate incident flags are placed on incident logs and all crime reports to ensure trends can be monitored
- ensure all reported hate crime is included in the post-event report
- liaise with the CPS prior to, or at first hearing of, an application for a Football Banning Order in the event of any arrest or summons
- establish from the host football club whether stewards or club officials have received any reports of hate crime or incidents

The results of these enquires should be recorded in the post-event report following a designated match.

Match commanders

Overall responsibility for managing the policing response during a sporting event rests with the match commander. They must:

- ensure that officers engaged in policing football events are fully briefed and understand the positive action policy, which must be part of any operation order
- ensure that incidents of hate crime at designated football matches are recorded by the officer receiving a complaint or witnessing an incident, irrespective of whether suspects are identified or not
- ensure that allegations of hate crime at football events have a focused response, either by appointing a dedicated investigation team or ensuring the enquiry is appropriately supervised and quality assured
- consider the proactive use of evidence-gathering teams or other tactics to identify those responsible for any racist chanting and ensure that effective action is taken, whether it is during the match or as part of a retrospective enquiry

16 Internal hate crimes and incidents

Hate crimes and non-crime hate incidents can happen in police organisations as staff carry out their duties. The police service has additional responsibilities to protect staff under employment law and the Equality Act 2010.

Police officers and staff may be targeted in different ways, and strategies should be put in place to ensure that victims are all treated appropriately according to their diverse needs. This includes where they are victimised by members of the public.

Policy and practice

Forces must have internal policies and procedures to address internal hate crimes and non-crime hate incidents. These must be transparent and responsive to unacceptable behaviour.

HMIC (2003) Thematic Inspection Report: Diversity Matters was clear that the standard of service afforded to victims of hate crimes and non-crime hate incidents among the general public is not always applied to victims of similar crimes and incidents within forces. There is a duty of care even when the victim is a colleague.

Leadership and partnership building

Clear leadership from chief constables and their senior teams will ensure a consistent standard of internal investigation.

This should include arrangements for monitoring, evaluation and performance measurement.

Partnerships

Partnership working is as important for internal hate crimes and incidents, as when dealing with incidents in the community, although the stakeholders may be different. Internal stakeholders will be statutory staff associations and local staff support networks.

Successful partnerships will help to increase communication and incident reporting. They can also provide secure third-party reporting facilities. Effective partnerships also have the ability to identify less serious non-crime hate incidents, giving an early warning of potential problems and allowing forces to intervene to prevent escalation to more serious issues.

Forces should also include external stakeholders, for example, external third-party reporting centres, independent professional advocates or existing independent advisory groups.

See also Partnership working.

Encouraging reporting

Forces must be able to assess the number of internal incidents that are reported, and also the extent of hostility faced by colleagues, whether from within or outside the organisation.

Staff perception surveys that use anonymised personal information and ask relevant questions about experiences of hostility, bullying and harassment can identify not only the extent of abuse in a force, but also how much goes unreported.

With this information a force can consider, with its stakeholders, the best ways to encourage reporting. Approaches might include confidential telephone lines or reporting through internal or external third parties.

Recording internal hate crime and non-crime incidents

When responding to internal hate crime or non-crime hate incidents recording is a challenge.

Internally, forces may apply different criteria for recording complaints against policing colleagues, particularly when they should be notified to the Independent Office for Police Conduct. Some incidents may be reported and recorded under processes such as human resources grievance procedures.

Forces should standardised reporting and recording of internal hate crimes and non-crime hate incidents, to facilitate local analysis of the nature and extent of incidents locally. Where a crime has been committed, it is recorded appropriately.

Performance data should be transparent and discussed with relevant stakeholders, protecting the confidentiality of staff. This is particularly important in smaller organisations with lower representation from visible minority or affected groups.

Legal duty to protect staff from harassment

Section 40 of the Equality Act 2010 states that an employer may be liable if an employee suffers harassment from their employer during recruitment or employment.

Section 26(1) of the Equality Act 2010 defines harassment as any unwanted conduct that violates an employee's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

The unwanted conduct must relate to a relevant protected characteristic. Sections 26(2) and 26(3) of the Act respectively deal with unwanted conduct of a sexual nature, and less favourable treatment because of a person's reaction to harassment.

The Protection from Harassment Act 1997 and the Public Order Act 1986 provide further legal protections from other forms of harassment.

Support for colleagues

Forces should consider what support is appropriate for colleagues who may be a victim of hate crime, or a non-crime hate incident, or exposed to the risk of hostility due to a deployment or other management decision. Responses could include:

- the support of staff associations and local staff support networks
- internal advocacy and counselling services
- mentoring support from experienced individuals
- access to external professionals
- training for managers to help them make effective decisions

Types of internal hate crime

There are a number of ways in which a police officer or member of police staff may be the victim of a hate crime or non-crime hate incident. These include:

- a crime or incident committed by a colleague or member of the public

- conflicts caused by expressions of personal belief
- the refusal by a member of the public to accept an allocated officer

Committed by colleagues

Reporting a crime or complaint against a colleague is difficult, even more so where it is motivated by hostility. While the victim's view should be considered, it is not for the victim to decide if any action should be taken, or what that action should be.

The broader considerations of victim support and investigation should be applied. In addition to traditional victims' services, forces may also want to consider external professional support to help victims manage the impact of the incident.

Management considerations

Managers must make decisions after:

- understanding the employer's legislative duties and policy commitments
- consultation with the individuals affected
- taking advice from legal and other experts

Decisions must be fully documented and record the:

- decision-making process
- views of those affected
- consultation and advice received
- competing legal requirements
- assessed level of risk
- options considered
- rationale for decisions

Risk assessment is key to victim support, and should include prevention of further hostility from the person complained of, or other colleagues. Options such as location moves or changes to the team structure should be considered as there may be a potential for secondary victimisation.

Committed by members of the public

A member of the public may target police officers or staff, eg, while they are on patrol or attending an incident.

These incidents should be treated in the same way as any other allegation of a hate crime or non-crime hate incident. The victim should receive the same standard of care as any other victim of a crime.

Deployment decisions

Some police deployments will create a greater risk to some officers or staff because of their protected characteristics or perceived protected characteristics.

When making deployment decisions there are competing legal and ethical duties to consider. The right choice may involve making a difficult decision not to deploy an officer to certain activities to protect that officer from potential abuse. However, excluding someone from a deployment or posting based on a protected characteristic may be against the individual's wishes and may also breach the Equality Act 2010, specifically the duty not to discriminate on the basis of protected characteristics.

Clear decision-making supported by management considerations and the national decision model will help managers to balance this conflict. The degree of consideration will vary depending on the immediacy of the decision required.

Deploying the closest officer to a priority call for service will require an immediate decision, but senior officers should still expect to evidence their rationale for making such deployment decisions.

Expressions of personal belief

Conflict can arise because of differing views on issues such as religious belief or sexual orientation.

Individuals have the right to express their views; they also have the right to be protected from harassment or hostility. If the manner in which a view is expressed meets the threshold for harassment (eg, it creates a hostile or degrading environment for others), management intervention will be required.

ACPO (2007) Guiding Principles for the Police Service in relation to the articulation and expression of religious beliefs and their manifestations in the workplace may help managers to reduce tensions.

Open and collaborative relationships between local staff support networks can also help to prevent these debates from escalating into something more serious.

Refusal by a member of the public to accept an allocated officer

There will be occasions where a victim of crime refuses to interact with a police officer or member of police staff because of prejudice against a personal characteristic of the officer or staff. This presents a potential source of abuse for the individual concerned and a difficult situation for managers, who will need to balance the duty to serve the public, with legal duties to protect colleagues from abuse.

Where intervention is required

Example 1
A white man enters a police station to report the theft of a mobile phone. A black member of police staff is allocated to record the theft and obtain a statement. The man refuses to speak to the staff member, demanding that someone else is made available.
Example 2
A child has been assaulted by a known sex offender. The offender is at large and considered to pose a high risk of re-offending. The child attends a video-interview facility with his mother, who is acting as an appropriate adult for her child. An investigator is allocated to carry out the interview. When the investigator (whom the mother perceives to be gay) introduces themselves, the mother refuses to allow the interview to take place.

It is important to understand why the services of the allocated officer or staff member have been refused. It may be nothing to do with personal characteristics.

If the refusal is based on discriminatory views, both situations described above must be managed effectively and sensitively. To simply comply with the demands of the complainant would be ethically wrong and the force could be challenged under the Equality Act 2010.

A sensitive management intervention is required, taking into account the views of the discriminated colleague.

In **Example 1**, the police have a duty to investigate the crime, but also to protect staff. Taking into account management considerations and having determined that the man's motives were racist, a supervisor should inform him that he has no right to demand a white colleague, further explaining why such a request is unacceptable with a clear statement explaining why the police could not accede to his demands.

If the man accepts the supervisor's view and agrees to the original officer progressing the incident, the officer's view on what should happen next is paramount. If they feel that they would suffer further distress by spending time in the company of the man they know to be a racist, they can choose not to do so. They may, however, want to continue the task, but with another colleague present to support them.

In **Example 2,** there is a duty to protect the child and investigate a serious crime, as well as to protect staff. To obtain the child's best evidence a video interview is required. Taking into account management considerations the supervisor should speak to the mother privately to find out why she objects to the allocated investigator and, where appropriate, explain why her discriminatory views are unacceptable.

If no agreement can be reached with the mother, it may be necessary to accede to the discriminatory demand if there is a significant risk of harm to the public or to the colleague, or if to continue would seriously undermine the investigation into a serious crime.

Although this decision may be discriminatory to the investigator, it may also be considered necessary and ethically defensible if all other solutions have been exhausted.

All decisions must consider the views of the discriminated colleague. The response to any breach of rights, for example human rights, must be defensible, proportionate and necessary.

The Equality Act 2010 does not provide a justifiable exemption to the direct discrimination legislation, except in very specifically defined circumstances. See the Equality Act 2010, section 13 explanatory notes.

If such a decision has to be made, it is essential to support the affected colleague and consider the adverse impact on other colleagues and the community.

In both of the examples, where a colleague perceives that a person's actions are motivated by hostility, the incident should be recorded as non-crime hate incident – unless the circumstances include a recordable crime.

Investigation of internal hate crimes

Forces should ensure that internal allegations of hate crime or non-crime hate incident are investigated by appropriately trained staff. Some forces may wish to consider an agreement to share resources with a neighbouring force or specialist hate crime investigators from a larger force.

The overriding consideration is that investigations into allegations of internal hate crime should be treated with the same level of professional expertise as that given to external hate crime, with the extra considerations of the ethical and legal duty to protect colleagues from abuse.

See also Commission for Racial Equality (2005) The Police Service in England and Wales: Final report of a formal investigation.

Reference material

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Further Information

Counting rules for recorded crime

CT Policing Online (accessible from a PNN address only)

Data.Police.UK

Disclosure and Barring Service

International Crime Coordination Centre (ICCC)

Kick It Out

Punishments for antisocial behaviour

Sentencing Council

Show Racism the Red Card

Stop Hate UK

True Vision

Victim Support

Neutral Citation Number: [2020] EWHC 225 (Admin)

Case No: CO/2507/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2020

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

THE QUEEN ON THE APPLICATION OF HARRY MILLER	**Claimant**
- and -	
(1) THE COLLEGE OF POLICING **(2) THE CHIEF CONSTABLE OF HUMBERSIDE**	**Defendants**

- -
- -

Ian Wise QC (instructed by **Sinclairslaw**) for the **Claimant**
Jonathan Auburn (instructed by **GLD**) for the **First Defendant**
Alex Ustych (instructed by the **Force Solicitor)** for the **Second Defendant**

Hearing dates: **20 and 21 November 2019**

- -

Approved Judgment

The Honourable Mr Justice Julian Knowles:

Introduction

1. In his unpublished introduction to *Animal Farm* (1945) George Orwell wrote:

> "If liberty means anything at all, it means the right to tell people what they do not want to hear."

2. In *R v Central Independent Television plc* [1994] Fam 192, 202-203, Hoffmann LJ said that:

> "… a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published. It means the right to say things which 'right-thinking people' regard as dangerous or irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute."

3. Also much quoted are the words of Sedley LJ in *Redmond-Bate v Director of Public Prosecutions* (1999) 7 BHRC 375, [20]:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative … Freedom only to speak inoffensively is not worth having ... "

4. In *R v Shayler* [2003] 1 AC 247, [21], Lord Bingham emphasised the connection between freedom of expression and democracy. He observed that 'the fundamental right of free expression has been recognised at common law for very many years' and explained:

> "The reasons why the right to free expression is regarded as fundamental are familiar, but merit brief restatement in the present context. Modern democratic government means government of the people by the people for the people. But there can be no government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be, a participatory process. But there can be no assurance that government is carried out for the people unless the facts are made known, the issues publicly ventilated …".

5. Article 10 of the European Convention on Human Rights (the Convention) also protects freedom of expression. It provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. 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."

6. In *Handyside v United Kingdom* (1979-80) 1 EHRR 737 the European Court of Human Rights (the Court) considered an Article 10 challenge by Mr Handyside following his conviction for obscenity. The Court said at [49]:

> "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued."

7. I turn to the case before me. It concerns freedom of speech. It involves the lawfulness of the First Defendant's operational guidance on non-criminal hate speech and, specifically, how Humberside Police dealt with a complaint by a woman called Mrs B about things the Claimant had written on Twitter about transgender issues that offended her.

8. I suspect that American constitutional scholars would find this case surprising. There, the speech at issue would not have raised a flicker with the authorities. In his State of the Union address in 1941 President Roosevelt proposed four fundamental freedoms that people 'everywhere in the world' ought to enjoy, the first of which was freedom of speech. In the United States that freedom is protected by the First Amendment. It is a

bedrock constitutional principle that speech may not be legally restricted on the grounds that it expresses ideas that offend. The strength of that protection is illustrated by *Virginia v Black* 538 US 343 (2003), where the US Supreme Court held that a law which criminalized public cross-burning was unconstitutional as a violation of free speech – despite the offensive nature of that symbol which, the Court said, was 'inextricably intertwined with the history of the Ku Klux Klan'. Another example is *Snyder v Phelps* 562 US 443 (2011), where the Court upheld the right of members of an evangelical church to picket soldiers' funerals carrying signs celebrating their deaths and other messages which most people thought were grossly offensive.

9. The freedom of speech afforded by the common law and Article 10 does not go so far as the First Amendment. But it is worth keeping that constitutional provision in mind because it underscores the vital importance of freedom of speech to a thriving democracy – a principle which James Madison recognised as long ago as 1789 when he drafted the First Amendment, and which Lord Bingham reaffirmed in *Shayler*, supra.

10. Moving to the twenty-first century, I probably do not need to explain that Twitter is a popular microblogging and social networking service. In *Chambers v Director of Public Prosecutions* [2013] 1 WLR 1833, [7] – [10], Lord Judge CJ gave the following helpful description of how Twitter works:

> "7. … Twitter was not invented until 2006 … but, as is the way with modern means of communication, its daily use by millions of people throughout the world has rocketed.
> 8. Each registered user adopts a unique user name or 'Twitter handle' …
>
> 9. In very brief terms Twitter enables its users to post messages (of no more than 140 characters) on the Twitter internet and other sites. Such messages are called tweets. Tweets include expressions of opinion, assertions of fact, gossip, jokes (bad ones as well as good ones), descriptions of what the user is or has been doing, or where he has been, or intends to go. Effectively it may communicate any information at all that the user wishes to send, and for some users, at any rate, it represents no more and no less than conversation without speech.
>
> 10. Those who use Twitter can be 'followed' by other users and Twitter users often enter into conversations or dialogues with other Twitter users. Depending on how a user posts his tweets, they can become available for others to read. A public time line of a user shows the most recent tweets. Unless they are addressed as a direct message to another Twitter user or users, in which case the message will only be seen by the user posting the tweet, and the specific user or users to whom it is addressed, the followers of a Twitter user are able to access his or her messages. Accordingly most tweets remain visible to the user and his/her followers for a short while, until they are replaced by more recently posted tweets. As every Twitter

> user appreciates or should appreciate, it is possible for non-followers to access these public time lines and they, too, can then read the messages. It is also possible for non-users to use the Twitter search facility to find tweets of possible interest to them."

11. In that case the Divisional Court held that tweets are messages sent over a public electronic telecommunications network for the purposes of the Communications Act 2003. Section 127(1)(a) of that Act makes it an offence to send via such a network 'a message or other matter that is grossly offensive or of an indecent, obscene or menacing character'. At [28] the Lord Chief Justice said:

> "The 2003 Act did not create some newly minted interference with the first of President Roosevelt's essential freedoms – freedom of speech and expression. Satirical, or iconoclastic, or rude comment, the expression of unpopular or unfashionable opinion about serious or trivial matters, banter or humour, even if distasteful to some or painful to those subjected to it should and no doubt will continue at their customary level, quite undiminished by this legislation. Given the submissions by Mr Cooper, we should perhaps add that for those who have the inclination to use Twitter for the purpose, Shakespeare can be quoted unbowdlerised, and with Edgar, at the end of King Lear, they are free to speak not what they ought to say, but what they feel."

12. I understand that the Shakespeare quote which the Lord Chief Justice had in mind was, 'The first thing we do, let's kill all the lawyers' (*Henry VI, Part 2,* Act IV, scene 2). The King Lear quote is from Act V, scene 3, where Edgar, son of Gloucester, says that we should, 'Speak what we feel, not what we ought to say'.

13. As I have said, the Claimant's tweets related to transgender issues. This is a topic of current controversy. The Government's 2018 consultation on reforms to the Gender Recognition Act 2004 (the GRA 2004) (*Reform of the Gender Recognition Act – Government Consultation*, July 2018) proposed replacing the current requirements for obtaining a Gender Recognition Certificate with an approach that places a greater emphasis on the self-identification by a person of their gender. The Minister said this in her introduction to the consultation document:

> "Trans people continue to face significant barriers to full participation in public life. Reported hate crime is rising. Reported self-harm and suicide rates, particularly amongst young trans people, are extremely concerning. Trans people continue to face discrimination and stigma, in employment and in the provision of public services.
>
> One public service that we know trans people are concerned about is the legal process for changing gender as set out in the Gender Recognition Act 2004. This Act allows an individual to get their gender legally recognised, giving them access to

> the legal rights of the gender they identify with and a new birth certificate issued in that gender. Many of the trans respondents to our LGBT survey said they found the current system intrusive, costly, humiliating and administratively burdensome. Whilst many trans people want legal recognition, too few are able to get it. In too many cases the current system prevents them from acquiring legal recognition of who they are, denying them the dignity and respect that comes with it. It often leaves trans people in the difficult situation of living in one gender, and holding Government issued forms of identification, credit cards, driving licence and all other documents in that gender, but a birth certificate and legal status in another.
>
> This consultation seeks views on how the Government might make it easier for trans people to achieve legal recognition. The way this has been achieved in some other countries around the world is to remove the requirement for a medical diagnosis and to streamline other parts of the process. This is one option that the Government wishes to ask for views on but no firm decisions on our eventual approach have been taken. The legal recognition process is separate from the pathway that trans people follow to obtain medical treatment that they may wish to have, such as hormones or surgery. The questions about any removal of a requirement for a medical diagnosis in the context of this consultation is only with regard to the legal recognition process.
>
> We also want to be clear that this is an explorative consultation and we do not have all the answers. That is why, as we consult, we are mindful of the need to engage with all perspectives. We particularly want to hear from women's groups who we know have expressed some concerns about the implications of our proposals."

14. On one side of the debate there are those who are concerned that such an approach will carry risks for women because, for instance, it might make it easier for trans women (ie, those born biologically male but who identify as female) to use single-sex spaces such as women's prisons, women's changing rooms and women's refuges. On the other side, there are those who consider it of paramount importance for trans individuals to be able more easily to obtain formal legal recognition of the gender with which they identify.

15. Broadly speaking, the Claimant holds the first of these viewpoints. He posted a number of tweets which Mrs B reported to the police as 'transphobic'. Under the policy issued by the First Defendant, the Hate Crime Operational Guidance (HCOG), the messages were recorded by Humberside Police as a 'non-crime hate incident'. An officer went to the Claimant's place of work to speak to him about them. The Claimant was not present. He and the officer subsequently spoke on the phone. The details of what was said are disputed, and I will return to them later, however the Claimant subsequently complained

about his treatment by the police. He claims that the police's actions interfered with his right under Article 10(1) to express himself on transgender issues.

16. This application for judicial review challenges: (a) the legality of HCOG; and (b) how the police dealt with the Claimant under that policy. The Claimant's case is that HCOG is unlawful on its face as being in violation of the common law and/or Article 10 of the Convention. Further or alternatively, he argues his treatment by the police violated his Article 10(1) rights. In other words, he says that even if the policy is lawful, his treatment by the police was unlawful.

17. I should make two things clear at the outset. Firstly, I am not concerned with the merits of the transgender debate. The issues are obviously complex. As I observed during the hearing, the legal status and rights of transgender people are a matter for Parliament and not the courts. Second, the nature of the debate is such that even the use of words such as 'men' and 'women' is difficult. Where those words, or related words, are used in this judgment, I am referring to individuals whose biological sex is as determined by their chromosomes, irrespective of the gender with which they identify. This use of language is not intended in any way to diminish the views and experience of those who identify as female notwithstanding that their biological sex is male (and *vice versa*), or to call their rights into question.

The factual background

The Claimant

18. The Claimant is a shareholder in a plant and machinery company in Lincolnshire. He happens to be a former police officer. He holds a number of degrees and formerly taught in higher education. He is intelligent and highly educated.

19. In his first witness statement the Claimant says that over the years he has worked alongside many members of the lesbian, gay, bisexual and transgender (LGBT) community, and that prior to this case he had never been the subject of any complaints about transphobia. In [12], [17] and [18] he writes:

> "12. On Twitter, my account name (or handle) is @HarrytheOwl. For the past two years, I have tweeted extensively about proposed reforms to the Gender Recognition Act 2004 (GRA); the ontology of sex and gender; the potentially dangerous consequences of self-identification to existing sex based rights; the distortion of commonly understood biological concepts, such as male and female, via the introduction of enforced language, including pronouns; the apparent politicisation of the police in their open campaigning to support the proposed change of law to a policy of self-identification; the weaponization of the police by pressure groups in favour of the proposed changes to the law to the detriment of contrary voices.
>
> …

> 17. I believe that trans women are men who have chosen to identify as women. I believe such persons have the right to present and perform in any way they choose, provided that such choices do not infringe upon the rights of women. I do not believe that presentation and performance equate to literally changing sex; I believe that conflating sex (a biological classification) with self-identified gender (a social construct) poses a risk to women's sex-based rights; I believe such concerns warrant vigorous discussion which is why I actively engage in the debate. The position I take is accurately described as gender critical.
>
> 18. In this context (political reform) I want to raise awareness by stating that which used to be instinctively obvious – a biological man is a man and a biological woman is a woman. To claim otherwise is extraordinary. Extraordinary claims require both extraordinary evidence and extraordinary scrutiny prior to becoming law."

