

Non-Crime Hate Incident Guidance

Following the case College of Policing V Miller interim guidance was given regarding the recording of non-crime hate incidents. The Home office have now written a Code of practice for all Police forces to follow when deciding whether or not to record non-crime hate incidents. This code of practise has been agreed in Parliament and went live on Saturday the 3rd of June 2023. This was launched in Wiltshire Police January 2024.

Link [Non-Crime Hate Incidents: Draft Code of Practice on the Recording and Retention of Personal Data \(accessible\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118422/Non-Crime_Hate_Incidents_Draft_Code_of_Practice_on_the_Recording_and_Retention_of_Personal_Data_accessible.pdf)

Home office definition of a non-crime hate incident.

“A **non-crime hate incident** (NCHI) means

- an **incident** or alleged incident
- which involves or is alleged to involve an act by a person (**‘the subject’**)
- which is perceived by a **person other than the subject** to be motivated - wholly or partly - by **hostility or prejudice** towards persons with a **particular characteristic**.”

“Particular Characteristic” This means protected characteristics within hate crime legislation.

- Race
- Religion
- sexual orientation
- Transgender
- Disability
- or perceived to be a member of those protected groups.

Wiltshire Police are a recording authority and there are some very important changes that we all need to understand.

1. **We do not automatically record all non-crime hate incidents.**
2. **If recording incidents, key decisions must be made about recording personal data.**
3. **Personal data must be deleted if the “additional threshold test” is not met.**
4. **Subjects must be informed that their personal data is being held in relation to a non-crime hate incident.**
5. **We must not use “criminal” terminology e.g., Victim / Suspect in our incident recording or investigation logs.**

Should we record the incident at all?

The following three considerations are taken from the code of practice which contains helpful examples and should be read in conjunction with this guide.

1. Consider using common sense reasoning and drawing on supporting information where available; whether the subject involved in the incident in question was motivated by intentional hostility or prejudice towards a particular characteristic. If neither hostility nor prejudice are demonstrated, or the recording authority believes that any hostility or prejudice demonstrated is unintentional, the incident should not be recorded as an NCHI.
2. Consider whether there is a **common-sense reason** not to record an NCHI - for example if the complaint is trivial, irrational and/or malicious. If the recording authority judges this to be the case, an NCHI should not be recorded. As part of

determining if the complaint is trivial, irrational or malicious, the recording authority should pay particular attention to the **context** of the incident to determine if the complaint was made in good faith.

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

What is personal data

Personal data is any information that can be used to identify an individual.

Most commonly this would be names, age, date of birth, address. But it could also be descriptive information that would identify someone. E.g. "The man that lives above the chip shop on Market Street in Sandford" Whilst this example does not directly name the

individual you could identify that person if they are the only man that lives above the chip shop in Market Street, Sandford.

What does the code say about recording personal data?

There may be a need to record non crime hate incident to assist with patrol planning such as incidents occurring in certain locations such as a place of worship or a meeting place to assist the police in planning patrols around potential hot spots. In this case we would only need to record time, date, location, and a description of the incident. There would be no need to record personal data of the subject.

If there is a need to record personal data of the subject we must ensure that the incident passes the additional threshold test.

Additional Threshold Test for the Recording of Personal Data.

“There are two subsets of NCHI records: those that include personal data of the subject, and those that do not.

Personal data may only be included in an NCHI record if the event presents a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future criminal offence may be committed against individuals or groups with particular characteristic(s).

The recording authority should utilise judgement to determine if this threshold has been met. This may include examples where the behaviour of the subject falls short of criminal conduct but may later be evidence of a course of criminal conduct (for instance, harassment).

The recording authority (Police) should also bear in mind that the risk of significant harm may be greater if the individual(s) who has experienced the incident is considered to be vulnerable. Further information on recognising vulnerability-related risk can be found on the College of Policing's website [here](#).

If an incident does not pass this threshold test, but all the other criteria required to record an NCHI are met, an NCHI without personal data may be recorded instead.

In these instances, the recording authority should ensure that any personal data that may previously have been recorded on policing systems in relation to the initial incident report is removed. For example, if personal information relating to the subject was recorded by the call taker when the initial report was made, this personal information should be deleted from the relevant policing system by the recording authority once it has been determined that the threshold test has not been met. If the criteria needed to record an NCHI are not met more generally, the recording authority will be required to close the original non-crime incident record. The recording authority should ensure that the non-crime incident record does not include any personal data before closing it. As set out in paragraph 23, if personal data has previously been recorded (for example, by the call taker during the initial report), this should be removed from the relevant policing system by the recording authority once it has been determined that the criteria needed to record an NCHI have not been met."

Who will make the decision to record a Non crime hate incident and if personal data should be recorded?

The decision to record a non-crime hate incident should be taken by the on-duty control room FORS supervisor, FIM or duty Inspector. By the very nature of this being a non-crime incident it may not be appropriate for this to fall to the Inspector where the call to service originates from. Due to managing immediate threat harm and risk if

the call to service is through CCC and the FIM is committed with a more serious incident the decision making maybe nominated to another Inspector such as the CIT Inspector. If further enquiries are required that require local investigation then it may be appropriate that this sits with the Duty Inspector or Local NPT inspector for incidents of a repeat nature requiring further investigation. There are approximately 10 NCHI's a month recorded in Wiltshire at present

We should delete personal data from our systems including our initial call logs if the “additional threshold