20. The Claimant goes on to say that he does not have, and has never had, 'any hatred towards members of the LGBT community in general, nor the transgender community in particular'. Nor, he says, does he have any interest in challenging the protection currently afforded to transgender individuals under either the GRA 2004 or the Equality Act 2010. He asserts that when tweeting, he typically uses 'sarcasm, satire and simple questioning' to challenge the beliefs that underpin the proposed reforms to the GRA 2004.

21. According to her witness statement, the Claimant's wife has similar views and concerns.

22. I grant permission to all parties to rely on the additional evidence that has been filed.

The Tweets

23. I turn to the Claimant's tweets which give rise to this case. There were 31 tweets in total. They were posted between November 2018 and January 2019. I will not recite them all, but will set out a selection which I think fairly expresses their overall tone and impact. Some of them contained profanity and/or abuse. Mr Wise QC for the Claimant preferred to describe them as 'provocative'. The meaning of some of them is not immediately clear, and so the Claimant has helpfully provided an explanatory note. Apart from Mrs B and another unnamed person, there is no direct evidence that anyone ever read them. I assume some of his Twitter followers would have done, but there is no evidence what they thought of them.

24. I begin on 16 November 2018 when the Claimant tweeted:

> "Just had son on from Oxford. The anti-Jenni Murray crowd were out baying, screaming and spitting at students who went to see Steve Bannon, and barricaded their way, not just to the meeting, but when they attempted to retreat to their rooms. Twats."

25. In his note the Claimant explains what this tweet meant:

> "This is an account, as relayed by my son, of what he witnessed at Oxford University. Dame Jenni Murray is Radio Four presenter of Woman's Hour. She wrote an article in March 2017 in the Sunday Times which headlined "Be trans be proud – but don't call yourself a 'real woman'". She was due to speak at Oxford University in November 2018 at an event called Powerful British women in History and Society, but cancelled after the Students' Union LGBTQ campaign objected to her Sunday Times comments which they said contributed to the 'harassment, marginalisation, discrimination and violence' faced by trans-people. The LGBTQ campaign had called on the History Society to either publicly condemn her views or cancel the event."

26. On 17 November 2018 he wrote in response to a tweet from someone called Dr Adrian Harrop which said, 'No idea what you're talking about':

> "Gloating bastard Harrop doing what he does best"

27. The Claimant explains this as follows:

> "This tweet identifies Trans Rights Activist, Dr Adrian Harrop, who appears to be taking delight at the permanent ban from Twitter by the Canadian feminist, Meghan Murphy. Harrop hints at being partially responsible for the ban.
>
> Meghan Murphy founded the feminist blog and podcast 'Feminist Comment' in 2012, which won the best feminist blog awards in the Canadian blog awards of the same year. Her work has appeared in numerous publications including the New Statesman, Al Jazeera and the National Post in Canada. She is gender critical.
>
> Harrop is currently the subject of a full GMC enquiry in relation to both online and off-line behaviour towards at least two women and towards me and my family."

28. On 20 November 2018 the Claimant tweeted:

> "Is Trans Day of Remembrance a thing, then ? Like, an actual one ?"

29. The Claimant explains that this was a comment on a tweet by the TUC about something called the Transgender Day of Remembrance which involves remembering those murdered because of transphobia. He says that this was a genuine question because he had not heard of the event.

30. On 25 November 2018 the journalist Andrew Gilligan tweeted that Brighton had a group for 'trans or gender-questioning 5 to 11-year-olds'. The same day the Claimant commented on this as follows:

> "'Give me the child and I'll give you the man.' The reason there's no critical assessment is this: They're building an army."

31. The Claimant explains that Andrew Gilligan had exposed 'the rapid rise of primary school children identifying as 'trans'' and was speculating as to the possible causes of this. The Claimant says that the lack of critical assessment had been recently documented by endocrinologists, psychologists, and 'senior whistle blowers' at the Tavistock Centre. He says that the quote was from St Ignatius Loyola (founder of the Jesuits) and he was speculating as to the possible reasons for a lack of critical assessment. He says, 'this is satire, but satire with a purpose', because he had been alarmed by the transitioning of children for a long time.

32. On 26 November 2018 the Claimant posted a picture of a male athlete called Bruce Jenner who won the men's decathlon at the 1976 Olympics and wrote:

> "Dear @Twitter Given your rules on dead naming, could you please clarify who won gold at the 1976 Olympic men's decathlon, please ?"

33. The Claimant explains that 'dead naming' means using someone's name and identity prior to their gender transition. Twitter regards doing it as being a breach of its terms and conditions. The Claimant says that Bruce Jenner is now Caitlyn Jenner and that she 'not only claims to be a woman but to have always been a woman'. The Claimant says his question confronts the reconciliation of these apparently contradictory facts: 'If Jenner was always a woman, why was she competing in a men's event ?'

34. On 30 November 2018 he wrote:

> "Ah yes; the troubled 40s when my rainbow wearing non binary 1920's gran was made to choose between having a lady vagina or a lady penis. It really was Sophie's Choice."

35. The Claimant explains this was a comment on someone else's tweet which claimed that trans identified persons have suffered more than any generation in history, 'a claim which I find unfounded and a biased reporting of history.'

36. On 11 December 2018 the Claimant tweeted:

> "If we asked Holly and Jessica who murdered them, I imagine they wouldn't say 'A woman called Nicola'. #IanHuntleyIsAMan"

37. The Claimant explains that this was a comment on a report that Ian Huntley, the Soham murderer, was identifying as a woman called Nicola and that activists were supporting his right to do so. He says that 'this is not hate speech towards a community'. He said

he was expressing concern by sarcasm that the horrific murder of Holly and Jessica was somehow being overshadowed by support for the murderer's transgenderism.

38. On 16 December 2018 the Claimant commented on the following tweet:

> "It's awful reading threads from parents who don't accept their kids are trans & are actively suppressing them. I just read one and I feel sick.
>
> What they're doing is inhumane, unscientific, and extremely dangerous. As the parent of a happy trans teen, it breaks my heart."

39. To that, the Claimant replied:

> "Had to read this crap pile twice to be sure it wasn't a parody account."

40. On 22nd December 2018 above a tweet about transgender participants in female sports, the Claimant commented 'proving once more that Sheffield women know the difference between lads n' lasses'.

41. The Claimant says that he cannot now recall the context of this tweet as the original tweet has been deleted.

42. The Claimant posted the following on 1 January 2019:

> "I was assigned Mammal at Birth, but my orientation is Fish. Don't mis species me. fuckers."

43. The Claimant describes this as 'existential humour', and says the point he was making was that if a biological male can become a biological female, 'then what boundary exists to separate fish from mammals ?'

44. On 3 January 2019 the Claimant posted:

> "You know the worst thing about cancer ? It's transphobic."

45. He explains this was a sarcastic tweet in response to a news report on medical evidence that a certain type of brain tumour is different in men than women. He says his comment was intended to demonstrate 'the obvious primacy of biology over gender.'

46. Also on 3 January, the Claimant posted a comment (above a picture of a transgender woman): 'Grow a beard, Hon … s'all the rage with the transwomen, appaz.'

47. The Claimant explains that the tweet he was responding to has been deleted, but he thinks this tweet was in response to a tweet from a trans activist who was arguing the NHS should provide more surgery for trans people.

48. On 6 January 2019 the Claimant tweeted to ask 'how do we categorise crime committed by 'women with penises'. Do they go in the M or the F column?'

49. He explains, 'This is a simple question exposing the absurdity of the assertion that women have penises'

50. On 11 January 2019 he wrote:

> "Transwomen are women. Anyone know where this new biological classification was first proposed and adopted ?"

51. He explains this was an enquiry as to the historical origins of the statement 'Transwomen are women'.

52. Later that day he posted this:

> "Seriously, do we know when this bollocks first appeared ?"

53. He explains that this tweet:

> "… makes an enquiry regarding the historical origin of the phrase 'transwomen are women'. Inclusion of the word 'bollocks' indicates my opinion of that statement. My opinion is not based on unconsidered prejudice; indeed I have offered a cash reward to anyone who can justify the statement without reference to tautology, gendered essence, reliance of sexist stereotypes, or by citing generally accepted science. My understanding is that gender is a social construct, that sex is a biological classification, that conflation between sex and gender is dangerously wrong."

54. On 13 January 2019 the Claimant tweeted:

> "Any idea why men aren't being more vocally GC ? I know there's a few of us, but I'd expect way more.
>
> And, could I ask @Glinner why you think there are not more GC voices on the box ? You'd think it would be ripe for satire."

55. The Claimant explains:

> "In this tweet I ask a question. Why are men not being more gender critical ? I direct a question to the writer Graham Linehan (@Glinner) who writes TV situation comedy. I suggest that the subject is ripe for satire."

56. As I shall explain in a moment, the post which most concerned the police was this verse, which Mr Miller said was written by a feminist song-writer. He re-tweeted it on 22 November 2018:

> "Your breasts are made of silicone/ your vagina goes nowhere/ And we can tell the difference/ Even when you are not there/ Your hormones are synthetic/And let's just cross this bridge/What you have, you stupid man/Is male privilege"

57. The Claimant says that he found this amusing and re-tweeted it and that 'it reveals the sentiment that many feminists feel – that male privilege is now encroaching on womanhood.'

Mrs B's complaint to the police

58. In early January 2019 the Claimant's tweets came to the attention of Mrs B. She has made a witness statement. Without objection from the parties I made an order anonymising her identity under CPR r 39.2. She lives somewhere in the north-west of England, some distance from the Claimant. They do not know each other. She describes herself as a 'post-operative transgender lady'.

59. In her statement Mrs B says that she did not see the Claimant's tweets herself but had them drawn to her attention by a friend. From this I conclude that Mrs B made a voluntary choice to read the tweets. They were not directed at her. Indeed, the conclusion which I draw from the evidence is that they were not directed at anyone in particular but were simply posted on Twitter to be read by the Claimant's Twitter followers or anyone else who might come across them, if they could be bothered to read them. They were certainly not specifically targeted at the transgender community. There is no evidence what Mrs B's friend thought of them. Mrs B does not say that anyone else read them. There is certainly no evidence that before Mrs B became involved anyone found the tweets offensive or indecent or in any way remarkable. They were merely moments lost in the Twittersphere (as I believe it is known).

60. However, Mrs B was offended by them. She writes in her statement that:

> "I was so alarmed and appalled by his brazen transphobic comments that I felt it necessary to pass it (*sic*) on to Humberside Police as he is the chairman of a company based in that force's area."

61. She goes on to describe the Claimant as a 'bigot' who 'eighty years ago … would have been making the same comments about Jewish people'. It is not clear what comments she is specifically referring to, but I understand she regards the Claimant as someone who eighty years ago would, by his writings, have contributed to the socio-political conditions in Germany which paved the way for the Holocaust and the murder of millions of Jews. She also says that over different decades he would have made offensive comments about gay people and black and Asian people.

62. She continues:

> "I doubt very much that Mr Miller has met any transgender people. Never even come across them. Never even interviewed them for a position with his firm. Never employed

> them. Never even sat down for a cup of tea with them. So, what makes him an expert suddenly in transgender issues ? In his interview with *The Spectator*, he claims he is 'concerned' with the introduction of self-ID. Self-ID has nothing to do with him. Doesn't affect him at all. I doubt he has even read the proposals behind it. In his interview with the *The Telegraph*, there is a desire to protect the female members of his family. Laudable, of course. But protect them from WHAT ? Does he, in his feverish imagination, honestly believe that transgender people are a threat ? Seriously ? He claims to be a 'feminist'. I'd like to ask him how many females he actually employs at his firm, outside of his secretary. He is NO feminist."

63. It therefore appears that Mrs B was just as exercised about what the Claimant had said in these interviews as she was about his tweets. The Claimant gave the interviews after his case received publicity in the media.

64. She goes on (emphasis in original):

> "He and his followers on Twitter honestly believe he has not done anything wrong. They say a crime has not been committed. (Clue: 'Hate CRIME'. Now maybe that might need to be reworded but it is clear he has still committed an offence).
>
> …
>
> All the transgender community want is to be LEFT IN PEACE. Transgender people ARE who they say they are. Trans women ARE women and Trans men ARE men. It NOT for the likes of Mr Miller to decide who is what, nor is it any of his God damn business.
>
> All they wish is to be treated with full and unswerving respect from their peers – respect should be automatic and, contrary to popular opinion, not earned. To be treated equally and fairly before the law. That is it. No more, no less. They are not monsters. They are not predators. They are not weirdos. They are not freaks. They are, in nearly every single case, decent, law-abiding people who cause harm to no-one. The amount of vitriol, abuse or worse they have to take on a daily basis from people like Harry Miller is an absolute disgrace and an affront to any society that calls itself civilised."

65. I should make clear that in none of the tweets did the Claimant use any of the words 'monsters', 'predators', 'weirdos' or 'freaks'.

66. Mrs B concludes her statement as follows:

> "I'll finish by addressing Mr Miller directly: Mr Miller, whether you or your followers like it or not, you have been served notice that your disgusting, bigoted, bullying, utterly reprehensible behaviour is NOT going to be tolerated any longer. That is NOT a threat either."

67. In a separate email to the police Mrs B wrote:

> "I do not think it is an exaggeration to state that, should this man and his organisation win this case, transgender people can kiss the few rights they have goodbye. It will be truly 'open season' on the transgender community, a community that has suffered more than enough from constant vile and unjustified attacks on them in real life, in the media and online. Do you know what it is like to be transgender in this country in 2019 ? To be denied your rights to be the person you want to be ? To be subject to disgusting and unwarranted attacks just for having the temerity to exist ? To be subject to the most awful discrimination ?"

68. The Claimant wrote a witness statement in response to Mrs B's evidence:

> "6. I completely reject any suggestion that I am racist, homophobic or transphobic. The suggestion that I am serves to show how ignorant the writer is, and that the writer simply does not know me or anything about me.
>
> …
>
> 8. The assertion that I would have been making 'the same comments' (clearly meaning bigoted comments) about Jewish people 80 years ago, about black and Asian people 40 years ago and gay people 30 years ago is simply gratuitously offensive."

Events following Mrs B's complaint

69. Mrs B made her complaint via an online system called 'True Vision'. It was passed to Humberside Police's Crime Reporting Team (CRT). They decided to record it as a hate incident pursuant to HCOG. The evidence from Steven Williams, Humberside Police's Crime/Incident Registrar is that a staff member reviewed Mrs B's complaint and created a non-crime investigation on the relevant computer system. He says [11]:

> "In this case and generally, the CRT staff member's assessment is based upon the initial account from the person reporting. There may be instances, where it is not considered appropriate to record a 'hate indicent' on the facts of a particular case. Staff will use a common sense and a proportionate approach to recording in all

> circumstances. It is not the case that report of a hate incident will be recorded as such."

70. It would therefore appear that the matter was recorded as a non-crime hate incident simply on the say so of Mrs B and without any critical scrutiny of the tweets or any assessment of whether what she was saying was accurate. As I shall show in a moment, what she told the police was not accurate.

71. After Mrs B contacted the police, they created a document called a 'Crime Report Print'. Given the common ground that at no stage did anyone (apart from Mrs B) think that the Claimant had committed a crime, the title is striking. It is also striking that throughout Mrs B is referred to as 'the victim' and the Claimant as 'the suspect'. Whether or not Mrs B was properly to be regarded as a victim, it was certainly inaccurate to describe the Claimant as a suspect.

72. The first entry is from 4 January 2019 and reads as follows:

> "Threat – low [REDACTED]
> Harm – emotional
> Risk – unlikely
> Investigation – named suspect, no factors for CSI, no known witnesses, no CCTV, twitter posts available
> Vulnerabilities – none known
> Engagement – passed to CMU"

73. Further on there is this:

> "I would like to report an individual by the name of Harry Miller who works for […] Immingham, South Humberside. Miller has been making transphobic remarks on his Twitter account under the handle @HarryTheOwl. These comments are designed to cause deep offence and show his hatred for the transgender community."

74. In my judgment there was no evidence that the tweets were 'designed' to cause deep offence, even leaving aside the Claimant's evidence about his motives. Mrs B's report was inaccurate. The tweets were not directed at the transgender community. They were primarily directed at the Claimant's Twitter followers. In *Monroe v Hopkins* [2017] EWHC 433 (QB), [36], Warby J remarked that it could be assumed in that case that the parties' Twitter followers (and visitors to their homepages) were likely to be sympathetic to their contrasting political stances (left wing v right wing). I assume the same to be true here. It can be assumed that the Claimant's followers are broadly sympathetic to his gender critical views, as are those others who read his tweets.

75. The Crime Report has this entry for 5 January 2019:

> "Victim states that she has not been contacted by the suspect. She was informed that the suspect had made comments about the transgender community by another person. Victim states they would like the suspect speaking to but on further research

> the victim has herself been making derogatory comments on [REDACTED] about people who are making comments about transgender people."

76. The matter was then referred to PC Mansoor Gul, a Community Cohesion Officer, for investigation. In his witness statement PC Gul writes:

> "9. Where I am assigned a hate incident to investigate, I review the report and decide whether it has been correctly classified as a hate incident. If, having reviewed the evidence available and spoken to the victim, I consider it to be more serious than a hate incident, then I can recommend that it be re-classified as a hate crime. Likewise, if having reviewed the evidence, I am satisfied that no action is required then I can close the matter without speaking to the alleged offender. Where I am satisfied, that an incident has been correctly classified as a hate incident then, as a bare minimum, I would speak to people involved. I do this for a number of reasons but in the main, it is to ensure I have information available from all parties, to make people aware of the impact of their behaviour on others and to prevent matters from escalating into hate crimes being committed."

77. PC Gul says that he spoke to Mrs B on 15 January 2019 and asked her to send him screen shots of the tweets. She did so, and PC Gul viewed them. He formed the view that they were properly treated as a hate incident. He says in his statement [10)]:

> "I did not identify any criminal offence but I was satisfied that there was a perception by the victim that the tweets were motivated by a hostility or prejudice against transgender people."

78. There is no suggestion in PC Gul's statement that he considered whether Mrs B was in reality a 'victim', given the tweets were not directed at her or the transgender community but that she had chosen voluntarily to read them, having previously been unaware of them. Nor is there is any suggestion that PC Gul considered [1.2.4] of HCOG, which provides that it is not appropriate to record a crime or incident as a hate crime or hate incident if 'it was based on the perception of a person or group who had no knowledge of the victim, crime or the area, and who may be responding to media or internet stories or who are reporting for a political or similar motive.' I will return to this later.

79. PC Gul says he considered what course of action to take, and after considering various matters, he decided to speak to the Claimant. PC Gul's rationale for speaking to the Claimant is explained at [11] of his witness statement. It was 'to ensure that I had as much information as possible to hand so that I could make an informed decision as to what action to take in this particular matter'. He goes on:

> "Having reviewed the nature of the tweets, the impact on the victim and the risk of matters escalating to criminal offences being committed, I took the decision to speak with Mr Miller."

80. PC Gul does not say what criminal offences he had in mind or why he thought there was a 'risk'.

81. On 23 January 2019 PC Gul attended the Claimant's workplace to speak to him. He says that he deliberately did not go in uniform so as not to attract wider attention and because 'the fact that the purpose of my visit was simply to speak with Mr Miller rather than the exercise of any police powers that were available to me.' ([12]).

82. The Claimant was not present, and so PC Gul left his card with a director of the company with the request that the Claimant call him. The Claimant called him back the same day.

83. It is at this point that the evidence of the Claimant and PC Gul diverges.

84. PC Gul's primary account is contained in the Crime Report that I have referred to. The relevant entry is as follows (emphasis as in original):

> "Later on the same day PC GUL received a call from Mr Miller and discussion took place about the tweets. Mr Miller wasn't happy and asked if he had committed a crime, PC Gul clearly explained to him that although the tweets were not criminal, they were upsetting many members of the transgender community who were upset enough to report them to the police. PC GUL explained to Mr Miller that it had been recorded as a HATE INCIDENT and PC GUL wanted to let him know about it also get his side of the story. PC GUL's thought process was that all parties need to be spoken to make a fair and balanced assessment. This was done in line with national guide lines in terms of hate incidents. PC GUL further explained to MR MILLER that although his behaviour did not amount to criminal behaviour, if it escalated then it may become criminal and the police will need to deal with it appropriately. MR MILLER was not happy, conversation took place around human rights act and freedom of speech and opinion. PC GUL explained that he fully agree and understand (*sic*) that but if there is a criminal behaviour then it would be dealt with as such. MR MILLER was not happy and informed PC GUL that he would take this to the national media."

85. For reasons which I will explain later it is important to note that there is no evidence that the tweets 'were upsetting many members of the transgender community who were upset enough to report them to the police'. There had been one complaint from Mrs B. PC Gul's statement that the Claimant had offended a significant section of the transgender community, who had then complained to the police, was not true. I note that in [10] of his statement PC Gul says that Mrs B told him that she had been contacted by other individuals who felt the same as her. However, given there is nothing in Mrs B's statement to that effect, I can place no weight on that assertion. She is quite clear that it was a friend who told her about the Claimant's tweets. It is certainly not the case that there had been a number of complaints: there had been one, from Mrs B. It may be that PC Gul wrongly thought Mrs B had been speaking on behalf of a number of transgender

people, and that he laboured under that misapprehension in his dealings with the Claimant. But, for whatever reason, he misrepresented the facts.

86. I have not overlooked the assertion by Mr Williams in [14] of his statement that 'the complainant reported other individuals had also told her that they had been affected by the Tweets …' I can place no weight on that assertion. There is no evidence that Mr Williams ever spoke to Mrs B and he provides no foundation for this statement. It might be he derived this from the Crime Report, which itself was not supported by any evidence. More significantly, in her statement Mrs B does not say that anyone else had seen the tweets. Her initial complaint to the police did not say that other people had seen them (besides the friend who told her about them). Given the strong terms in which she expresses herself in her statement, I would have expected her to say so if that had been the case.

87. The Claimant's account of the phone call is at [30] onwards of his first witness statement. He says that PC Gul told him that he had been contacted by a person from 'down south'. He called the tweets 'transphobic' and referred to 'the victim'. He says PC Gul said that the 'victim' had called to express concern for employees at the Claimant's place of work and was concerned it was dangerous for trans people. PC Gul explained that the Claimant had not committed a crime, but that his tweets had been 'upsetting to many members of the transgender community'. PC Gul told the Claimant that the lyric about silicone breasts had come closest to being a crime.

88. According to the Claimant in [34] of his witness statement, there was then this exchange:

> "I informed PC Gul that I was not the author of the verse and that it was simply expressing in verse the sense of imbalance of power between the sexes in the context of transgenderism. He said by Liking and Retweeting it on Twitter, I was promoting Hate.
>
> I again asked for, and received, confirmation that neither the verse, nor any of the other alleged 30 tweets, were criminal. I then asked PC Gul why he was wasting my time.
>
> PC Gul said 'I need to check your thinking'.
>
> I replied: 'So, let me get this straight, I've committed no crime. You're a police officer. And you need to check my thinking ?'
>
> PC Gul answered: 'Yes'.
>
> I said, 'Have you any idea what that makes you ? 'Nineteen Eighty-Four' is a dystopian novel, not a police training manual.'"

89. 'Nineteen Eighty-Four' is, of course, the 1949 novel by George Orwell which coined the term 'thoughtcrime' to describe a person's politically unorthodox or unacceptable

thoughts. The Thought Police are the secret police of the superstate Oceania, who discover and punish thoughtcrime.

90. At [35] and [38] the Claimant says:

> "35. PC Gul explained that, on the basis of the third party complaint, a Hate Incident Record would be generated, regardless of there being no crime nor any evidence of hate. He warned me that continuing to tweet Gender critical content could count as an escalation from non crime to crime, thus prompting further police intervention. PC Gul did not elaborate on how such escalation might occur. However, the clear implication was that, in order to avoid such escalation into criminality, I would be strongly advised to cease tweeting gender critical content. At the time, I instinctively felt that the intervention by PC Gul was wrong, coercive and oppressive although I was not yet sufficiently cognisant in the European Convention on Human Rights to quote Article 10 at him.
>
> …
>
> [38] Finally, PC Gul offered his final words of advice, words that I will never forget as I was so stunned by them. He said, 'You have to understand, sometimes in the womb, a female brain gets confused and pushes out the wrong body parts, and that is what transgender is.
>
> I replied, 'You've got to be kidding me. Wrong body parts ? You have to know that is absolute bullshit. Is this really the official police line ?'
>
> PC Gul said, 'Yes, I have been on a course.'
>
> I ended the call shortly after this. The call lasted 34 minutes."

91. In the Crime Report under the heading '*Modus Operandi* Summary', PC Gul states that the 'suspect' was 'posting transphobic comments on Twitter causing offence and showing hatred for transgender community'.

92. PC Gul does not accept parts of the Claimant's account of their conversation. He denies telling the Claimant that he wanted to 'check his thinking' and denies the comment about 'pushing out' the wrong body parts. He also denies telling the Claimant not to tweet further on transgender issues. The Claimant is adamant that these things were said.

Subsequent events

93. The Claimant's evidence is that he experienced a deep sense of personal humiliation, shame and embarrassment on both his own behalf and for his family and employees, on learning about the recording of a hate incident in relation to his tweets. He says that as a consequence of the police's actions, he has withdrawn from all involvement with his

company and has not returned to the office since the day he was first contacted by PC Gul. He says that he and his family have been the subject of threats and intimidation from a number of individuals, which caused the Claimant and his wife briefly to leave the family home. Nevertheless, after much deliberation and against the wishes of his wife, the Claimant has decided to continue tweeting about transgender issues. Indeed, he did so fairly promptly after speaking with PC Gul.

94. The press quickly picked up the story. This prompted a statement from Assistant Chief Constable (ACC) Young on 28 January 2019 which described the Claimant's tweets as 'transphobic', referred to the possibility of such incidents 'escalat[ing]', and stated that a 'correct decision was made to record the report as a hate incident'. Mr Young's statement included the following:

> "The actions taken by the individual and his comments around transgender caused someone distress. We take all reports of hate related incidents seriously and aim to ensure they do not escalate into anything further. The correct decision was made to record the report as a hate incident … and to proportionately progress (sic) by making contact with the individual concerned to discuss the actions on social media."

95. This statement therefore made clear that there had only been one complaint to the police and it therefore shows, as I have said, that PC Gul had been wrong to suggest the Claimant had upset 'many members' of the transgender community.

96. The Claimant lodged a complaint with the police about his treatment. He was subsequently contacted by Acting Inspector Wilson by telephone, and on 28 March 2019 he received a letter from him rejecting his complaint. The letter stated that the Claimant had been spoken to in order to help him:

> "… understand the impact [his] comments could have on others and to prevent any possible escalation into a crime'
>
> and noted that
>
> '[w]hile it is your right to express your opinion, if future reports are received it is our duty to consider our role and proportionately look into them, to prevent any potential offences occurring'".

97. The Claimant appealed this decision to Humberside Police's Appeals Body. His appeal was rejected on 18 June 2019.

Facts: conclusions

98. No party invited me to hear oral evidence, and so I am unable to determine the disputes of fact between the Claimant and PC Gul as to what exactly was said during their conversation. However, the following facts are not in dispute, or I can conclude as follows on the evidence: (a) PC Gul visited the Claimant's place of work in his capacity

as a police officer, albeit he did not think he was exercising any powers of a police officer; (b) he left a message requesting that the Claimant contact him; (c) they subsequently spoke on the telephone; (d) during that call PC Gul misrepresented and/or exaggerated the effect of the Claimant's tweets had had and the number of complaints the police had received; (e) PC Gul warned the Claimant that if he 'escalated' matters then the police might take criminal action; (f) he did not explain what escalation meant; (g) ACC Young also publicly referred to escalation; (h) when the Claimant complained, the police responded by again referring to escalation and criminal proceedings.

99. Specifically, I find that the only people who definitely read the tweets were Mrs B and the friend who told her about them, and that the only person who complained to the police was Mrs B.

100. On these facts I conclude that the police left the Claimant with the clear belief that he was being warned by them to desist from posting further tweets on transgender matters even if they did not directly warn him in terms. In other words, I conclude that the police's actions led him, reasonably, to believe that he was being warned not to exercise his right to freedom of expression about transgender issues on pain of potential criminal prosecution. At no stage did the police explain on what basis they thought that the Claimant's tweets could 'escalate' to a criminal offence. They did not indicate on what evidence they thought there was a risk of escalation. They did not indicate which offence they thought the Claimant's tweets might escalate into. I accept what the Claimant said in [52] of his first witness statement:

> "The initial intervention by PC Gul and the subsequent statements of ACC Young and A/Inspector Wilson cannot be interpreted as anything other than attempts to discourage me, and other interested parties from making such statements and to withdraw from national, political conversation."

The Hate Crime Operational Guidance 2014 (HCOG)

101. With that lengthy but necessary factual introduction, I now turn to the policy at issue in this case.

102. The College of Policing is the professional body whose purpose is to provide those working in policing with the skills and knowledge necessary for effective policing. The College's role is described in the witness statement of David Tucker, its Faculty Lead for Crime and Criminal Justice. He says that the College is a company limited by guarantee that is owned by the Secretary of State for the Home Department but which operates at arms-length from the Home Office. The College's work is limited to policy. It has no operational role.

103. Mr Tucker says that the College's purpose is to support the fight against crime and to protect the public by ensuring professionalism in policing. It has five principal responsibilities: (a) setting standards and developing guidance and policy for policing; (b) building and developing the research evidence base for policing; (c) supporting the professional development of police officers and staff; (d) supporting the police, other law enforcement agencies and those involved in crime reduction; and (e) identifying the

ethics and values of the police. He explains that ss 123 – 124 of the Anti-social Behaviour, Crime and Policing Act 2014 give powers to the College to issue regulations and codes of practice. Additionally, the College issues manuals of guidance and advice called Authorised Professional Practice (APP). He says that APP is the type of document that the College uses to set out standards that police forces and individuals should apply when discharging their responsibilities. At [15] he says that HCOG was developed by the Association of Chief Police Officers (ACPO) and adopted by the College, although it has not yet been adopted as APP.

104. The evidence of Paul Giannasi, the Hate Crime Adviser to the National Police Chief's Council is that for a long time the police have recorded and responded to non-crime incidents. In his statement he says:

> "26. Throughout my career police have recorded all calls for service or deployments, not only to account for officer activity, but also due to the recognition of the need to play a role in solving societal problems rather than just responding to bring offenders to justice when they escalate to criminality
>
> …
>
> 70. It is often unclear from the initial contact whether a crime has been committed. A core purpose of policing is to prevent crime and protect citizens. Recording incidents allows the police to monitor and measure police deployments. As an operational police officer, I spent a considerable amount of time responding to non-crime incidents ranging from parking disputes, anti-social behaviour and community tensions … the policing role would include trying to mitigate risk, advise on and/or assess risk of escalation into more serious harm."

105. In 2014 the College published HCOG. The background is set out in Mr Giannasi's witness statement. I summarise it as follows. HCOG is the result of twenty to thirty years of policy development concerning police responses to hate crime and non-crime hate incidents. Following the racist murder of Stephen Lawrence in April 1993, the Macpherson Report was produced in 1999. Many of the key features in contemporary hate incident policy (as set out in the HCOG) originate from the recommendations in the Macpherson Report, including perception-based recording, ie, that the basis for determining whether an incident was a 'racist incident' should be whether it was perceived as racist by the victim or another person (Recommendation 12) and encouragement of the reporting of non-criminal incidents as well as crimes (Recommendation 16).

106. The relevant parts of HCOG to this claim are [1.2], [1.2.4], [1.2.5], [6.1], [6.3] and [6.4].

107. A hate incident in relation to transgender people is defined in [1.2] as:

> "Any non-crime incident which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice

against a person who is transgender or perceived to be transgender."

108. As I shall explain later, [1.2.4] ('Other person') is important in this case. It provides:

> "Perception-based recording refers to the perception of the victim, or any other person.
>
> It would not be appropriate to record a crime or incident as a hate crime or hate incident if it was based on the perception of a person or group who had no knowledge of the victim, crime or the area, and who may be responding to media or internet stories or who are reporting for a political or similar motive.
>
> The other person could, however, be one of a number of people, including:
>
> • police officers or staff
> • witnesses
> • family members
> • civil society organisations who know details of the victim, the crime or hate crimes in the locality, such as a third-party reporting charity
> • a carer or other professional who supports the victim
> • someone who has knowledge of hate crime in the area – this could include many professionals and experts such as the manager of an education centre used by people with learning disabilities who regularly receives reports of abuse from students
> • a person from within the group targeted with the hostility, eg, a Traveller who witnessed racist damage in a local park.
>
> A victim of a hate crime or incident does not have to be a member of a minority group or someone who is generally considered to be vulnerable. For example, a heterosexual man who is verbally abused leaving a gay bar may well perceive that the abuse is motivated by hostility based on sexual orientation, although he himself is not gay. Anyone can be the victim of a hate incident or crime, including people working inside the police service."

109. Paragraph 1.2.5 (Malicious Complaints) provides:

> "Some people, particularly celebrities and political figures, have been subjected to malicious complaints from hostile individuals, often with a grudge against the person, their politics or their lifestyle. This, on occasions, can even be part of a stalking process. Sometimes these complainants will

allege that the activity was based on hostility towards them because of their protected characteristics.

Police officers should not exacerbate the harm caused to a genuine victim when dealing with such incidents. It is also important not to falsely accuse an innocent person and harm their reputation, particularly where the allegation is made against a public figure.

In order not to harm an innocent party, the matter should be dealt with as swiftly and sensitively as is possible. In such circumstances investigating officers should seek support from senior colleagues and the CPS hate crime coordinator."

110. A non-crime hate incident is defined in [6.1] as:

> "… any non-crime incident which is perceived by the victim, or any other person, to be motivated (wholly or partially) by a hostility or prejudice."

111. Paragraph 6.3 provides:

> "6.3 Recording non-crime hate incidents
>
> Where any person, including police personnel, reports a hate incident which would not be the primary responsibility of another agency, it must be recorded regardless of whether or not they are the victim, and irrespective of whether there is any evidence to identify the hate element.
>
> The mechanism for local recording of non-crime hate incidents varies. Many forces record them on their crime recording system for ease of collection but assign them a code to separate them out from recordable crimes. Whichever system is used to record hate incidents, managers should have confidence that responses are appropriate and that crimes are not being recorded incorrectly as non-crime incidents. Records must be factually accurate and easy to understand. At an early stage any risks to the victim, their family or the community as a whole must be assessed and identified. The number of non-crime hate incidents is not collated or published nationally, but forces should be able to analyse this locally and be in a position to share the data with partners and communities. Police officers may identify a hate incident, even when the victim or others do not. Where this occurs, the incident should be recorded in the appropriate manner. Victims may be reluctant to reveal that they think they are being targeted because of their ethnicity, religion or other protected characteristic (especially in the case of someone from the LGBT community) or they may not be aware that

they are a victim of a hate incident, even though this is clear to others."

112. Paragraph 6.4 (Opposition to Police Policy) provides:

> "The recording of, and response to, non-crime hate incidents does not have universal support in society. Some people use this as evidence to accuse the police of becoming 'the thought police', trying to control what citizens think or believe, rather than what they do. While the police reject this view, it is important that officers do not overreact to non-crime incidents. To do so would leave the police service vulnerable to civil legal action or criticism in the media and this could undermine community confidence in policing.
> The circumstances of any incident dictate the correct response, but it must be compatible with section 6(1) of the Human Rights Act 1998. The Act states that it is unlawful for a public authority to act in a way which is incompatible with a right conferred by the European Convention on Human Rights. Some of these rights are absolute and can never be interfered with by the state, eg, the freedom from torture, inhuman or degrading treatment or punishment. Some, such as the right to liberty, are classed as limited rights and can be restricted in specific and finite circumstances. Others, such as the right to respect for private and family life, the right to manifest one's religion or beliefs, freedom of expression, and freedom of assembly and association are qualified and require a balance to be struck between the rights of the individual and those of the wider community.
>
> Qualified rights are usually set out in two parts, the first part sets out the right or freedom, and the second part sets out the circumstances under which the right can be restricted.
> Generally, interference with a qualified right is not permitted unless it is:
>
> - prescribed by or in accordance with the law
> - necessary in a democratic society
> - in pursuit of one or more legitimate aims specified in the relevant Article
> - proportionate."

113. The key points I draw from these provisions are :

a. Paragraph 1.2.4 and 1.2.5: there may be circumstances which make it inappropriate to record an incident, for example, a complaint by someone with no proper connection to the incident in question, or a maliciously motivated complaint.

b. Paragraph 6.1: (i) it is important to record non-crime incidents so that police understand tensions in communities and prevent these escalating into crimes; (ii)

the police have limited enforcement powers to deal with non-crime incidents; (iii) most forces have separate systems for recording crimes and incidents.

c. Paragraph 6.3: (i) non-crime hate incidents should be recorded by police unless doing so is the responsibility of another organisation; (ii) early assessment of risk of harm to the person/communities reporting is required; (iii) police officers can identify hate motivation or hostility even if the target does not.

d. Paragraph 6.4: the general duty in [6.3] is subject to the following principles (i) the police should not over-react to reports of non-crime hate incidents; (ii) police must take account of s 6(1) of the Human Rights Act 1998 and the responsibility not to act in way that contravenes the Convention.

114. The College is currently in the process of revising HCOG. This includes revision of the sections the Claimant is most concerned about in this case. The College issued a draft of the proposed new HCOG and held a consultation period between 8 October 2019 and 5 November 2019. The revisions include detailed guidance on malicious complaints and when not to record an incident; two entirely new sections titled 'Management of police information' and 'Disclosure and Barring Service checks'; further detail on responding to non-crime hate incidents; further guidance on ensuring responses are proportionate, as well as further separate guidance on contacting people alleged to have committed such incidents, and further guidance on recording non-crime hate incidents.

The parties' submissions

The Claimant's submissions

115. On behalf of the Claimant Mr Wise submitted that (a) HCOG is unlawful as contrary to the Claimant's right to freedom of expression under the common law and/or Article 10; (b) the actions taken by the police in recording the incident, and their subsequent dealings with the Claimant, amounted to an unlawful interference with his rights under Article 10.

116. Mr Wise began by emphasising the importance of the freedom of expression at common law: see eg *Shayler*, supra, [21]; *R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115, p125; *Central Television Plc*, supra, pp202-203

117. He submitted that the HCOG offends against the principle that the right to freedom of expression may not be curtailed except where the curtailment is authorised by statute, which is an aspect of the principle of legality, and that, secondly, even where a curtailment of the right is authorised in principle, the curtailment must go no further than is reasonably necessary to meet the ends which justify the curtailment.

118. In relation to Article 10, he said that consistently with the approach taken under English common law, the Court has often emphasised that the right to freedom of expression is 'one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment': see, eg, *Vogt v Germany*, supra, [52].

119. In the Article 10 context, he said that special protection is afforded to political speech and debate on questions of public interest: *Vajnai v Hungary* (No. 33629/06, judgment

of 8 July 2008), [47]. He also said that domestic courts have similarly attached special importance to political speech and public debate in the Article 10 context: see eg *R (ProLife Alliance) v British Broadcasting Corporation* [2004] 1 AC 185, [6].

120. Mr Wise accepted that the protection afforded by Article 10 does not apply to cases of hate speech. Article 17 excludes the protection of Article 10 to speech which negates the fundamental values of the Convention. In *Erbakan v Turkey*, judgment of 6 July 2006, the Court said at [56]:

> "… [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance …, provided that any 'formalities', 'conditions', 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued."

121. However, Mr Wise said that it is critical to distinguish in this context between forms of expression which incite, promote or justify hatred based on intolerance and forms of expression which may be insulting or offensive to some sections of society but which nevertheless do not incite hatred and which form part of debate on issues of public interest.

122. No party suggested that Article 17 applies to the Claimant's tweets and that Article 10 was not in principle applicable to the Claimant's tweets, although the level of protection to be afforded them was in dispute.

123. In light of these principles, Mr Wise submitted that the HCOG is unlawful on any or all of the following bases:

    a. Firstly, it violates the common law principle of legality, in that there is no statutory authorisation for the interferences with the fundamental right to freedom of expression to which the Guidance gives rise. Further or alternatively, the approach taken in the Guidance to the mandatory recording of 'non-crime hate incidents' in the absence of any evidence of hate is disproportionate and hence unreasonable as a matter of common law, in that it goes further than is reasonably necessary to achieve the aims pursued.

    b. Second, it interferes with Article 10 a manner that is not 'prescribed by law' for Convention purposes;

    c. Third, and in any event, it is not 'necessary in a democratic society' within the meaning of Article 10(2), in that it is disproportionate and fails to strike a fair balance between the Article 10 rights of individuals and the interests of the community in relation to the recording of non-crime hate incidents.

124. Turning to the Second Defendant's specific actions in this case vis-à-vis the Claimant, Mr Wise said that for essentially the same reasons, the police's actions, in recording a

non-crime hate incident in relation to the Claimant under HCOG and thereafter seeking to dissuade the Claimant from making similar online statements in the future, were also unlawful.

125. Developing these submissions, Mr Wise said the HCOG plainly interferes with the exercise of the common law right to freedom of expression because it is a hindrance or impediment to that right. He said that any utterances that are subjectively *perceived* as being motivated by hostility or prejudice towards transgender individuals, is plainly apt to hinder or impede free expression in relation to transgender issues, especially where such incidents may (subject to the discretion of the relevant local police force) be included on Enhanced Criminal Record Certificates (ECRCs), with potential consequences for employment in particular professions.

126. Likewise, a police force's decision to record a hate incident pursuant to the HCOG in relation to a particular expression of opinion, along with subsequent police action in relation to the incident concerned (in this case, interventions by police officers and express attempts to dissuade the Claimant from expressing similar views), self-evidently hinders/impedes the exercise of the right to freedom of expression.

127. If the HCOG contravenes the principle of legality, he said that followed inexorably that it was unlawful for the police to rely on it in recording the Claimant's tweets as as a hate incidents, and thereafter seeking to dissuade him from expressing similar views in the future.

128. Further or alternatively, Mr Wise submitted that HCOG, and consequently the police reliance upon it, constitute interferences with the Claimant's Article 10(1) rights that are not prescribed by law within the meaning of Article 10(2). He said that although the Guidance is publicly available, it is opaque and ambiguous in a number of crucial respects including about what incidents will be reported. He emphasised that a 'non-crime hate incident' is defined in the Guidance entirely by reference to the subjective perception of the person reporting the incident. Consequently, a reasonable reader of the Guidance would not be able to foresee, with any reasonable degree of certainty, the consequences of making a given statement.

129. In relation to the interference not being necessary in a democratic society under Article 10(2) and/or not reasonably necessary as a matter of common law, Mr Wise said the Claimant accepted that the HCOG pursues a number of legitimate objectives. However, he submitted that the interference with the right of the Claimant and others to freedom of expression in relation to statements such as those made by the Claimant in this case is clearly disproportionate, failing to strike a fair balance between individuals' Article 10 rights and the interests pursued by the policy of recording non-crime hate incidents. He stressed the importance of the topic in question and that it was a hotly-contested public debate. Second, he accepted that some of the tweets were provocative but he denied they were hate speech The lyric which PC Gul was most concerned about had as its purpose the imbalance of power between the sexes in the context of transgenderism. He said the evidence shows that the HCOG has had a real and substantial chilling effect in relation to the expression of such views by the Claimant and others.

The First Defendant's submissions

130. On behalf of the First Defendant, the College of Policing, Mr Auburn submitted as follows.

131. The Claimant's first ground, concerning the common law principle of legality, is misconceived. This is a principle of statutory construction, applicable only to the exercise of statutory powers. It has no application in this case. The HCOG is not a statute, and nor is it statutory guidance. In any event this ground adds nothing to the Article 10 challenge.

132. The Article 10 challenge should also be dismissed. There is no interference with the Claimant's Article 10 rights. The records created have no real consequence for him. Recording is primarily an administrative process to build an intelligence picture based on statistics. It is not a sanction. Whilst a record exists of this incident within the records of the Humberside Police, no sanction has been imposed or threatened to be imposed on the Claimant. Nor would it be under the HCOG.

133. The record has not been disclosed by the Second Defendant, nor is there any realistic possibility that it could be disclosed. The assertions by the Claimant and his witnesses as to possible consequences (eg that it might be disclosed in criminal records check) are not borne out. There have been no such consequences, and no real likelihood of the consequences claimed.

134. The HCOG meets the Convention's requirement of being prescribed by law. The fact that non-crime hate incidents are defined by reference to complainant perception does not contravene the foreseeability requirement. There is a discretion to not record non-crime hate incidents. The discretion is sufficiently clear in scope. There are a significant number of safeguards in place to ensure both (a) that the consequences of a non-crime hate incident being recorded are foreseeable, and (b) to protect against arbitrary interference.

135. If there has been any interference with the Claimant's Article 10 rights by the police, that does not call the HCOG itself into question. In any event the recording of a hate incident was proportionate. The aims pursued are extremely important in nature. Great weight should be attributed to them. They are very important to police protection of minorities and marginalised groups. Recording and the key features of the HCOG are effective and necessary to achieve the legitimate aims pursued. There is a good evidence basis for this. That may be set against the very low level of interference, if any, on the Claimant's rights; and the safeguards on recording, retention and disclosure of such information. The fact that this speech may occur in a political context does not lead to a different result.

136. Developing these submissions, in relation to the Claimant's common law claim and the suggestion that the HCOG breaches the principle of legality, Mr Auburn submitted that the principle of legality is a principle of statutory construction, and so was not in play here because the HCOG is non-statutory. It is not a free-standing ground of control of all types of action by public bodies, particularly the exercise of non-statutory power: *R (Youseff) v Secretary of State for the Foreign and Commonwealth Office* [2013] QB 906, [53]-[54]; *R (El Gizouli) v Secretary of State for the Home Department* [2019] [2019] 1 WLR 3463, [54]-[57]. Mr Auburn submitted that the College had the power at common law to issue HCOG and there was no infringement of the principle of legality. He said measures which violate rights such as privacy or free speech which have been held not

to require legislation, and cited *R (Bridges) v Chief Constable of South Wales Police* [2019] EWHC 2341 (Admin) in support (facial recognition technology).

137. As to Article 10, Mr Auburn submitted that there had been no interference with the Claimant's Article 10 rights. If, in the alternative, that was such an interference, then the very low level of interference is a critical factor in the proportionality analysis which has to be undertaken in relation to Article 10(2) such that I should not find that there has been a disproportionate interference.

138. Mr Auburn said that there had been no interference with the Claimant's Article 10(1) rights because the recording of the hate crime incident had no consequence for him and did not inhibit his freedom to continue tweeting. Recording is primarily an administrative process to build an intelligence picture based on statistics. He said that applying the test in *Handyside v United Kingdom*, supra, [49], in this case there has been no 'formality, condition, restriction or penalty' imposed on the speech of the Claimant, his wife, or any of the witnesses. Also, he said there had been no real risk of any further consequences for the Claimant's rights arising from the recording of the incident, and in particular no disclosure and no risk of disclosure, even on an ECRC. Also, Mr Auburn submitted that there had been no chilling effect. The Claimant has continued tweeting in the same manner as he had done before, and nothing has happened.

139. Mr Auburn went on to submit that any restriction or interference imposed by the HCOG was prescribed by law because it had the necessary qualities of accessibility and foreseeability. He said, in particular, that the perception-based definition of non-crime hate incidents does not contravene the foreseeability requirement.

140. Lastly, Mr Auburn said that any interference with the Claimant's Article 10(1) rights was proportionate. He submitted that I had to have regard to all of the work over many years by a number of different bodies which had led to HCOG. He said that I had to afford a margin of judgment to the First Defendant in assessing the proportionality of HCOG. He pointed in support to: (a) the very high level of importance of the aims pursued by HCOG, and the great weight that is attributable to them; (b) the very low level of interference, if any, on the Claimant's rights; (c) the safeguards on recording, retention and disclosure.

141. Overall, Mr Auburn submitted that the HCOG is lawful and capable of being applied compatibly with Article 10. He said the police's actions did not infringe Article 10, and in any event do not call the policy into question. The application for judicial review should be dismissed.

The Second Defendant's submissions

142. On behalf of the Second Defendant Mr Ustych focussed on those aspects of the claim relating to his client's actions, as opposed to the challenge to the HCOG itself.

143. He said that the Claimant had set out four grounds of challenge in respect of the police's actions in [37] of his Grounds, but in his Skeleton Argument, had distilled these to essentially two assertions, that (a) the HCOG and Humberside's recording of a 'hate incident' infringed the common law principle of legality; and (b) the Claimant's Article 10(1) rights were engaged and infringed (including on the basis that the operation of HCOG is not sufficiently foreseeable).

144. Mr Ustych said that the first ground is misconceived as against Humberside Police, because the common law principle of legality is applicable to the exercise of statutory powers only. In recording the 'hate incident', Humberside Police do not rely on statutory police powers. He said that in *Catt*, supra, [7] it was expressly acknowledged that the police have the power to obtain and store information for policing purposes. As to the second, he said that that should be dismissed because there was no sanction or restriction on the Claimant. He said the Claimant had not established the existence of a 'chilling effect' as the result of the recording, which is primarily an administrative matter. However, even if Article 10 was found to be engaged, he said the level of interference with it could only be trivial and (given the extremely important aims of recording non-crime incidents) plainly proportionate.

145. Mr Ustych said that the only decision of the police which is subject to challenge in this claim is the recording of a 'hate incident' in respect of the Claimant's tweets. He said this is how the matter had been put in the letter before claim and the claim form and he said I should proceed as against the police on the basis that only the recording decision is being challenged in this claim. He accepted, however, that the Claimant's Skeleton Argument at [5] put the police's specific actions in issue (Second Defendant's Skeleton Argument, [29]). His oral submissions addressed this issue and he did not strongly press the point that it was only the recording under HCOG that was in issue.

146. In relation to Article 10, even if Article 10 was found to be engaged, the level of interference was trivial and (given the extremely important aims of recording non-crime incidents) plainly proportionate.

147. He said that the witness evidence submitted on behalf of the Claimant paints a picture of a significant impact on the Claimant's life from the 'hate incident' recording and a vast array of fears arising from it. However, he submitted that a careful analysis demonstrates these effects/concerns to be unrealistic, exaggerated and/or caused by the Claimant's own actions rather than the fact of the recording. Furthermore, many of the effects complained of are said to be linked not to the fact of the recording but to the contact with PC Gul, which, as set out above, is a discrete and separate decision to that being challenged. He said that I should assess the expressed fears/concerns on an objective basis and with an eye on the reality of the situation: cf in *TLT and others v The Secretary of State for the Home Department* [2016] EWHC 2217 (QB), [35], where, in the context of data protection and privacy claims, the claimants expressed various concerns about the repercussions of the breach which (in some cases) the Court deemed not to be rational/realistic.

148. Mr Ustych said that in the absence of any sanction, legal restriction or other material consequence of the 'hate incident' recording, the Claimant had sought to establish engagement of Article 10 via a chilling effect. However he pointed to the Claimants continued tweeting and submitted there was no evidence of a chilling effect. He said there had been no interference under Article 10(1).

149. He accepted there is no dispute that expression which is provocatively worded and potentially capable of causing offence nonetheless attracts the protection of Article 10(1). He argued that in fact the Claimant's tweets were not truly political; he said on their face, they have little to do with legislative debate (reasoned or otherwise), but instead amount

to a ‘vehement attack’’ on the legitimacy of transgenderism as a concept. He said they challenged the basic feature of the Gender Recognition Act 2004 that a person in receipt of a Gender Recognition Certificate is a person of the specified sex. He said they therefore do not qualify for particular protection. He said less protection is afforded by the Convention to expression which is abusive or attacking toward a group sharing a characteristic protected by Article 14 ECHR/Equality Act 2010.

150. Even if an interference with the Claimant’s Article 10 rights is found, the extent of that interference would be trivial. However, even if the competing interests were more finely balanced, the application of margin of judgment would decisively favour a finding that the ‘hate incident’ recording was lawful.

151. Overall, Mr Ustych said that even if Article 10 is found to be engaged, the balancing exercise decisively favours the finding that Humberside’s decision to record a ‘hate incident’ and its other actions did not breach the Claimant’s right to express himself freely.

Discussion

The legality of HCOG at common law

152. I deal first with Mr Wise’s contention that HCOG violates the common law principle of legality. He says that is because there is no statutory authorisation for the interference with the fundamental right to freedom of expression to which he says the Guidance gives rise. I reject that contention for the following reasons.

153. Amongst other things, HCOG provides a method of obtaining and recording data about hate crime and non-crime hate incidents with a view to the police providing an effective response. Paragraph 1.1 of HCOG states:

> “The police are responsible for collecting data on hate crimes and many hate incidents. Accurate data for hate crime is difficult to maintain as any hate crime fits into another crime category as well. This ‘secondary’ recording has led to inconsistency and contributed to the under-recording of hate crime, making the challenge of reducing under-reporting from victims more difficult. All criminal justice system (CJS) agencies share the common definition of monitored hate crime. A widespread understanding of this definition and compliance with crime recording rules helps to provide an accurate picture of the extent of hate crime and to deliver an intelligence-led response.”

154. Steven Williams, the Second Defendant’s Crime/Incident Registrar, says at [16] of his witness statement that:

> “The recording of a hate incident is primarily for administrative and intelligence purposes. The information is used to provide statistical data to the Home Office and other relevant agencies to ensure consistency and accuracy in terms

> of data relating to reporting of such incidents. The information is also relevant for intelligence purposes should matters escalate and information be required in any future investigation. The recording is not a sanction against the individual subject of the complaint and does not restrict the individuals from expressing themselves further."

155. Data regarding non-crime hate incidents is collected and held locally by police forces rather than on the Police National Computer (PNC); witness statement of David Tucker, [19].

156. I conclude that HCOG is lawful under domestic law because the police have the power at common law to record and retain a wide variety of data and information. The cases make clear that no statutory authorisation is necessary in relation to non-intrusive methods of data collection, even where the gathering and retention of that data interferes with Convention rights.

157. A police constable is a creature of the common law. Police constables owe the public a common law duty to prevent and detect crime. That duty reflects a corresponding common law power to take steps in order to prevent and detect crime. As Lord Parker CJ said in *Rice v Connolly* [1966] 2 QB 414, p419:

> "[I]t is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal damage. There is no exhaustive definition of the powers and obligations of the police, but they are at least those, and they would further include the duty to detect crime and to bring an offender to justice."

158. This general power of the police includes the use, retention and disclosure of information, for example, imagery of individuals for the purposes of preventing and detecting crime. In *R (Wood) v Commissioner of Police of the Metropolis* [2010] 1 WLR 123, the police took and retained photographs of the claimant in the street for the purpose of gathering evidence about possible disorder and criminal conduct. Laws LJ and Lord Collins held that this was lawful (see [50]-[55] and [98]-[100] respectively). That was even in the absence of statutory authorisation and the fact that taking photographs was capable of engaging Article 8 of the Convention.

159. In *R (Catt) v Association of Chief Police Officers* [2015] AC 1065, the Supreme Court considered the lawfulness of collecting and retaining personal information, including a photograph of an individual who had demonstrated against the operation of an arms manufacturer on a 'domestic extremism' database. In relation to the police's power to obtain and hold such information, Lord Sumption JSC held at [7]:

> "At common law the police have the power to obtain and store information for policing purposes, ie, broadly speaking for the maintenance of public order and the prevention and detection of crime. These powers do not authorise intrusive methods of obtaining information, such as entry onto private property or

> acts (other than arrest under common law powers) which would constitute an assault. But they were amply sufficient to authorise the obtaining and storage of the kind of public information in question on these appeals."

160. In *R (Bridges) v Chief Constable of South Wales Police* [2019] EWHC 2341 (Admin) the Divisional Court considered the legality of the use of Automated Facial Recognition technology (AFR) by police forces. The Claimant's first contention was that there had to be specific statutory basis for the use of AFR, ie, to permit the use of the CCTV cameras, and the use of the software that processes the digital information that the cameras collect. The Chief Constable and the Secretary of State relied on the police's common law powers identified in the cases I have cited as sufficient authority for use of this equipment, and the Court upheld this submission (at [78]).

161. There is a detailed and comprehensive legal framework regulating the retention of that data. This includes the Data Protection Act 2018; the Code of Practice for Management of Police Information; and the Authorised Professional Practice issued by the First Defendant on the Management of Police Information.

162. These cases and this material provide ample authority for the lawfulness of HCOG under domestic law, notwithstanding the absence of any statutory authorisation. Collecting details of hate crimes and non-crime hate incidents forms one aspect of the police's common law duty to keep the peace and to prevent crime, and is lawful on that basis. Later in this judgment I will explain how the recording of non-criminal hate incidents aids in the prevention of crime.

163. I turn to the principle of legality. In *R (Simms) v Secretary of State for the Home Department* [2000] 2 AC 115, 131, Lord Hoffmann expressed the principle as follows:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

164. The Defendants were right to submit that the principle of legality is one of statutory construction and, as such, that it has no application in relation to common law powers such as the College of Policing was exercising when it issued its HCOG in 2014.

165. In *R (Youseff) v Secretary of State for the Foreign and Commonwealth Office* [2013] QB 906 the Court rejected an attempt to apply the principle of legality beyond statutory powers/statutory construction. Toulson LJ said [53]-[55]:

> "53. In making a decision whether to support or oppose the designation of an individual by the sanctions committee, the Foreign Secretary is not exercising a power derived from an Act of Parliament. He is acting on behalf of the Government in its capacity as a member of an international body, the Security Council.
>
> 54. Consequently, we are not in an area where the 'principle of legality' explained in such cases as *R v Secretary of State for the Home Department, Ex p Pierson* [1998] AC 539, 573–575 (per Lord Browne-Wilkinson) and 587–590 (per Lord Steyn) and *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 131, per Lord Hoffmann, is apposite. That principle applies in cases where a court is asked to construe legislation in a way which may be contrary to human rights embedded in the common law."
>
> 55. … there is sometimes a tendency on the part of lawyers (as there has been in this case) to seek to use the 'principle of legality' as a developmental tool providing an additional ground of challenge in a case purely involving questions of common law, ie, not a case where the defendant is seeking to justify his action by reference to a statutory power. That is to misunderstand it. The 'principle of legality' is a principle of statutory interpretation, derived from the common law."

166. In *AJA v Commissioner of Police of the Metropolis* [2014] 1 WLR 285, [23]-[27], the Court of Appeal reviewed the case-law relating to this principle, and concluded at [28]:

> "The principle of legality is an important tool of statutory interpretation. But it is no more than that."

167. In *R (Al-Saadoon) v Secretary of State for Defence* [2017] QB 1015, [198] Lloyd-Jones LJ said:

> "… the principle of legality is a principle of statutory interpretation. In the absence of express language or necessary implication to the contrary, general words in legislation must be construed compatibly with fundamental human rights because Parliament cannot be taken to have intended by using general words to override such rights."

168. Most recently, in *R (El Gizouli) v Secretary of State for the Home Department* [2019] 1 WLR 3463 Lord Burnett CJ and Garnham J rejected an attempt to apply the principle of legality beyond a principle of statutory construction, ie, beyond statutory powers to, in that case, prerogative powers. The Court said at [54]:

> "The principle of legality is deployed as a technique of statutory construction … operates to require express wording if such rights are to be overridden by statutory provisions".

169. After setting out passages from cases which limit the principle to one of statutory construction the Court said at [57]:

> "We respectfully agree with that analysis. Here, the Home Secretary exercised a prerogative, not a statutory, power and, in our judgment, the principle of legality has no application."

170. None of the cases relied on by the Claimant assist this aspect of his case. For example, *R (UNISON) v Lord Chancellor* [2017] 3 WLR 409 (the Employment Tribunal fees case) is relied on for an asserted proposition that any hindrance to a fundamental right can only be made by clear legislation. In fact the case does not say that. The Court primarily dealt with the issue as one of statutory interpretation ([65]). The issue was whether the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893), was *ultra vires* s 42(1) of the Tribunals, Courts and Enforcement Act 2007.

171. As for the Claimant's argument that the approach taken in HCOG to the mandatory recording of 'non-crime hate incidents' in the absence of any evidence of hate is disproportionate and hence unreasonable as a matter of common law, in that it goes further than is reasonably necessary to achieve the aims pursued, I accept the Defendants' submission that this is reality is an argument about proportionality which is to be analysed as part of the Claimant's challenge to HCOG under Article 10.

172. I therefore reject the Claimant's challenge to HCOG at common law.

The legality of HCOG under Article 10

173. It was common ground that a four part analysis is required where it is alleged that a measure or action violates Article 10: see eg, *Wingrove v United Kingdom*, supra, [43]-[62]. The four stages are (a) firstly, has there been an interference with the right to freedom of expression that is enshrined in Article 10(1)(b) second, is the interference in question 'prescribed by law'; (c) third, does it pursue one or more of the aims set out in Article 10(2); and (d) fourth, is the interference 'necessary in democratic society' ? The last question brings in the issue of proportionality. As Baroness Hale said in *Catt*, supra, [49], this question involves considering whether the means used, and the interference it involves, are a proportionate way of achieving those legitimate aims.

174. In my judgment the Claimant's challenge to HCOG as being contrary to Article 10 fails for a number of reasons.

(i) Interference

175. Firstly, I reject the Claimant's submission that the mere recording of non-crime hate speech pursuant to HCOG interferes with the Claimant's right to freedom of expression within the meaning of Article 10(1). I accept that the Strasbourg court's general approach to protecting freedom of expression under the Convention is to provide very wide protection for all expressive activities. The Court has done this in part by forging a very broad understanding of what constitutes an interference with freedom of expression. The approach of the Court has essentially been to find any State activity which has the effect, directly or indirectly, of limiting, impeding or burdening an expressive activity as an interference. Thus, the Court has found an interference not only where a law establishes civil or criminal limits on what may be said, but also in cases involving disciplinary sanctions (*Engel and others v the Netherlands* (1979-80) 1 EHRR 647); the banning of books as obscene (*Handyside v the United Kingdom*, supra); the refusal to authorise videos for commercial release (*Wingrove v. the United Kingdom* (1997) 24 EHRR 1); the imposition of injunctions on publication (*Sunday Times (No 1) v the United Kingdom*, (1970) 2 HER 245); the dismissal of an employee (*Vogt v. Germany*, supra); a Head of State making a statement that he would not appoint an individual (*Wille v. Liechtenstein*, [1999] ECHR 207); the expulsion of someone from a territory (*Piermont v. France*, (1995) EHRR 301); a refusal to licence a broadcaster (*Informationsverein Lentia and others v. Austria* (1994) 17 EHRR 93); a refusal to protect journalists' confidential sources (*Goodwin v. the United Kingdom* (1996) 23 EHRR 123); the conduct of a search which might lead to the identification of such sources (*Roemen and Schmit v Luxembourg*, 25 February 2003); a refusal to grant nationality (*Petropavlovskis v Latvia*, no. 44230/06 2008); a refusal to allow a protest vessel into territorial waters (*Women on Waves and others v. Portugal*, Application No. 31276/05, Judgment of 3 February 2009); and failing to enable a journalist to gain access to Davos during the World Economic Forum (*Gsell v. Switzerland*, judgment of 8 October 2009).

176. That broad approach notwithstanding, in my judgment in this case the mere recording by the police of the Claimant's tweets as non-crime hate speech pursuant to HCOG did not amount to a formality, condition, restriction or penalty (*Handyside* restrictions) imposed in response to his speech so as to amount to an interference within the meaning of Article 10(1). I recognise the argument that the mere act of recording speech may have a chilling effect on the speaker's right to freedom of expression. But in my judgment the mere recording without more is too remote from any consequences so that it can amount to a *Handyside* restriction.

177. I accept the First Defendant's submission that while the overall information obtained from recording is important to policing, the mere recording – and I emphasise mere - of an incident of itself has no real consequence for the individual such as the Claimant. The evidence of Paul Giannasi in his witness statement at [61] et seq and of Mr Williams at [16] of his statement is that recording is primarily an administrative process to build an intelligence picture based on statistics. The intelligence picture could include finding that an incident may be part of a jigsaw suggesting criminal activity. Mr Giannasi explains at [79] that HCOG does not mandate the police to take any form of action in response to a report of a non-criminal hate incident. As a result, where the police do decide to take any action following the recording of an incident, this is carried out on the basis of an operational decision by the police exercising their common law and statutory powers. Where that decision is taken, HCOG itself does not require a

particular response, and expressly states that disproportionate action should not be taken. From this evidence I conclude there is no real risk of any further consequences for the Claimant's rights arising from the mere recording of his tweets pursuant to HCOG.

178. I do not accept the Claimant's submission that the recording of a an incident pursuant to HCOG is, or is analogous to the 'administrative warning*'* which was given in *Balsytė-Lideikienė v Lithuania*, Application no. 72596, 4 November 2008, to the publisher of material promoting ethnic hatred which the Court held was an interference with the publisher's Article 10 rights. At [70] the Court said that it

> "… finds it clear, and this has not been disputed, that there has been an interference with the applicant's freedom of expression on account of the administrative penalty and the confiscation of the publication, which were applied under Articles 30 and 214 of the Code on Administrative Law Offences."

179. Earlier, at [38], the Court explained that:

> "An administrative warning is a penalty under Article 30 and it can be used to replace a harsher penalty the Code prescribes for a particular offence; the administrative warning is also intended to serve as a preventive measure, in the same way as a suspended sentence in criminal law"

180. Hence, it is clear that the penalty imposed by the court in that case was a punishment which was accompanied by the confiscation of the publication in question. That was unquestionably an interference pursuant with Article 10(1). I accept the First Defendant's submission that it is not relatable to the kind of record-keeping prescribed by HCOG.

181. Mr Wise submitted that the recording of a non-crime incident against the Claimant's name was an Article 10(1) interference because of the risk that it might in the future be disclosed on an ECRC issued by the DBS were the Claimant to apply for a position which justified such a disclosure. The disclosure regime was described in *R(T) v Chief Constable of Greater Manchester* [2015] AC 49, [10]-[12]. The statutory provisions are contained in Part V of the Police Act 1997. An ordinary criminal record certificate contains only material held on the PNC. An ECRC contains both that information and by way of enhancement, information about the person held on local police records which the police believe may be relevant and ought to be included on it. Generally speaking, ECRCs are required where individuals are applying for positions which are especially sensitive, such as positions working with children or vulnerable adults. The broad protection of the Rehabilitation of Offenders Act 1974 does not apply to such individuals.

182. David Tucker explains at [18] of his witness statement that non-crime hate incidents are not recorded on the PNC but are only held by forces locally. In principle, they are therefore disclosable information. However, Mr Tucker's opinion in [57] of his witness statement is that he could not envisage any circumstances in which it would be found that the non-crime information recorded against the Claimant would be disclosed. That, I do not accept. One example which springs to mind where disclosure would almost certainly take place is if the Claimant applied for a job which would bring him into contact with

vulnerable transgender individuals. I put this example to the Defendants' counsel in argument and, with respect, neither had a convincing explanation why the information about the Claimant would not be disclosed in those circumstances.

183. But if such a thing were to happen it would not be as a result of HCOG, which as I have said does not require any particular operational response to the recording of a non-crime hate incident. It would take place as the result of a decision taken under the Police Act 1997 and if and only if particular facts arose which made disclosure necessary. Whatever the theoretical possibilities, no-one suggested that in this case there is presently a foreseeable prospect of disclosure being made. Hence, to the extent it is argued that the prospect of such a disclosure has (or had) a chilling effect, I do not accept that occurs as a consequence of the policy itself. I acknowledge there is an argument that disclosure in such circumstances could only take place because of recording pursuant to HCOG. But in my judgment the recording would be secondary to the primary disclosure decision, and only part of the background factual context.

184. Moreover, the Defendants were right to submit that the legal framework relating to the disclosure of non-conviction data on an individual's ECRC is tightly drawn. The courts have on several occasions broadly upheld the human rights compatibility of this regime: *R (L) v Commissioner of Police of the Metropolis*; [2010] 1 AC 410 and *R (AR) v Chief Constable of Greater Manchester* [2018] UKSC 47; [2018] 1 WLR 4079; *In re Gallagher* [2019] 2 WLR 509.

185. They also pointed to the fact that the disclosure of information in an ECRC is subject to safeguards to prevent against arbitrary unfairness including the statutory framework under ss 112-127 of the Police Act 1997; the Statutory Disclosure Guidance issued by the Home Secretary under s 113B(4A) of the Police Act 1997; and the Quality Assurance Framework issued by the DBS. The Claimant would have the right to make representations about whether disclosure should take place were it ever to be contemplated. There is also a statutory right of appeal to the Independent Monitor under s 117A of the 1997 Act. The Independent Monitor can require the DBS to issue a new certificate omitting information considered to be not relevant for the purpose sought: s 117A(5).

(ii) Prescribed by law

186. My conclusion on interference is sufficient to dispose of the Claimant's broad-based Article 10 challenge to HCOG. But in case I am wrong, I turn to the second stage of the required analysis, namely whether – assuming HCOG does interfere with free speech - that interference is 'prescribed by law'. I find that it is, for the following reasons.

187. The requirements in Articles 5(1), 8(2), 9(2), 10(2) and 11(2) that any restriction with the right must be 'prescribed by law' or 'in accordance with the law' have the same meaning across the articles: *In re Gallagher*, supra, [14]. In that case at [16]-[20], Lord Sumption summarised the relevant Strasbourg case law:

> "16 It is well established that 'law' in the Human Rights Convention has an extended meaning. In two judgments delivered on the same day, *Huvig v France* (1990) 12 EHRR 528, para 26 and *Kruslin v France* 12 EHRR 547, para 27, the

European Court of Human Rights set out what has become the classic definition of law in this context *Huvig*, para 26:

> 'The expression 'in accordance with the law', within the meaning of article 8.2, requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law.'

Huvig v France and *Kruslin v France* established a dual test of accessibility and foreseeability for any measure which is required to have the quality of law. That test has continued to be cited by the Strasbourg court as the authoritative statement of the meaning of "law" in very many subsequent cases: see, for example, most recently, *Catt v United Kingdom* CE:ECHR: 2019:0124JUD004351415.

17 The accessibility test speaks for itself. For a measure to have the quality of law, it must be possible to discover, if necessary with the aid of professional advice, what its provisions are. In other words, it must be published and comprehensible. The requirement of foreseeability, so far as it adds to the requirement of accessibility, is essentially concerned with the principle summed up in the adage of the American founding father John Adams, "a government of laws and not of men". A measure is not "in accordance with the law" if it purports to authorise an exercise of power unconstrained by law. The measure must not therefore confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself. Nor should it be couched in terms so vague or so general as to produce substantially the same effect in practice. The breadth of a measure and the absence of safeguards for the rights of individuals are relevant to its quality as law where the measure confers discretions, in terms or in practice, which make its effects insufficiently foreseeable. Thus a power whose exercise is dependent on the judgment of an official as to when, in what circumstances or against whom to apply it, must be sufficiently constrained by some legal rule governing the principles on which that decision is to be made. But a legal rule imposing a duty to take some action in every case to which the rule applies does not necessarily give rise to the same problem. It may give rise to a different problem when it comes to necessity and proportionality, but that is another issue. If the question is how much discretion is too much, the only legal tool available for resolving it is a proportionality test which, unlike the test of legality, is a question of degree.

18 This much is clear not only from the *Huvig* and *Kruslin* judgments themselves, but from the three leading decisions on the principle of legality on which the Strasbourg court's statement of principle in those cases was founded, namely *Sunday Times v United Kingdom* (1980) 2 EHRR 245, *Silver v United Kingdom* (1983) 5 EHRR 347 and *Malone v United Kingdom* (1985) 7 EHRR 14.

19 *Sunday Times v United Kingdom* was the first occasion on which the Strasbourg court addressed the test of legality. It was not a privacy case, but a case about freedom of expression in the context of the English law of contempt of court. The requirement of foreseeability was summarised by the court as follows at para 49:

> 'A norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.'

20 In *Silver v United Kingdom*, para 85, the Strasbourg court adopted this definition and applied it to a complaint of interference with prisoners' correspondence, contrary to article 8. The court observed at para 88 that the need for precision in Sunday Times v United Kingdom meant that "a law which confers a discretion must indicate the scope of that discretion". It was in that context that the court addressed the question of safeguards, at para 90:

> 'The applicants further contended that the law itself must provide safeguards against abuse. The Government recognised that the correspondence control system must itself be subject to control and the court finds it evident that some form of safeguards must exist. One of the principles underlying the Convention is the rule of law, which implies that an interference by the authorities with an individual's rights should be subject to effective control. This is especially so where, as in the present case, the law bestows on the executive wide discretionary powers, the application whereof is a matter of practice which is susceptible to modification but not to any Parliamentary scrutiny.'"

188. Earlier, at [14] Lord Sumption emphasised that that the condition of legality is not a question of degree. A measure either has the quality of law or it does not. It is a binary

test. This is because it relates to the characteristics of the legislation itself, and not just to its application in any particular case: see *Kruslin v France, supra,* [31]-[32].

189. The principles were recently set out in *Bridges*, supra, [80]:

> "(1) The measure in question … should comply with the twin requirements of 'accessibility' and 'foreseeability' …
>
> (2) … The measure must also be 'foreseeable' meaning that it must be possible for a person to foresee its consequences for them and it should not 'confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself' (Lord Sumption, *Re Gallagher*, [17]).
>
> (3) Related to (2), the law must 'afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise'
> …
>
> (5) The rules governing the scope and application of measures need not be statutory, provided that they operate within a framework of law and that there are effective means of enforcing them (*Catt* at [11]).
>
> (6) The requirement for reasonable predictability does not mean that the law has to codify answers to every possible issue (per Lord Sumption in *Catt* at [11])".

190. In *R (Purdy) v Director of Public Prosecutions (Society for the Protection of Unborn Children intervening)* [2010] 1 AC 345, [41] Lord Hope said that the Convention's concept of what is 'prescribed by law':

> "… implies qualitative requirements, including those of accessibility and foreseeability. Accessibility means that an individual must know from the wording of the relevant provision and, if need be, with the assistance of the court's interpretation of it what acts and omissions will make him criminally liable: see also *Gülmez v Turkey* (Application No 16330/02) (unreported) given 20 May 2008, para 49. The requirement of foreseeability will be satisfied where the person concerned is able to foresee, if need be with appropriate legal advice, the consequences which a given action may entail. A law which confers a discretion is not in itself inconsistent with this requirement, provided the scope of the discretion and the manner of its exercise are indicated with sufficient clarity to give the individual protection against interference which is arbitrary: *Goodwin v United Kingdom* (1996) 22 EHRR 123, para 31; *Sorvisto v Finland*, para 112."

191. Earlier, I held that HCOG has a basis in domestic law because it falls within the police's general common law power to collect, use, retain and disclose information, for the purposes of preventing and detecting crime.

192. HCOG also plainly satisfies the accessibility test. It is available to all with access to the internet on the College's website. It is therefore 'published and comprehensible': see *In re Gallagher*, supra, [17].

193. Mr Wise focussed his challenge under this head on the requirement of 'foreseeability', namely the second of the two requirements formulated in the Strasbourg case law namely that the relevant law' must be formulated with sufficient precision to enable the citizen to regulate his conduct and foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. He made two main points: (a) the perception-based definition of non-crime hate incidents is such that people cannot foresee the consequences of making a given statement; and (b) it is uncertain whether there is a discretion not to record non-crime hate incidents, and, if there is a discretion, its scope is unclear.

194. I accept the broad thrust of the College's submissions in response. In particular, I agree that: (a) the perception-based definition of non-crime hate incidents does not contravene the foreseeability requirement; and (b) there is a discretion to not record reports of non-crime hate incidents that is sufficiently clear in scope.

195. Hate incidents and non-crime hate incidents are the subject of detailed definitions by reference to the five protected strands, namely disability; race; religion; sexual orientation; and transgender. I have already set out the definitions earlier in this judgment. To recap, [6.1] states:

> "A non-crime hate incident is defined as:
>
> > any non-crime incident which is perceived by the victim, or any other person, to be motivated (wholly or partially) by a hostility of prejudice,
>
> If the hostility or prejudice is directed at one of the five monitored strands … it should be recorded as a hate incident."

196. Whether a non-crime hate incident is recorded is, in my judgment, sufficiently foreseeable to satisfy the Strasbourg test. If someone behaves in a way which carries the possibility that another person may subjectively conclude that it exhibits non-criminal hostility or prejudice in relation to one of the five protected strands then it will be recorded. That is because HCOG requires in [6.1] and [6.3] such incidents to be recorded. This definition ensures all complaints are treated the same, and citizens know how a complaint will be processed.

197. I accept that the subjective and perception-based approach in HCOG means that the range of circumstances in which a 'non-crime hate incident' may be recorded against an individual is extremely wide in scope. However, a reasonable reader of HCOG would be able to foresee, with a reasonable degree of certainty (and with advice if necessary),

the consequences of making a given statement, precisely because any statement that is reported as being motivated by hostility towards one of the monitored strands is to be recorded as a non-crime hate incident. Those who exercise their freedom of speech in a way that may come to the attention of the authorities via a complaint will generally have a pretty good idea of their motivation, and whether it is foreseeably going to be interpreted by others as motivated by hostility or prejudice. In my judgment it is sufficiently certainly the case that perception based reporting does not render HCOG uncertain.

198. The Claimant argues in his Skeleton Argument at [65(g)] that 'an individual who is considering whether to make a statement … about transgender issues simply will not know whether that statement will generate the kind of complaint that will result in the recording of a 'non-crime hate incident'. However, as the First Defendant argues, the same could apply equally to any complaint of any incident or crime against any person. There is no reason to distinguish, for these purposes, between records of all incidents and records of hate incidents: all are triggered by reference to the subjective perception of the person reporting the incident.

199. During the hearing I queried with counsel the meaning of [6.3], and in particular the statement that a non-crime incident must be recorded '… irrespective of whether there is any evidence to identify the hate element'. I wondered how something could be regarded by someone (be it the victim or another person) as a hate incident if there was no evidence of hate. Having thought further, my conclusions are as follows. Mr Giannasi explains at [74] on his statement:

> "As with hate crime, there is no onus on the complainant to be able to 'prove' the hostility for a non-crime incident to be recorded. As noted above, the Macpherson Report specifically recommended that racist non-crime incidents should be recorded, and that the definition of a racist incident should be perception-based. Accordingly the HCOG has applied the same approach to the process of response to all hate crimes and non-crime hate incidents. It applies this for the purposes of assessing whether such hostilities are present, and for assessing levels of risk of escalation."

200. From this, what I take [6.3] to mean is that it is sufficient to qualify as a non-crime hate incident if the complainant perceives hate to be present (as that term is defined in [1.2] namely as prejudice or hostility on the basis of a protected strand) and that they are not required to be called upon to prove that that is in fact the case, or to provide evidence that that is so. That interpretation is reinforced by [1.2.3] which states:

> "For recording purposes, the perception of the victim, or any other person … is the defining factor in determining whether an incident is a hate incident, or in recognising the hostility element of a hate crime. The victim does not have to justify or provide evidence of their belief, and police officers or staff should not directly challenge this perception. Evidence of the hostility is not required for an incident or crime to be recorded as a hate crime or hate incident."

201. Example A given straight after this paragraph I think illustrates what [1.2.3] and [6.3] mean:

> "Jon reports circumstances which amount to an offence under section 4 of the Public Order Act 1986. He was sworn at and threatened that he would be punched in the face by an attacker who moved toward him in an aggressive manner. Nothing was said about his sexual orientation but he perceives that he was targeted as he is openly gay and there was no other reason why he was chosen. He reports this to the police who should correctly record this as a hate crime based on sexual orientation."

202. The policy means that Jon should not be called upon to provide evidence that his attacker was *in fact* hostile to him because he is gay, or to prove that fact. His perception that he was attacked because is a gay man is sufficient and what matters for the purposes of recording the incident.

203. But it seems to me that this approach does not exclude that there must, on the facts narrated by a complainant, be some rational basis for concluding that there is a hate element. Suppose, for example, that a fat and bald straight non-trans man is walking home from work down his quiet residential street when abuse is shouted at him from a passing car to the effect that he is fat and bald. If that person went to the police and said the abuse were based on hostility because of transgender it cannot be the case that HCOG would require it to be recorded as such as a non-crime hate incident when there is nothing in the facts which remotely begins to suggest that was any connection with that protected strand. Vitally important though the purposes which HCOG serves undoubtedly are, it does not require the police to leave common sense wholly out of account when deciding whether to record what is or is not a non-crime hate incident.

204. This conclusion is consistent with the Second Defendant's evidence. Steven Williams says at [11] of his witness statement:

> "… [t]here may be instances, where it is not considered appropriate to record a 'hate incident' on the facts of a particular case. Staff will use a common sense and a proportionate approach to recording all circumstances. It is not the case that a report of a hate incident will always be recorded as such".

205. This interpretation is also consistent with Mr Giannasi's statement at [76]-[78]:

> "76. Although the HCOG provides that genuine non-crime hate incidents must be recorded as such, it does not follow that recording is mandatory in all circumstances irrespective of the context. In particular, para 1.2.4 of the HCOG (p6) provides that:

> ‘It would not be appropriate to record a crime or incident as a hate crime or hate incident if it was based on the perception of a person or group who had no knowledge of the victim, crime or the area, and who may be responding to media or internet stories or who are reporting for a political or similar motive.’
>
> 77. We recognise that some complaints may be fuelled by political or even malicious motives, so this advice is provided to help reduce the potential for abuse of police recording and response. The HCOG leaves this to the discretion of individual forces, as it is not possible to predict all of the circumstances police may be called upon to address.
>
> 78. The full circumstances of the report and the parties involved need to be considered, and this will inform the appropriate response. Such response could include for example recording the allegation but taking no further action, other than to inform the complainant and to monitor for other indications of tensions. Even where a police officer take no action, he or she may be called upon to explain or justify the decision not to act. Therefore, it is important that the police maintain a record of the complaint and the rationale for the response. Being able to measure such complaints also allows the police to assess whether community tensions are increasing in severity or nature.”

206. For these reasons, I conclude that the use of complainant perception in defining non-crime hate incidents does not contravene the requirement of foreseeability. Overall, the perception based approach in HCOG does not, in my judgment, confer a discretion so broad that it depends on the will of those who apply it, on the whim of those who may report incidents, nor are its terms so broadly defined as to produce the same effect in practice: *In re Gallagher*, supra, [17].

207. I also reject Mr Wise’s argument that HCOG fails the test of foreseeability because it is uncertain whether there is a discretion not to record non-crime hate incidents, and, if there is a discretion, its scope is unclear. He says HCOG is uncertain because, on the one hand. it contains a mandatory requirement in [6.3] to record all non-crime hate incidents that are not the responsibility of another agency, but at the same time proceeds on the basis that the police have a discretion as to whether to record such incidents, to be exercised by reference to whether doing so would be an ‘overreact[ion]’ [6.4] and/or the considerations in [1.2.4].

208. I do not accept these submissions. There is nothing inconsistent in the way the policy is drafted. The mandatory duty to record in [6.3] has to be read as subject to the overarching duty which all public authorities have to abide by the Convention. That overarching duty is contained in [6.4], which is where the reference to the need not to overreact is to be found.

209. Further, I consider that [1.2.4] and [1.5] sufficiently clearly delineate (without being exhaustive) the circumstances in which a complaint will not be recorded. The Strasbourg

Court has recognised that many legal provisions have to be drafted in general or vague terms, and applied in a way that involves questions of practice: *Sunday Times v United Kingdom*, supra, [49]. The Strasbourg court has found that where the interference in question may be applied in a large number of cases, it will often not be possible to formulate a discretion for every eventuality: *Silver v United Kingdom,* supra, [88]. I accept the submission that given the number of incidents which may constitute hate incidents is often so large that it is impossible in practice to draft guidance relating to whether or not each one is a hate incident and whether or not it should be recorded.

210. For these reasons, I conclude that HCOG, to the extent that it involves interfering with the right of freedom of expression, does so in a manner that is prescribed by law for the purposes of Article 10(2).

(iii) Legitimate aim

211. For reasons I will explain more fully when I come to consider the question of proportionality, I am satisfied that HCOG pursues the legitimate aim of preventing disorder and crime and protecting the rights and freedoms of others. These are both specified aims in Article 10(2).

(iv) Necessary in a democratic society/proportionality

212. I turn to the fourth analytical stage, namely whether HCOG is necessary in a democratic society, that is to say, a proportionate interference with the right to freedom of expression having regard to the aims pursued. A certain margin of judgment has to be afforded to the decision maker in this area: *R (Haq) v Walsall District Council* [2019] PTSR 1192, [73].

213. In relation to the term 'necessary' Lord Bingham emphasised in *Shayler, supra,* [23]:

> ""Necessary" has been strongly interpreted: it is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable': *Handyside v United Kingdom* (1976) 1 EHRR 737, 754, para 48. One must consider whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authority to justify it are relevant and sufficient under article 10(2): *The Sunday Times v United Kingdom* (1979) 2 EHRR 245 , 277–278, para 62."

214. The Court has recently reiterated that the exceptions found in Article 10(2) must be 'construed strictly, and the need for any restrictions must be established convincingly' see eg *Mariya Alenkhina and others v Russia* (No. 38004/12, judgment of 3 December 2018), [198].

215. The most often cited formulation of the proportionality test is that of Lord Reed JSC in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700, [74], where he said that an assessment of proportionality involved four questions: (a) whether the objective of the measure is

sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure.

216. The Claimant makes a systemic attack on HCOG as being unlawful because it is disproportionate. However, the Defendants correctly submitted that a systemic challenge must show more than that the policy is *capable* of producing an unlawful result. The test is that the policy must give rise to an *unacceptable risk* of unlawfulness. In *R (Suppiah) v Secretary of State for the Home Department* [2011] EWHC 2 (Admin), Wyn Williams J said at [137]:

> "I am content to accept that as a matter of law a policy which cannot be operated lawfully cannot itself be lawful; further, it seems to me that there is clear and binding authority for the proposition that a policy which is in principle capable of being implemented lawfully but which nonetheless gives rise to an unacceptable risk of unlawful decision-making is itself an unlawful policy."

217. This is not, without more, established by individual instances of an unlawful result. In *R (Woolcock) v Secretary of State for Communities and Local Government* [2018] EWHC 17 (Admin), [68(iii)], the Divisional Court said:

> "(iii) An administrative scheme will be open to a systemic challenge if there is something inherent in the scheme that gives rise to an unacceptable risk of procedural unfairness."

218. The issue was considered most recently in *BF (Eritrea) v Secretary of State for the Home Department* [2019] EWCA Civ 872, [60]-[63]. Having considered a number of cases, Underhill LJ concluded:

> "I do not think that it is necessary or useful to analyse the various cases referred to. In my view the correct approach in the circumstances of the present case is, straightforwardly, that the policy/guidance contained in paragraph 55.3.9.1 of the EIG and the relevant parts of *Assessing Age* will be unlawful, if but only if, the way that they are framed creates a real risk of a more than minimal number of children being detained. I should emphasise, however, that the policy should not be held to be unlawful only because there are liable, as in any system which necessarily depends on the exercise of subjective judgment, to be particular "aberrant" decisions – that is, individual mistakes or misjudgments made in the pursuit of a proper policy. The issue is whether the terms of the policy themselves create a risk which could be avoided if they were better formulated."

219. Applied in the current context, this means that in order to succeed on his broad challenge, the Claimant must show that HCOG creates a real risk of more than a minimal number of cases where Article 10(1) will be unlawfully infringed.

220. I begin with the first of Lord Reed's questions, namely the importance and weight of the aims said to be pursued by HCOG. As I have said, there are two relevant aims set out in Article 10(2): (a) the prevention of disorder or crime; and (b) the protection of the … rights of others. I accept that these are important legitimate aims, which cumulatively provide weighty factors justifying any potential interferences in an individual's human rights in particular cases. Even if HCOG does involve an interference with freedom of expression (which, as I have found, it does not) it only does so at a low level. I shall return to this point shortly.

221. First, the evidence shows that the specific aims of HCOG are of preventing, or taking steps to counter, hate crime and hate incidents, and building confidence in policing in minority and marginalised communities. Paul Giannasi explains at [10] of his witness statement that HCOG should be viewed in the context of 20 to 30 years of policy development concerning police responses to hate crime and non-crime hate incidents. He says the current HCOG is informed by these prior policies and reports, which have their roots in the Macpherson Report into the murder of Stephen Lawrence. He points to s 95 of the Criminal Justice Act 1991, which introduced a focus on the recording of data relating to hate incidents. At [18] he says that the Macpherson Report (one of whose terms of reference was to 'identify lessons to be learned for the investigation and prosecution of racially motivated crimes) gave rise to key features of HCOG, including the definition of a racist incident; encouragement of the reporting of non-criminal incidents; perception based recording; and that criminal and non-criminal racist incidents should be recorded and investigated with equal commitment.

222. HCOG helps achieve these overall aims because, first, I accept that monitoring hate incidents helps inform police action to protect minorities and marginalised groups. That in turn assists in building confidence in policing in some communities, particularly ethnic or racial minorities and vulnerable individuals. The need to improve confidence in the police's attitude to hate incidents was a crucial part of the Macpherson Report. Paragraph 45.12 stated:

> "… police and other agencies did not or would not realise the impact of less serious, non-crime incidents upon the minority ethnic communities … The actions or inactions of officers in relation to racist incidents were clearly a more potent factor in damaging public confidence in the Police Service."

223. The Introduction to HCOG makes this point:

> "The police occupy an important position in protecting victims of hate crime, and have a valuable role to play in doing so. Above all, victims and communities need to have trust and confidence that the police will respond appropriately and effectively to their needs.

> This document contains many examples of innovative police work being developed and delivered across the country, and provides practical advice and instruction on how service delivery to hate crime victims might be further improved. The policing of hate crime has improved in many respects since the Stephen Lawrence Inquiry, and that is testament to the dedication of many police officers of all ranks across the country, but there can be no room for complacency. There is still much to do.

224. HCOG also assists in the prevention of the escalation of hate-based hostility from low-level non-criminal activity to criminal activity. Mr Giannasi, who has extensive experience in the field of hate crime and hate incidents, explains at [72] of his witness statement the dynamic of escalating levels of behaviour which he regards as widely acknowledged in the criminal justice sector. In so doing, HCOG assists in the wider investigation and prevention of crime. The evidence of Mr Giannasi at [37]-[39] is that often low levels incidents are pieces in a local jigsaw of information and intelligence that enables policing to be aware of community tensions and take action to prevent minor issues or a series of minor issues escalating into something more serious.

225. Lastly, I accept that protected groups are particularly vulnerable and in need of protection. HCOG assists the police to fulfil their public sector equality duty under s 149 of the Equality Act 2010. Gender reassignment is one of the protected groups in s 149(7).

226. Overall, I am satisfied that the aims and objectives of HCOG justify the limitation it imposes on freedom of speech. That is because its aims are extremely important for the reasons I have given. As against that, the level of interference to freedom of expression by HCOG is low. The Strasbourg and domestic courts have consistently held that 'an important factor to be taken into account when assessing the proportionality of an interference with freedom of expression is the nature and severity of the penalties imposed': eg, *Tammer v Estonia* (2003) 37 EHRR 43. Further, the Convention itself gives only limited protection to hate speech (properly so called). There are two approaches. Article 17 of the Convention excludes entirely from the protection of Article 10 hate speech which negates the fundamental values of the Convention: see eg *Ivanov v Russia*, judgment of 20 February 2007 (ethnic hate); *Roj TV a/s v Denmark*, judgment of 17 April 2018 (incitement to violence and support for terrorist activity). To such speech Article 10 simply does not apply. Where Article 10 is not excluded by Article 17, then any restriction upon genuinely hateful speech has generally been easier to justify as necessary in a democratic society than other forms of speech: see eg *Murphy v Ireland*, judgment of 10 July 2003, [66]-[67]; Lester and Pannick, *Human Rights Law and Practice* (3rd Edn), [4.10.14].

227. I turn to the second of Lord Reed's four questions, namely whether HCOG, and in particular the recording of non-hate incidents, is rationally connected to the objectives it serves. Plainly, it is. For all of the reasons set out in the evidence of Mr Gianassi and Mr Tucker it is important that the police have adequate records of potential hate incidents to inform their work. I accept that the recording of non-criminal incidents is a basic and necessary aspect of policing. The evidence is that the recording of non-criminal incidents is provided for by the Home Office's National Standard for Incident Recording (NSIR). Among other things the NSIR calls for police to mark incident with qualifiers, and one

such qualified is 'hate and prejudice'. In 2018 Her Majesty's Inspectorate said that recording non-crime hate incidents was a valuable source of information.

228. The third question is whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective. In my judgment it could not. As I have said, the recording of non-crime hate incidents barely encroaches on freedom of expression, if it does so at all. I also take into account that key elements of HCOG have been derived from sources which should command great respect and weight. It can be concluded that they are what is thought necessary to achieve HCOG's aims. These include the Macpherson Report; ACPO Hate Crime Manuals; and Fulford J's (as he then was) Race For Justice Taskforce Report of 2006. That was a report on the handling of racist and religious crime by the police, the CPS and the courts. In response, in 2007 the Attorney General created a Cross-Government Hate Crime Programme and tasked it with agreeing a shared definition of hate crime and non-crime hate incidents. There was also an Independent Advisory Group which, as Mr Gianassi explains at [48] unanimously supported the inclusion of a response to non-crime hate incidents to effectively measure tensions and to prevent the escalation to more serious hostility. At [30] of his statement Mr Giannasi wrote:

> "… recording, measuring and proportionate response is vital to mitigate hate speech and non-crime hate incidents, and this is an important part the State's effective protection and promotion of human rights. Failure to address non-crime hate incidents is likely to lead to their increase, and ultimately increase the risk of serious violence and societal damage."

229. I turn, then, to the fourth of Lord Reed's questions which is whether, balancing the severity of HCOG's effects on the rights of the persons to whom it applies against the importance of the objectives it serves, to the extent that the measure will contribute to its achievement, the former outweighs the latter. The question is whether the impact of the rights infringement is disproportionate to the likely benefits brought by recording non-crime hate incidents under HCOG.

230. The answer to this question is that that impact is not disproportionate to the benefits which HCOG brings to the achievement of the objectives it serves. That answer largely flows from my earlier conclusions. The mere recording of non-crime hate incidents arising out of speech barely impacts on the right to freedom of expression. Set against that, there is considerable evidence about both the necessity of HCOG's measures in relation to non-crime hate incidents and also the benefits which they bring. I have cited much of this evidence already. In addition, Mike Ainsworth of Stop Hate UK and the chair of the Government's Independent Advisory Group on Hate Crime wrote in his statement at [16] in relation to hate incidents:

> "16. Recording of hate incidents by the police is critical for a number of reasons:
>
> - Hate incidents often provide the evidence of motivation for subsequent hate crimes. Specifically where individuals are victims of harassment or stalking where individual acts may be sub-criminal.

- Hate incidents can increase levels of fear in communities. Understanding what drives and affects community cohesion is essential for effective policing
- Recording of hate incidents can prevent escalation into criminal behavior. For example we know through our work in schools that young children are now committing criminal acts online without understanding that their behavior online can lead to criminal convictions."

231. In addition, Nick Antjoule is a specialist in hate crime at a leading LGBT+ charity. He has experience of working in a police force as a specialist LGBT Liaison Officer, and in hate crime in a local authority. In his statement he has also provided detailed reasons explaining why perception-based recording is necessary and why monitoring of non-crime hate incidents is needed to prevent hate crime ([12-18]). Nathan Hall wrote the Introduction to HCOG and is an academic specialising in hate crimes and the legacy of the Stephen Lawrence Inquiry. He also holds posts on the Independent Advisory Group and the NPCC's Hate Crime Working Group. In his statement at [11]-[31] he explains in detail the need for perception-based recording; the dynamic of hate speech escalating into a hate crime**;** and detailed reasons why it is necessary to record non-crime hate incidents.

232. Accordingly, there is a wealth of evidence supporting the necessity of the key elements of HCOG.

233. In considering this question, it is also necessary to consider the safeguards that are in place in relation to how information recorded and retained under HCOG.

234. First, as I have explained, there is an element of discretion whether to record in HCOG. It has to be applied in a common-sense manner by police forces. Also, HCOG expressly provides that it must be applied in a proportionate and Convention compliant manner (at [6.1] and [6.4]). When Mr Giannasi trains police on hate crime he emphasises the importance of Articles 8 and 10 of the Convention.

235. In respect of retention, the police are subject to the Data Protection Act 1998 and other policies including the NSIR; the Home Office Counting Rules for Recorded Crime; the College of Policing's Authorised Professional Practice: Information Management – Retention, review and disposal.

236. Finally, there is the question of disclosure a non-crime hate incident in respect of an individual. There is a framework of laws and policies in place the legality of which has been upheld. Disclosure is only permissible in principle, therefore, where the need to protect the public is at its greatest, ie, where the individual may be in contact with vulnerable individuals and, because of the test of relevance, where those vulnerable individuals may belong to the group against whom it is complained the applicant was hostile. It is right that employers, who themselves must uphold their own equality duties in relation to their staff and service-users, may be informed about the potential prejudicial and discriminatory views of prospective employees. There are important safeguards in place to protect job applicants, who have the right to request that information held about them be removed from the police's record. Individuals have a right of appeal against decisions as to what is to be disclosed.

(v) Conclusion

237. I therefore reject the Claimant's broad-based challenge to the legality of HCOG under Article 10. In summary, I conclude that (a) the mere recording of a non-crime hate incident based on an individual's speech is not an interference with his or her rights under Article 10(1); (b) but if it is, it is prescribed by law and done for two of the legitimate aims in Article 10(2); and (c) that HCOG does not give rise to an unacceptable risk of a violation of Article 10(1) on the grounds of disproportionality.

The legality of the police's treatment of the Claimant

238. I turn to the Claimant's narrower challenge. He contends that the combination of the recording of his tweets as a non-crime hate incident under HCOG; PC Gul going to his workplace to speak to him about them; their subsequent conversation in which, at a minimum, PC Gul warned him of the risk of a criminal prosecution if he continued to tweet; and the Claimant's subsequent dealings with the police in which he was again warned about criminal prosecution, interfered with his rights under Article 10(1) in a manner which was unlawful.

239. On behalf of the Second Defendant Mr Ustych took what might be called a pleading point, in as much as he contended that as against his client the only complaint by the Claimant was the recording of his tweets rather than the police's subsequent action. I do not accept this. It is clear from the pleadings and the Skeleton Arguments that everyone was alive to the way in which the case was being put by the Claimant. There is the broad challenge to HCOG which I have rejected, and there is also the focussed challenge on the facts as to how it was applied in the Claimant's case. Mr Ustych met the case on that basis during argument and that is how I propose to deal with it.

The Claimant's tweets: the context

240. It is vital to begin with the context of the debate in which the Claimant was writing. As Lord Steyn said in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, 548, 'in law, context is everything.' In *Vajnai v Hungary* (No. 33629/06, judgment of 8 July 2008), [53] the Court observed:

> "… it is only by a careful examination of the context in which the offending words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 and that which forfeits its right to tolerance in a democratic society."

241. It is very important to recognise that the Claimant was not tweeting in a vacuum. He was contributing to an ongoing debate that is complex and multi-faceted. In order to understand the contours of that debate I have been assisted by the first witness statement of Professor Kathleen Stock, Professor of Philosophy at Sussex University. She researches and teaches the philosophy of fiction and feminist philosophy. Her intellectual pedigree is impeccable. She writes:

> "4, In my work, among other things I argue that there's nothing wrong, either theoretically, linguistically, empirically, or politically, with the once-familiar idea that a woman is, definitionally, an adult human female. I also argue that the subjective notion of 'gender identity' is ill-conceived intrinsically, and *a fortiori* as a potential object of law or policy. In light of these and other views, I am intellectually 'gender-critical'; that is, critical of the influential societal role of sex-based stereotypes, generally, including the role of stereotypes in informing the dogmatic and, in my view, false assertion that – quite literally – 'trans women are women'. I am clear throughout my work that trans people are deserving of all human rights and dignity."

242. Professor Stock co-runs an informal network of around 100 gender-critical academics working in UK and overseas universities. Members of the network come from a wide variety of different disciplines including sociology, philosophy, law, psychology and medicine. She says that many members of the network 'research on the many rich theoretical and practical questions raised by current major social changes in the UK around sex and gender'.

243. Professor Stock then describes the 'hostile climate' facing gender-critical academics working in UK universities. She says that any research which threatens to produce conclusions or outcomes that influential trans-advocacy organisations would judge to be politically inexpedient, faces significant obstacles. These, broadly, are impediments to the generation of research and to its publication. She also explains how gender critical academics face constant student protests which hinder their work.

244. At [17] she says:

> "As also indicative, since I began writing and speaking on gender-critical matters: the Sussex University Student Union Executive has put out a statement about me on their website, accusing me of 'transphobia' and 'hatred'; I've had my office door defaced twice with stickers saying that 'TERFS' are 'not welcome here' …"

245. I understand that 'TERF' is an acronym for 'trans-exclusionary radical feminist'. It is used to describe feminists who express ideas that other feminists consider transphobic, such as the claim that trans women are not women, opposition to transgender rights and exclusion of trans women from women's spaces and organisations. It can be a pejorative term.

246. She concludes at [22]:

> "… there are also unfair obstacles to getting gender-critical research articles into academic publications, and in achieving grant funding. These stem from a dogmatic belief, widespread amongst those academics most likely to be asked to referee a project about sex or gender (eg those already

> established in Gender Studies; those in feminist philosophy) that trans women are literally women, that trans men are literally men, and that any dissent on this point must automatically be transphobic …"

247. Also in evidence is a statement from Jodie Ginsberg, the CEO of Index on Censorship. Index on Censorship is a non-profit organisation that campaigns for and defends free expression worldwide. It publishes work by censored writers and artists, promote debate, and monitor threats to free speech. She deals with a number of topics, including the Government Consultation on the GRA 2004. She explains at [10]-[11]:

> "10. The proposed reforms to the Gender Recognition Act involve removing the gender recognition procedures described above and replacing them with a simple self-identification process (self-ID). Self-ID means the transitioner does not have to undergo medical or other assessment procedures.
>
> 11. Many in the UK are concerned that the proposed reforms for self-ID will erase 'sex' as protected characteristic in the Equality Act 2010 by conflating 'sex' and 'gender'. There are concerns that single sex spaces with important protective functions (women's prisons or women's refuse shelters for victims of domestic violence or rape) will be undermined. The UK government has said it does not plan to amend the existing protections in the Equality Act; however, this is not convincing to those who see self-ID in any form as fundamentally incompatible with legal protection for women and girls."

248. She goes on to address gender criticism and Twitter and explains that there is on-going concern that Twitter is stifling legitimate debate on this topic by its terms of service which apparently treat gender critical comment as hate speech. She then gives a number of examples where the police have taken action because of things people have posted on Twitter about transgender issues.

249. She concludes at [27]-[29]:

> "27. Index is concerned by the apparent growing number of cases in which police are contacting individuals about online speech that is not illegal and sometimes asking for posts to be removed. This is creating confusion among the wider population about what is and is not legal speech, and - more significantly – further suppressing debate on an issue of public interest, given that the government invited comment on this issue as part of its review of the Gender Recognition Act.
>
> 28. The confusion of the public (and police) around what is, and what is not, illegal speech may be responsible for

> artificially inflating statistics on transgender hate crime … Police actions against those espousing lawful, gender critical views – including the recording of such views where reported as 'hate incidents' – create a hostile environment in which gender critical voices are silenced. This is at a time when the country is debating the limits and meaning of 'gender' as a legal category.
>
> 29. It has been reported that the hostile environment in which this debate is being conducted is preventing even members of parliament from expressing their opinions openly. The journalist James Kirkup said in a 2018 report for The Spectator: "I know MPs, in more than one party, who privately say they will not talk about this issue in public for fear of the responses that are likely to follow. The debate is currently conducted in terms that are not conducive to – and sometimes actively hostile to – free expression. As a result, it is very unlikely to lead to good and socially sustainable policy."

250. I take the following points from this evidence. First, there is a vigorous ongoing debate about trans rights. Professor Stock's evidence shows that some involved in the debate are readily willing to label those with different viewpoints as 'transphobic' or as displaying 'hatred' when they are not. It is clear that there are those on one side of the debate who simply will not tolerate different views, even when they are expressed by legitimate scholars whose views are not grounded in hatred, bigotry, prejudice or hostility, but are based on legitimately different value judgments, reasoning and analysis, and form part of mainstream academic research.

251. The Claimant's tweets were, for the most part, either opaque, profane, or unsophisticated. That does not rob them of the protection of Article 10(1). I am quite clear that they were expressions of opinion on a topic of current controversy, namely gender recognition. Unsubtle though they were, the Claimant expressed views which are congruent with the views of a number of respected academics who hold gender-critical views and do so for profound socio-philosophical reasons. This conclusion is reinforced by Ms Ginsberg's evidence, which shows that many other people hold concerns similar to those held by the Claimant.

252. The Defendants submitted that this contextual evidence was not relevant to the issues in this case. I disagree. It is relevant because in the Article 10 context, special protection is afforded to political speech and debate on questions of public interest: see eg *Vajnai v Hungary* (No. 33629/06, judgment of 8 July 2008), [47], where the Court emphasised that that there is:

> "… little scope under Article 10(2) of the Convention for restrictions on political speech or on the debate of questions of public interest".

253. I turn to the required four-part analysis to determine whether the police unlawfully interfered with the Claimant's Article 10 rights.

(i) Interference

254. The first question is whether the police interfered with the Claimant's right to freedom of expression. I set out the case law on interference earlier. The issue of whether there has been an interference with the right to freedom of expression in Article 10(1) is helpfully summarised in Clayton & Tomlinson, *The Law of Human Rights* (2nd Edn, Vol 1) at [15.267]:

> "In contrast to the position under some other Articles of the Convention, the question as to whether there has been an interference with an Article 10 right will usually be straightforward. Interferences with the right to freedom of expression can take a wide variety of forms and the [ECtHR] has, generally, considered that anything which impedes, sanctions, restricts or deters expression constitutes an interference..."

255. The Strasbourg case law shows that comparatively little official action is needed to constitute an interference for the purposes of Article 10(1). In *Steur v Netherlands*, Application 39657/98, judgment of 28 January 2003, a lawyer complained that Bar disciplinary proceedings had interfered with his Article 10(1) rights. At [29], [44] the Court said:

> "27. The Government argued that the applicant had not been the subject of any 'formalities, conditions, restrictions or penalties' …
>
> 29. The Court acknowledges that no sanction was imposed on the applicant – not even the lightest sanction, a mere admonition. Nonetheless, the applicant was censured, that is, he was formally found at fault in that he had breached the applicable professional standards. This could have a negative effect on the applicant, in the sense that he might feel restricted in his choice of factual and legal arguments when defending his clients in future cases. It is therefore reasonable to consider that the applicant was made subject to a 'formality' or a 'restriction' on his freedom of expression.
>
> 44. It is true that no sanction was imposed on the applicant but, even so, the threat of an *ex post facto* review of his criticism with respect to the manner in which evidence was taken from his client is difficult to reconcile with his duty as an advocate to defend the interests of his clients and could have a "chilling effect" on the practice of his profession …"

256. For the reasons I explained earlier, although what was said between PC Gul and the Claimant is disputed and I cannot resolve that dispute, the undisputed facts plainly show

that the police interfered with the Claimant's right to freedom of expression. PC Gul's actions in going to the Claimant's place of work and his misstatement of the facts, his warning to the Claimant, coupled with the subsequent warnings by the police to the Claimant that he would be at risk of criminal prosecution if he continued to tweet (the term 'escalation' was never defined or explained) all lead me to conclude that the police did interfere with his Article 10(1) rights even though he was not made subject to any formal sanction. There is also the point that the police created a Crime Report which referred to the Claimant as a 'suspect'.

257. I bear in mind the Defendants' submission that I should regard the Claimant's evidence about his reaction with caution. However, I accept what he said in [40] of his witness statement about what he felt following his conversation with PC Gul:

> "I felt a deep sense of both personal humiliation, shame for my family and embarrassment for my Company, its customers, suppliers and employees. I also felt anxious as to what this might mean for me, the family and the business. What did a hate incident say of me and what would happen if it escalated ? How could it escalate ? How would I cross the line into criminality ? Where was the safe place to engage in critical comment about deeply concerning legislative possibilities …"

258. It seems to me that this would be the reaction of anyone who had been exercising their free expression rights and then received a visit from the police as a consequence.

259. Mr Auburn and Mr Ustych both sought to play down the police's actions. They said that there had been no interference with the Claimant's free expression rights or, if there had, it was at a trivial level. In my judgment these submissions impermissibly minimise what occurred and do not properly reflect the value of free speech in a democracy. There was not a shred of evidence that the Claimant was at risk of committing a criminal offence. The effect of the police turning up at his place of work because of his political opinions must not be underestimated. To do so would be to undervalue a cardinal democratic freedom. In this country we have never had a Cheka, a Gestapo or a Stasi. We have never lived in an Orwellian society.

260. It is nothing to the point that the Claimant subsequently gave interviews to various media outlets, or that he soon continued to tweet on transgender issues, and that both of these generated further publicity. That, in my judgment, does not mean that what the police did was not an interference under Article 10(1). The paradigm case of an Article 10(1) interference is where someone suffers a criminal punishment as a consequence of exercise their right to freedom of speech. The fact that they may continue to speak following their punishment does not stop that punishment from being an interference.

261. Warning the Claimant that in unspecified circumstances he might find himself being prosecuted for exercising his right to freedom of expression on Twitter had the capacity to impede and deter him from expressing himself on transgender issues. In other words, the police's actions, taken as a whole, had a chilling effect on his right to freedom of expression. That is an interference for the purposes of Article 10(1).

(ii) Prescribed by law

262. Were the police's actions 'in accordance with law' ? In principle they had the power to record the tweets under HCOG, although whether it was proper to do so I will consider later in connection with proportionality. ACC Young had the power to issue his statement and Acting Inspector Wilson had the power to write to the Claimant in response to his complaint.

263. PC Gul's evidence about what power he was exercising when he visited the Claimant's workplace and subsequently spoke to the Claimant is confused. He does not identify the power in his statement. His confusion is illustrated by [12] of his statement, where he said that 'the purpose of my visit was simply to speak with Mr Miller rather than the exercise of any police powers that were available to me.'

264. Despite his confusion, I am prepared to assume that PC Gul was acting within the scope of his common law power to prevent crime when he went to the Claimant's workplace and later spoke to him in order to warn him about 'escalation'. But I should make clear, as I have already said, that there was no evidence that the Claimant either had, or was going to, escalate his tweets so that they potentially would amount to a criminal offence so as to require police action. The contrary conclusion is irrational. From November 2018 until January 2019 the Claimant's tweets had followed a fairly random pattern, raising subjects relating to transgender which were probably only of interest to obsessives (such as who won a particular event at the 1976 Olympics). There is no evidence that they were, for example, becoming increasingly offensive and intemperate, or that the Claimant was beginning specifically to target transgender people, or that increasing numbers of people were being offended by them.

265. No-one can forget the despicable language recorded by the police during their investigation of the Stephen Lawrence murder. But the Claimant's tweets were a world away from that. As I have explained, he expressed the sort of views that are also held by many academics as part of a complex multi-faceted debate.

266. At this point I should refer to the second witness statement of Professor Stock. In it she discusses the differences between speech perceived as racist, and utterances that are frequently perceived by hearers as motivated by transphobia, or understood as hostility or prejudice against a person who is transgender, eg, 'Trans women aren't women'. She says at [5]:

> "5. Where an utterance is perceived to be racist, it usually contains some identifiable pejorative element which explains that perception, so that it is not reasonably interpretable merely as straightforward, non-evaluative description. For instance, racist utterances might involve: a slur, such as the N-word, conventionally expressing contempt; mocking epithets designed to ridicule; or other statements expressing personal disapproval …

267. In contrast, she says expressions such as 'Trans women aren't women':

> "… contain no pejorative, expressive, mocking, or disapproving elements. In the mouths of many people, these utterances are intended to convey, and be heard as simple descriptions of observable facts; that is they are intended to be fact-stating and non-evaluative utterances, along the lines of 'water boils and 100 degrees' or 'pillar boxes in the UK are red.
>
> 6. For many English speakers, 'woman' is strictly synonymous with 'biologically female and 'man' with 'biologically male'. For these speakers, therefore, given the accompanying true belief that trans women are biologically male, to say that 'trans women are men' and 'trans women aren't women' is simply to neutrally state facts'"

268. During the hearing I asked Mr Ustych what criminal offences the police had in mind when they warned the Claimant about escalation and further tweeting. He suggested the offence under s 127 of the Communications Act 2003 which, to recap, makes it an offence to send 'a message or other matter that is grossly offensive or of an indecent, obscene or menacing character' via a public telecommunications system. He also suggested the offence under s 1 of the Malicious Communications Act 1988. In my judgment the suggestion that there was evidence that Claimant could escalate so as to commit either offence is not remotely tenable.

269. The s 127 offence was considered by the House of Lords in *Director of Public Prosecutions v Collins* [2006] 1 WLR 2223. The defendant telephoned his Member of Parliament and spoke or left messages using offensive racial terms. None of the people whom the defendant addressed or who picked up the recorded messages was a member of an ethnic minority. The defendant was tried for sending, by means of a public telecommunications system, messages that were grossly offensive contrary to s 127 of the Communications Act 2003. The justices held that, although the conversations and messages were offensive, a reasonable person would not have found them grossly offensive; accordingly, they acquitted the defendant. The Divisional Court dismissed the Crown's appeal by way of case stated. The House of Lords allowed the Crown's appeal. It held: (a) that the purpose of s 127(1)(a) was to prohibit the use of a service provided and funded by the public for the benefit of the public, for the transmission of communications which contravened the basic standards of society; (b) that the proscribed act was the sending of the message of the proscribed character by the defined means, and the offence was complete when the message was sent; (c) it was for the court, applying the standards of an open and just multiracial society and taking account of the context and all relevant circumstances, to determine as a question of fact whether a message was grossly offensive; (d) that it was necessary to show that the defendant intended his words to be grossly offensive to those to whom the message related, or that he was aware that they might be taken to be so.

270. It held that that the defendant's messages were grossly offensive and would be found by a reasonable person to be so, and that although s 127(1)(a) interfered with the right to freedom of expression under Article 10, it went no further than was necessary in a democratic society for achieving the legitimate objective of preventing the use of the public electronic communications network for attacking the reputations and rights of

others; and that, accordingly, since the messages had been sent by the defendant by means of a public electronic communications network, he should have been convicted of an offence under s 127(1)(a).

271. The Claimant's tweets did not come close to this offence. No reasonable person could have regarded them as grossly offensive, and certainly not having regard to the context in which they were sent, namely, as part of a debate on a matter of current controversy. Nor could they be reasonably regarded as indecent or menacing. The lyric which apparently most concerned PC Gul used the words 'breasts' and 'vagina'. The use of such words in twenty-first century United Kingdom is not indecent, or at least not in the satirical context in which they were deployed. Nor was the use of the words 'penis' in one of the other tweets. Nor was there any evidence that the Claimant intended to be grossly offensive: he regarded himself as simply using sarcasm and satire as part of the gender recognition debate in tweets to his Twitter followers. As I have held, apart from Mrs B, there is no firm evidence about who read the tweets, or what their reaction was. I infer from this that apart from her, no-one else was remotely concerned by them. However, the Claimant had no reason to know that Mrs B would read them and be offended.

272. Section 1 of the Malicious Communications Act 1988 provides:

> "Any person who sends to another person - (a) a letter, electronic communication or article of any description which conveys - (i) a message which is indecent or grossly offensive … is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should … cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated."

273. The Claimant's tweets did not amount to this offence for essentially the same reasons they did not constitute the s 127 offence: they were not grossly offensive or indecent and the Claimant did not intend to cause anyone anxiety or distress.

(iii) Legitimate aim

274. I am prepared to assume for the purposes of argument that the police's actions taken as a whole were aimed at two of the purposes specified in Article 10(2), namely for the prevention of crime or the protection of the rights and freedoms of others. As I have explained, there was in fact no risk of any offence being committed by the Claimant, but I am prepared to accept that PC Gul's acted as he did because he thought there was such a risk, and that he believed he was protecting Mrs B's right not to be offended.

(iv) Necessary in a democratic society

275. I turn to the question of 'necessary in a democratic society' and proportionality. I set out the four questions to be considered earlier in this judgment. Proportionality is always fact specific and the facts have to be closely scrutinised: *Bridges*, supra, [100], [108].

276. The first question is whether the objective of the police's actions in warning the Claimant was sufficiently important to justify restricting his freedom of speech. I remind myself

that there is little scope under Article 10(2) of the Convention for restrictions on political speech or on the debate of questions of public interest: see eg *Vajnai v Hungary*, supra, [47]. In *R (Prolife Alliance) v British Broadcasting Corporation*, supra, [6], Lord Nicholls said:

> "6. Freedom of political speech is a freedom of the very highest importance in any country which lays claim to being a democracy. Restrictions on this freedom need to be examined rigorously by all concerned, not least the courts. The courts, as independent and impartial bodies, are charged with a vital supervisory role."

277. I also remind myself, as Lord Bingham said in *Shayler*, supra, that the test of necessity is a stringent one. Strong justification is therefore needed to justify a restriction on such speech. In my judgment, there was no such justification in this case.

278. The two legitimate aims in question were the prevention of crime and the protection of others. For the reasons I have given there was no rational basis on which PC Gul could have believed that there was any risk of the Claimant committing a criminal offence. There was accordingly no need for him to visit the Claimant's workplace and then warn him about the danger of being prosecuted if he escalated. Nor was there any need for ACC Young and Acting Inspector Wilson to say the same thing. As I have already said but emphasise again, there was no firm evidence that anyone had read his tweets and been upset, apart from Mrs B. There was no evidence anyone would read any future tweets and be upset by them. As I have pointed out, PC Gul was wrong to say that the tweets had upset 'many members' of the transgender community. There was no evidence of that and Mrs B does not say that in her witness statement.

279. The Claimant's tweets were not targeted at Mrs B, nor even the transgender community. They were primarily aimed at his 900-odd Twitter followers many of whom, as I said earlier, can be assumed to be of a like mind. Mrs B chose to read them. Until she got involved, there is no evidence anyone had paid any attention to the Claimant's tweets. No-one had been bothered by them. No-one had responded to them. No-one had complained about them. Some of them were so opaque I doubt many people would have understood them even if they had read them.

280. I hesitate to be overly critical of Mrs B, given she has not given evidence, but I consider it fair to say that her reaction to the Claimant's tweets was, at times, at the outer margins of rationality. For example, her suggestion that the Claimant would have been anti-Semitic eighty years ago had no proper basis and represents an extreme mindset on her behalf. Equally, her statement that if the Claimant wins this case, transgender people will have to 'kiss their rights goodbye' was simply wrong. The Equality Act 2010 will remain in force. The evidence of Professor Stock shows that the Claimant is far from alone in a debate which is complex and multi-faceted. Mrs B profoundly disagrees with his views, but such is the nature of free speech in a democracy. Professor Stock's evidence demonstrates how quickly some involved in the transgender debate are prepared to accuse others with whom they disagree of showing hatred, or as being transphobic when they are not, but simply hold a different view. Mrs B's evidence would tend to confirm Professor Stock's evidence.

281. Although I do not need to decide the point, I entertain considerable doubt whether the Claimant's tweets were properly recordable under HCOG at all. It seems to me to be arguable that the tweets (or at least some of them) did not disclose hostility or prejudice to the transgender community and so did not come within the definition of a non-crime hate incident. HCOG rightly notes at [1.2.2] that 'hate implies a high degree of animosity …'. Professor Stock has explained that expressions which are often described as transphobic are not in fact so, or at least necessarily so (unlike racist language, which is always hateful and offensive). I acknowledge the importance of perception-based reporting for all of the reasons I set out earlier and I am prepared to accept that Mrs B had the perception that the tweets demonstrated hostility or prejudice to the transgender community. But I would question whether that conclusion was a rational one in relation to at least some of them. It is striking that no-where in their evidence did Mrs B or PC Gul specifically identify which tweets amounted to hate speech, or why. It is just asserted that they did, without further discussion. In my view many of them definitely did not, eg, the tweet about Dame Jenni Murray. That, it seems to me, was a protest against those who were seeking to curtail freedom of speech, and was not about transgender issues at all. Calling Dr Harrop a 'gloating bastard' was not very nice, but it was not displaying hatred or prejudice to the transgender community. Asking why gender critical views were not more represented in the media was a perfectly reasonable enquiry, as was asking what the Trans Day of Remembrance was. The Claimant's evidence, which I accept, is that he is not prejudiced and that his tweets were sent as part of an ongoing debate. Whilst I am prepared to accept Mrs B's indignation, I question whether Mrs B fell into [1.2.4] as someone who was responding to an internet story or who was reporting for a political motive, making the recording of her complaint not appropriate. The Crime Report shows she herself was not above making derogatory comments online about people she disagrees with on transgender issues; in other words, Mrs B is an active participant in the trans debate online.

282. I readily accept, of course, that a single victim can be the subject of hate speech that is properly recordable under HCOG. But I do think that it is significant in this case that the Claimant was tweeting to a large number of people, and yet only Mrs B complained, and did so in terms that on any view were extreme and, as I have explained, not wholly accurate. That is a factor that has to be taken into account when the proportionality of the police's response is assessed.

283. Overall, given the importance of not restricting legitimate political debate, I conclude that Mrs B's upset did not justify the police's actions towards the Claimant including turning up at his workplace and then warning him about criminal prosecution, thereby interfering with his Article 10(1) rights.

284. The answer to the second question, whether the measure was rationally connected to the objective, flows from the first question. It was not. It was not rational or necessary to warn the Claimant for the reasons that I have given.

285. The third question is whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective. If some of the tweets were in fact a non-crime hate incident because of their effect on Mrs B then the police could simply have recorded them pursuant to HCOG and taken no further step. In his statement PC Gul accepts that one option that was open to him was to take no further action. They

could also have advised Mrs B not to read any subsequent tweets. Both of those things would have served the objectives in question.

286. The fourth question is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure. I am quite satisfied that it is. The Claimant's Article 10(1) right to speak on transgender issues as part of an ongoing debate was extremely important for all of the reasons I have given and because freedom of speech is intrinsically important. There was no risk of him committing an offence and Mrs B's emotional response did not justify the police acting as they did towards the Claimant. What they did effectively granted her a 'heckler's veto'. As to this, in *Vajnaj v Hungary,* supra, the Court said at [57]:

> "In the Court's view, a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling – real or imaginary – cannot be regarded as meeting the pressing social needs recognised in a democratic society, since that society must remain reasonable in its judgement. To hold otherwise would mean that freedom of speech and opinion is subjected to the heckler's veto."

287. What the Claimant wrote was lawful. The Claimant was just one person writing things which only one other person found offensive out of however many read them. Mrs B chose to read the Claimant's tweets. The tweets were not directed at her. If the Claimant's tweets had been reported in a newspaper and Mrs B had complained as a consequence, then I seriously doubt it would have been recorded as a hate incident. He would have been expressing himself in a public forum (as he did on Twitter) for people to read, or not, what he had to say. What happened in this case was not in my judgment meaningfully different.

Conclusion

288. In his treatise *On Liberty* (1859) John Stuart Mill wrote:

> "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind."

289. For the reasons I have set out, whilst Mrs B made a complaint that was recorded under HCOG, the police's treatment of the Claimant thereafter disproportionately interfered with his right of freedom of expression, which is an essential component of democracy for all of the reasons I explained at the beginning of this judgment.

Name of meeting: Professional Committee
Date of meeting: 23 June 2020
Item lead at meeting: [redacted]
Agenda item number: 5
Title of paper: College Digital Intelligence and Investigations Project

1. Issue

1.1 The College has been awarded 12 months funding to develop 'tradecraft' materials to enhance police service skills in the area of digital intelligence and investigations.

2. Summary

2.1 The Digital Intelligence and Investigations Project (DII Project) previously sat under the Digital Policing Portfolio (DPP) as part of a larger programme. That programme has now ceased and the College submitted a successful bid to progress the work of the DII Project focusing on supporting the 20k officer uplift. The Home Office awarded funding of just over £4 million from the Operation Uplift budget.

2.2 The project will focus on delivering 'bite sized', operationally focused learning products that will help everyone in policing, including those new to the organisation, to deal with challenges associated with the digital environment.

3. Recommendation

3.1 Professional decision required: **NO**

3.2 Professional Committee is asked to

i. **NOTE** the progress of the project.

4. Supporting Information/Consideration

4.1 The DII Project is a Tier 1 project reporting to the Strategic Capability Investment Board which Kit Malthouse chairs.

4.2 Under DPP, the DII project had a longer-term strategic focus, based on a £70m Spending Review bid, seeking to create a programme of activity to transform policing capability over many years. That bid was not progressed by Home Office and the much reduced funding under Operation Uplift was approved, but with a far narrower focus and for a single year. The previous project was technology focused, whereas the College priority is to develop digital skills.

4.3 The project has four work streams. It will develop a 'Capability Improvement Hub' (CIH), linked to a 'Digital Knowledge and Learning Base' (DKLB).

4.4 CIH will be an outreach team, working closely with forces, specific NPCC areas, academia, NCA and other experts to understand the current challenges and opportunities in the DII environment.

4.5 DKLB will turn those insights into products that forces can use to provide new recruits and those already in policing with the digital skills they need. The intention is to take a 'tradecraft' approach, identifying what knowledge and skills will be most useful in

the operational environment. The project will also explore the best means to make information available at point of need, through digital devices available to responders.

4.6 The third work stream is developing a digital skills and standards framework to underpin digital policing.

4.7 The fourth work stream is to accelerate the existing College digital learning programme.

4.8 The project is already using data that twenty six forces submitted as part of DPP's Digital Assessment Tool (DAT) and will liaise closely with forces to ensure products meet the needs of Uplift recruits and those already in the service.

4.9 The project is focused on delivering a number of highly innovative and attractive learning products, supported by 'bite sized' knowledge products, accessible on mobile devices at the point of need. The team is procuring an external production company to assist with developing content, enabling it to draw on market leaders with experience of delivering learning and knowledge across different sectors and in different parts of the world. Four bidders are being assessed at the time of writing.

4.10 The COVID 19 pandemic will affect management and delivery of the project. Face to face events may not be possible. The project team will respond to changes in the environment to ensure that the work assists policing whilst avoiding abstracting colleagues from delivery of policing services. Recruiting staff has been made difficult because of the short-term nature of funding and the restrictions on face to face recruitment and team building. However, recruitment to many of the most significant roles has taken place, with induction being achieved remotely. .

4.11 The team has reordered the delivery of project deliverables to reflect practicalities of delivering face-to face events, with planned learning workshops being pushed back to the end of the year. In addition, the team is supporting the College to adopt Office 365 as soon as possible so that it can use the platform that forces are or will be using.

4.12 Further concerns relate to the position after the end of this financial year. The project team is exploring options to manage and/or develop products at the end of funding.

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Name of meeting: Professional Committee
Date of meeting: 23 June 2020
Item lead at meeting: Mike Cunningham
Agenda item number: 6
Title of paper: The Role of Professional Committee

1. Issue

1.1. The Board has confirmed that the College's regulatory decision-making must be made in line with its constitutional powers.

1.2. The Professional Committee provides invaluable advice to the Board and it is proposed that its role be enhanced by absorbing the functions of the College Regulatory Consultative Group (CRCG).

2. Summary

2.1. The Professional Committee and CRCG both support the Board of the College (the Board) in discharging its responsibility for preparing Police Regulations, determinations, codes of practice and guidance (under Part 11 of the Anti-Social Behaviour, Crime and Policing Act 2014, sections 123, 124, 125, 126) [Section 50 of the Police Act 1996 (as amended)] and Section 97 of the Criminal Justice and Police Act 2001. Professional Committee's role and purpose are defined by, and may be amended by, the Board.

2.2. The Act devolved the power to prepare Police Regulations from the Home Secretary to the College in a number of areas. Under Section 53A (Regulation of Procedures and Practices) the College is required to consult with the National Crime Agency on draft regulations.

2.3. The role of the Board in receiving recommendations from Professional Committee is to ensure standards have gone through due process with proper consultation and recommending to the Home Secretary as appropriate.

2.4. The incorporation of CRCG's consultative functions by Professional Committee will streamline decision making without compromising consultation.

3. Recommendations

3.1. Professional Committee decision required: **NO**

3.2. Professional Committee is asked to

3.3.

i. **NOTE AND DISCUSS** the revised role and Terms of Reference for PC
ii. **NOTE** the inclusion of a Business Pipeline at future meetings
iii. **NOTE** the dissolution of College Regulatory Consultative Group.

4. Supporting Information/Consideration

4.1. Under Section 53A (Regulation of Procedures and Practices) the College is required to consult with the National Crime Agency on draft regulations. CRCG was developed to ensure that the College fulfilled the Act's consultation requirements, but also expanded consultation to include staff associations, unions, the Home Office and other interested parties not only on draft regulations and determinations but also Codes of Practice and guidance.

4.2. Following a review of the Board and its committee structure, it was recognised that CRCG and Professional Committee undertook similar roles and it was decided to streamline the committee structure by absorbing the functions of CRCG into Professional Committee.

4.3. The College wishes to continue its approach of wider consultation rather than that which is narrowly specified under Section 53A and to include this within Professional Committee's Terms of Reference. Draft Terms of Reference (TOR) are attached at **Appendix 1**. The revised TOR combines the purposes of both Professional Committee and CRCG, gives prominence to the Committee's role in recommending standards to the Board and ensures that the broad consultation process enshrined within CRCG is maintained.

4.4. The proposed membership of Professional Committee has been reviewed. Full details are given in the TOR.

4.5. Professional Committee is asked to **Note and Discuss** the proposed TOR so that the Committee's feedback may be included prior to submission to the Board for approval.

4.6. CRCG reviewed a Business Pipeline at each of its meetings. This provided a brief overview of programmes/projects and a status update. The Business Pipeline is attached at **Appendix 2**. Professional Committee is asked to **Note** the inclusion of a Business Pipeline at its future meetings.

4.7. Professional Committee is asked to **Note** that CRCG has been formally dissolved and its attendees have been contacted in this regard.

5. Related Considerations

5.1. The proposed breadth of membership of Professional Committee which gives representation to all areas of policing ensures that no diversity and inclusion issues exist.

5.2. There are no financial or other considerations of concern.

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College of Policing

college.police.uk

Professional Committee Terms of Reference

Version 1.3

1. Purpose

1.1. The College of Policing (the College) is an independent professional body for policing in England and Wales. Our purposes are to promote policing excellence and to support everyone in policing to reduce crime and keep people safe. We do this through three principal activities:

- Sharing knowledge and good practice
- Setting operational standards
- Supporting professional development.

1.2. The College is a company limited by guarantee whose sole member is the Secretary of State for the Home Department. The College is also an arms-length body of the Home Office.

1.3. The Professional Committee (PC) supports the Board of the College (the Board) in discharging its responsibility for preparing Police Regulations, determinations, codes of practice and guidance (under Part 11 of the Anti-Social Behaviour, Crime and Policing Act 2014, sections 123, 124, 125, 126) [Section 50 of the Police Act 1996 (as amended)] and Section 97 of the Criminal Justice and Police Act 2001. Its role and purpose are defined by, and may be amended by, the Board.

1.4. PC will act with proper regard to the requirements related to the College's dual status and in accordance with both government frameworks and company law.

1.5. These terms of reference have been developed with particular regard to the UK Corporate Governance Code July 2018 and best practice guidance from ICSA: The Governance Institute.

2. Role/Scope/Responsibilities

2.1. The PC will:

- Recommend codes of practice, regulations, section 125 guidance and high profile guidance, training and other College products to the College Board for approval.
- Provide and support the priority work programmes that will report to the Committee including risk management;
- Identify priorities across policing where national standards are required, including professional development, policy, training and practice in line with the College's strategy;
- Consult the National Police Chiefs' Council on implementation issues relating to national standards;
- Consult the Association of Police and Crime Commissioners on resourcing issues relating to national standards;
- Support the College to lead debate on policing standards issues, including in response to recommendations arising from other public agencies (Home Office, HMICFRS, IOPC).
- Be alert to, sighted on and responsive to emerging risks, challenges and opportunities facing the profession and provide a forum where member and public concerns are considered;

2.2. The areas of the College's powers (under Part 11 of the Anti-Social Behaviour, Crime and Policing Act 2014, sections 123, 124, 125, 126) [Section 50 of the Police Act 1996 (as amended)] are provided in **Annex A**.

2.3. The Committee will ensure that consultation and consideration of draft regulations, codes of practice or Section 125 guidance is carried out with the National Crime Agency and other professional policing communities. The consultation process is provided at **Annex B**.

2.4. In the management and exercise of its role and the advancement of any decision, the PC will apply the principles set out within the College of Policing Code of Ethics.

3. Membership

3.1. The chair of the committee will be the Chief Executive Officer.

3.2. The Committee's membership comprises representatives from:

- National Police Chiefs' Council (3)
- National Crime Agency (2)
- The Metropolitan Police Service (1)
- Police Superintendents' Association of England and Wales (1)
- Police Federation of England and Wales (3)
- Trade Unions (1)
- Association of Special Constabulary Chief Officers (1)
- Police and Crime Commissioners (2)
- Chief Police Officers' Staff Association (1)
- Academic Member (1)

3.3. Members of the committee will normally serve on the committee for the duration of the appointed term of their representative organisation, unless the board decides otherwise or they elect to step down.

3.4. The committee may decide to co-opt an independent member who is not a member of the College Board to bring specific knowledge expertise and challenge to the committee. A co-opted member would count towards the quorum for the committee and would participate in any vote that the committee may take in order to reach a decision.

3.5. Members of the committee are entitled to send personal representatives from their own organisation.

3.6. Representatives from the following organisations may attend meetings, but do not have voting rights.

- Association of Police and Crime Commissioners
- Metropolitan Police Trade Union
- Home Office
- British Transport Police
- NPCC Leads on specific agenda items
- HMICFRS and IOPC

3.7. Other individuals such as directors and senior managers responsible for those areas of business under discussion, subject matter experts and specialists may be

invited to attend for all or part of any meeting as and when appropriate and necessary. The governance team will make the necessary arrangements for the attendance of non-members and ensure that they are provided with the necessary information.

3.8. The Head of Governance, or their nominee, will act as the secretary of the committee and will ensure that the committee receives information and papers in a timely manner to enable full and proper consideration to be given to the issues.

4. Quorum

4.1. Quorum for the committee will be the committee chair, or their nominee, and 50% of the committee members which must include a representative from the National Police Chiefs' Council, the Police Superintendents' Association of England and Wales, the Police Federation of England and Wales, Police and Crime Commissioners, and Trade Unions.

5. Decision making arrangements

5.1. Decisions taken by the committee will be normally be reached by consensus. Where a consensus of opinion does not exist a vote will be taken and the matter decided by simple majority of those voting members present.

5.2. If an equality of votes occurs the Chair will have a second, casting vote. The minutes of the meeting will record the results of voting and show the numbers for and against the proposal and the number of any abstentions.

5.3. The Chair has the discretion to escalate any issues for Board consideration and decision.

5.4. Where a decision is required outside the normal meeting cycle for reasons of urgency and it is not possible to convene a meeting in person or a meeting by skype at short notice, the Head of Governance will facilitate a Decision Under Urgency Procedures. The outcome of such a process will be included in the minutes of the next scheduled meeting.

6. Governance

6.1. The committee will meet at least four times a year and otherwise as required.

6.2. The Director of Operational Standards will be the Lead Officer.

6.3. Meetings will be called by the secretary of the committee at the request of the committee chair.

6.4. Unless otherwise agreed notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, will be forwarded to each member of the committee, and any other person required to attend, no later than five working days before the date of the meeting. Supporting papers will be sent to committee members and to other attendees, as appropriate, at the same time.

6.5. The Committee will arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary for board approval.

6.6. Committee members will at all times abide by the Code of Conduct for Board Members of Public Bodies 2019 and the College Code of Ethics.

7. Minutes of meetings

7.1. The secretary will minute the proceedings and resolutions of all committee meetings, including the names of those present and in attendance

7.2. Draft minutes of committee meetings will be circulated promptly to all members of the committee. Once approved, minutes should be circulated to all other members of the board unless in the opinion of the committee chair it would be inappropriate to do so.

8. Reporting responsibilities

The committee will:

8.1. Report to the board on its proceedings after each meeting on all matters within its duties and obligations

8.2. Make whatever recommendations to the board it deems appropriate on any area within its remit where action or improvement is needed

8.3. Produce a report to be included in the company's annual report about its activities during the year.

9. Other matters

The committee will:

9.1. Have access to sufficient resources in order to carry out its duties including access to the company secretariat for assistance if required

9.2. Be provided with appropriate and timely training, both in the form of an induction programme for new members and on an on-going basis for all members

9.3. Give due consideration to relevant laws and regulations as well as Home Office guidance

9.4. Work and liaise as necessary with all other board committees taking particular account of the impact of risk management and internal controls being delegated to different committees

10 Authority

The PC is authorised to:

10.1. seek any information it requires from any Officer in order to perform its duties and

10.2. obtain at the College's expense independent legal or professional advice on any matter it believes it is necessary to do so.

COLLEGE OF POLICING POWERS UNDER PART 11 OF THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014, SECTIONS 123, 124, 125, 126 [SECTION 50 OF THE POLICE ACT 1996 (AS AMENDED)] AND SECTION 97 OF THE CRIMINAL JUSTICE AND POLICE ACT 2001

Under Part 11 of The Anti-Social Behaviour, Crime And Policing Act 2014, Sections 123, 124, 125, 126 [Section 50 of the Police Act 1996 (as amended)] and Section 97 of the Criminal Justice and Police Act 2001, the power to prepare Police Regulations was devolved from the Home Secretary to the College. The Act requires the College to consult upon and prepare Police Regulations in respect of:

- the ranks held by police officers and special constables
- the qualifications required for appointment to and promotion within police forces and special constabulary
- the period of probation for police officers and special constables
- the maintenance of personal records of members of police forces and special constabulary
- police training
- the qualifications for deployment to perform particular tasks
- police practice and procedure

Legislation

Where draft regulations or determinations on the matters listed above have been consulted upon, they will be submitted to the Home Secretary and the Act provides that the Home Secretary will make those regulations unless he /she considers that:

- doing so would impair the efficiency or effectiveness of the police
- it would be unlawful to do so or
- it would for some other reason be wrong to do so

Codes of Practice

The College of Policing has the power to issue, with the approval of the Home Secretary, Codes of Practice relating to chief officers' discharge of their functions if the College consider that it is necessary:

- to promote the efficiency and effectiveness of police forces generally
- to facilitate the carrying out of joint or co-ordinated operations between forces or
- for any other reason in the national interests.

Guidance

As the College of Policing will also set standards for police staff and some staff working for third party contractors, the Act also creates a new, narrower power to issue guidance in relation to the experience, qualifications and training of police staff and contractors. This guidance can be addressed to local policing bodies (Police and Crime Commissioners and Police, Fire and Crime Commissionrs) as well as Chief Officers. Guidance must be published, but is not subject to the requirements for the approval of the Home Secretary and subsequent laying before Parliament that apply to regulations and codes.

ANNEX B

PROFESSIONAL COMMITTEE CONSULTATION PROCESS

1. The Committee must be able to influence the development of new or revised Regulations, determinations, Codes of Practice. This will be a consultative process and the Committee may not always reach consensus. This is acceptable and the different views should be included within the consultation summary that will be submitted to the College Board.

2. The Committee will support the College in fulfilling its legal requirements in relation to consultation as described in paragraph 1. In addition, the Committee will assist staff from the College to carry out proportionate consultation for other products, such as guidance and training, if they may be high profile or contentious.

3. For new projects or programmes, the Senior Responsible Owner (SRO) must identify at the earliest stage if there are any issues relating to regulations, determinations, and codes of practice or section 53D guidance. Where there are such issues the Professional Committee Business Pipeline must be updated to provide a summary of the project/programme; the overall timeline; an assessment of complexity; the nature of the regulations, determinations, Codes of Practice or guidance; the schedule for consultation and issues for consultation; and a list of core stakeholders who will need to be consulted formally.

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4. Prior to formal consultation, Professional Committee will receive a detailed project/programme proposal and will be asked to share with their colleagues the issues arising and to bring back to the Senior Responsible Owner the issues from their organisation. This informal consultation is vital to the development of any product prior to formal consultation.

5. Once the draft regulation, determination Code of Practice or section 125 guidance, has been developed the SRO will ensure that formal consultation is carried out.

6. The information given to the Committee members for consultation must include any legal advice. The Committee may also be asked by the Board to review and comment on any areas including: the law; Equality Diversity and Human Rights; and national and international issues that may arise within the development of police regulations or determinations, codes of practice, section 125 guidance or drafts.

7. The SRO includes a summary of the consultation and any legal advice when the draft Regulation, determination, Code of Practice or section 125 guidance is submitted to the Professional Committee for its formal consideration post consultation.

8. The Professional Committee will ensure that it considers the summary of any consultation when making any recommendation to the College of Policing Board.

9. The College of Policing will, where necessary, be responsible for the provision of legal or other specialist advice requested by the Committee.

10. The Board will receive a summary of the consultation and any comments from the Professional Committee before seeking approval from the Home Secretary.

11. Where the Board feels they would benefit from further information from the Professional Committee, they will request this via the College Chief Executive.

College of Policing

College Regulatory Consultative Group: Business Pipeline June 2020

Programme / Project Source	Owner	Brief Overview	Other Project Interdependencies/ Links	Recommended Additional Governance/ Consultation fora	Current Position
Transferees from non-HO forces	[redacted]	Varied requirements regarding probation and training for officers transferring from non-HO forces. Clarity needed on what competencies required before a transferee can be confirmed in rank	PEQF: Links to academic pre-requisites for entry and Leadership Review flexible entry routes		08/06/2020 [redacted]
MPS Detective Recruitment Campaign	[redacted]	MPS campaign to recruit individuals direct to Detective Constable without having previously been a police officer	Leadership Review, flexible entry routes and PEQF - links to academic pre-requisites for entry		Review of regulations has taken place internally and Reg 10 changes now not deemed necessary at this time. There may be some alignment with existing work by PAB and Notts Police in relation to use of Regulation 13 (from an educational attainment perspective) and PEQF. Met will continue to monitor any issues with Reg 13 and the detective pathway. Nothing significant has arisen to date. 31 July 2019: Item to remain on the pipeline pending confirmation by [redacted] of whether it was formally written down that individuals would join as constables – he was to ask this question of the MPS. 12 February 2020: Update still awaited.

Programme / Project Source	Owner	Brief Overview	Other Project Interdependencies/ Links	Recommended Additional Governance/ Consultation fora	Current Position
PEQF (Initial Entry Routes)	[redacted]	Proposed amendment to Regulation 10 around the age requirement for appointment to a police force – to allow applications from candidates under the age of 18 years in order to take up appointment on reaching the age of 18 years.	Linked to proposed amendment to Regulation 10 around the nationality requirement (see below) for appointment to a police force.		08/06/2020 ([redacted]: The proposed amendment (The Police (Amendment) Regulations 2020) was laid before Parliament on 01 June 2020, and comes into force on 22 June 2020.
PEQF (Initial Entry Routes)	[redacted]	Proposed amendment to Annex BA (Police Qualifications and Experience) to provide for only Policing Education Qualifications Framework (PEQF) initial entry routes into policing from 01 July 2022.	Linked to proposed amendment to Regulation 10 around the age (see above) and nationality requirement (see below) for appointment to a police force.		30/01/2020: Following communication of the agreed extension to the use of the Initial Police Learning and Development Programme (IPLDP) until (at least) June 2022, a (draft) timeline for implementation of the proposed regulatory change is to be presented to the Head of Workforce Development and Progression. It is anticipated the position of potential amendment will be presented to the College Regulatory Consultative Group (CRCG) (to note and provide comment on) in mid- to late-2020. 08/06/2020 ([redacted]): The regulatory change process map for the proposed amendment to Annex BA has been established (Regulatory change process map (Annex BA)) and, with the dissolution of the College Regulatory Consultative Group (CRCG), amended accordingly, to make specific reference to the Professional Committee.
Pilot Day One – Initial Police Recruitment	[redacted]	Proposed amendments to Regulation 10 to make requirements for passing an assessment centre approved by	Linked to proposed amendments to		05/02/2020: In October 2019 a decision was made between the Police Uplift Board and the College to implement Day One from July 2020

Programme / Project Source	Owner	Brief Overview	Other Project Interdependencies/ Links	Recommended Additional Governance/ Consultation fora	Current Position
Assessment Centre		the College (e.g. Day One) before being appointed to a police force more visible.	Regulation 10 (see above).		onwards. This decision was based on evaluation evidence from 18 month pilot, where the Day One exercises have been piloted on a diverse candidate population and candidates have been assessed by a diverse group of assessors. A number of enhancements to the model have been identified and will be incorporated into the final model implemented from July 2020 onwards. A national implementation plan has been developed which includes tailored support for forces whether delivering Day One locally/regionally or sending candidates to a College delivered assessment centre. Proposed changes regs include the recruit assessment centre being one which is approved by the College and one which candidates for the appointment of police constable must pass before being appointed to a police force. 08/02/2020 ([redacted]): Following discussions with Louise Meade (Head of Selection and Assessment), the proposed amendment to Regulation 10 to make specific reference to the assessment centre (approved by the College of Policing) has been put on hold until approval to progress a regulatory change has been discussed and received the relevant Senior Responsible Officer (SRO).
Brexit	Home Office	Amendment to Regulation 10 of the Police Regulations 2003 (and Regulation 1 of the Special Constable Regulations 1965) around			08/06/2020 ([redacted]): The Immigration, Nationality and Asylum (EU Exit) Regulations 2019 were made on 28 March 2019 and was due to come into force on exit day (31 January 2020). However, the

Programme / Project Source	Owner	Brief Overview	Other Project Interdependencies/ Links	Recommended Additional Governance/ Consultation fora	Current Position
		the nationality requirements for appointment to a police force due to the scheduled withdrawal of UK from the European Union (EU) (Brexit).			European Union (Withdrawal Agreement) Act 2020 has deferred the coming into force of this instrument until the end of the transition period which is also known as ' IP completion day' (31 December 2020 at 11:00pm).
Positive Action Guidance	Fiona Eldridge	College published guidance in 2014 – Positive Action Practical Advice. The recent case of Furlong v Chief Constable of Cheshire Police plus feedback from forces suggests that a review and clarification is required as different forces interpret the guidance differently.			The new Attraction and Recruitment toolkit contains some updated guidance. A full review of our current guidance will now be completed. We will be working with the PAPA (positive action practioners alliance) to develop the revised guidance. 03/02/2020 – Guidance has been updated and approved by Gov Legal Dept. PAPA group has been involved throughout. Just waiting on Design and Publishing before it is released. 08/06/2020 ([redacted]): Following discussions at the College Regulatory Consultative Group (CRCG) on 12 February 2020, the aforementioned guidance (Positive Action) was forwarded (by [redacted]) to J[redacted](Police Federation of England and Wales), and [redacted]) (Superintendents' Association of England and Wales) on 23 March 2020.

Programme / Project Source	Owner	Brief Overview	Other Project Interdependencies/ Links	Recommended Additional Governance/ Consultation fora	Current Position
Fast Track and Direct Entry (FTDE)	[redacted]	The five-year evaluation of FTDE was submitted to the Home Office in January 2020. At time of writing (June 2020) the reports remain under embargo. Once published the College intends to consult with the service to help inform the future of these programmes and potentially additional programmes such as a FT inspector to superintendent programme. The outcome of the consultation is likely to be January 2021 and until such time, we're unlikely to know what regulatory change may be required. However, regulatory change occurring as a consequence of existing FTDE programmes have included success at College run assessment centres to be eligible to enter the programme and probationary periods for those entering the service from outside.	N/A	The consultative process is under development, but will provide a clear indication of governance.	Awaiting publishing of FTDE evaluation reports.

Name of meeting:	Professional Committee
Date of meeting:	23 June 2020
Item lead at meeting:	Mike Cunningham
Agenda item number:	7a
Title of paper:	College Business Update

1. Issue:

1.1 This paper provides an overview of current College activity.

2. Recommendation

2.1 Professional Committee is requested to:

a) **Note** the highlight report of current College Business.

3 College Business Update

3.1 The update below provides an overview of the College's work. It is not an exhaustive list, but is intended to highlight the breadth and range of current activity across the College.

4. College Support for Operation Uplift

4.1 The national Police Officer Uplift Programme successfully recruited an additional 3005 new recruits within the first year and is on target to see 6000 new officers join the service by March 2021. However, in March, the plans for national implementation of Day One as a new initial selection process was presented with the challenge of being unable to deliver any form of face to face assessment centre due to the COVID-19 global pandemic and lockdown/social distancing restrictions imposed by HM Government.

4.2 The College is now working to deliver a suitable assessment process for all initial police officer recruitment that can be delivered entirely online, as an interim solution. We have started the initial roll out of the online assessment process to a number of forces. 7 forces are already 'live' and the College are working with the Police Uplift Programme to make the online assessment process available to all forces by the end of June.

4.3 The online assessment process will remain in place throughout the remainder of 2020, to ensure consistency and fairness in entry routes.

Crime and Criminal Justice Faculty

4.4 Professional Committee have previously been updated about the **Domestic Abuse Risk Assessment** project to test a revised DA risk assessment tool in four forces. As a result of Covid, it has not been possible for forces to collect, clean and submit their data. A fourth force has also not been able to go live as intended. We propose, therefore, to continue with this testing phase, leading to a formal 'gateway' meeting at which proposals for development will be considered. This is likely to happen in the autumn.

4.5 Professional Committee was informed of work to develop the **Digital Extraction guide/code.** This work continues and we expect to have an early draft for informal, early consultation in June.

4.6 The **SIO Advice document** on institutional **child sexual abuse** is ready for publication and will be released in the next few weeks. Discussions are taking place with the communications teams at NPCC, College and Op Hydrant.

4.7 Covid 19 has led to concerns about risk of harm for many vulnerable people, particularly in relation to domestic abuse. The College convened a weekly meeting with leading national DA charities, CPS, HMICFRS and a selection of police forces. This has proved extremely useful in maintaining communication across the DA sector. A number of products to support forces have been produced, including advice on dealing with DA calls without attending and principles on managing high risk DA and stalking perpetrators. We have also liaised with [redacted] team to address the broader vulnerability agenda.

Uniformed Policing Faculty

4.8 College support to **Operation Talla** has supported specialist areas to manage the impact of C19 on refresher training and reaccreditation activity, with the initial set-up and facilitation of the Civil Contingencies Knowledge Hub community, including the COVID-19 page. Also working with Coroners, NARU and NPCC on a national standard for the process of recognition of life extinct and remote verification of death. The College has contributed to the Multi-agency Excess Death Steering Group and supported the Police Uplift Programme to manage impacts of C19 on pre-employment.

4.9 Final amendments are currently being made to the **APP on Community Engagement for Stop and Search and Vetting.**

Workforce Development Directorate

4.10 **Uplift and Diversity -** [redacted] Diversity, Inclusion and Engagement) has now taken over as Diversity Lead for Uplift. A major focus will be on richer and more consistent data collection and analysis of diversity factors; 'declaration' rates; exit interviews and flexible working. Refreshed, user friendly Positive Action Guidance was shared with forces and stakeholders in March and will be developed as a living document to capture and share best practice in the future.

4.11 **Special Constables -** Following extensive consultation with key stakeholders, the College released a new National Learning Programme for the training of Special Constables at the end of April. The training is entirely aligned to the modern entry programmes for Police Constables and provides key training associated with the Constable role.

4.12 **Rejoiners -** The College has also published enhanced national guidance for forces considering recruiting rejoiners to increase capacity and capability at a time of emergency. The guidance provides minimum standards for those developing or broadening -rejoiner programmes and details recommendations for good practice advice regarding use of the emergency curriculum for rejoiners; and explains the Coronavirus Police Retention Scheme (CPRS).

4.13 **Virtual Learning development -** A national specification enabling Higher and Further Education providers to provide widening access programmes to support those who may be considering applying to join the police service is currently under development and is expected to be available in autumn 2020. It is anticipated that the first programmes will be available in 2021, and will prove of significant benefit to the attraction and recruitment pipeline.

4.14 **On Line Examinations -** The delivery of the NPPF Sergeant and Inspector exams has been affected this year and affected force's ability to promote police officers. The College has now announced an alternative ways to deliver the NPPF exams (online): This is now being worked through, for implementation for the first online examination date on 8th September 2020.

4.15 **Policing Education Qualifications Framework -** Number of forces live with the new initial entry routes (May 2020):

- Police Constable Degree Apprenticeship: 22
- Degree Holder Entry Programme: 7
- Universities currently running the Pre-join Degree in Professional Policing: 25.

4.16 Applications have been received from 11 forces to run the detective-specific degree holder entry programme

4.17 The College has published an initial report on learning to date from development and implementation of the new entry routes.

4.18 **Leadership Centre** - Building upon current initiatives, the College is in the early stages of providing enhanced professional body support for leadership development, through establishment of a Leadership Centre that will:

- Set out national leadership expectations for all levels in policing and provide leadership development opportunities
- Set the standards for leadership in policing, providing consistency and a pathway for progression
- Providing support to talented individuals who may not have previously considered leadership opportunities

Knowledge, Research & Practice

4.19 The College will be sharing the outputs of its **Future Operating Environment 2040** work at an event at the end of June. The work was undertaken to describe how policing's operating environment might change over the next 20 years and consider what that change might mean for policing today. The work has drawn on the Ministry of Defence Global Strategic Trends, supplemented with interviews and workshops with policing stakeholders and futures experts to identify how these trends will impact policing.

4.20 The College's **fifth bursary scheme** was launched in March, giving police officers and staff across England and Wales the opportunity to apply for financial support towards their higher education fees. The application period has now closed and the 135 applications are currently being assessed.

Delivery Services

4.21 As a result of **Covid-19** the College took a decision in late March 2020 to pause all face to face learning delivery and events for an initial period of three months. In the meantime we have been working on a virtual offer.

- In support of Operation Uplift, rapidly re-designed a 3 day **Tutor Constable** classroom-based course into bite-size learning modules for self-directed learning using a combination of MLE, Knowledge Hub and online delivery via Skype.
- Trialed online delivery of **CDI SPOC** with policing over a three-week period. Evaluation data is being finalised.
- Recreated one module of the **UC Advanced course** for delivery via Skype over the first two weeks in June.
- Re-written the **PND User Basic Search course** to be delivered online
- Created a **Trainer upskill course** for online delivery which has been trialed inside the College
- Supported work to convert the next **Direct Entry course** (June) to on-line delivery using iVent.

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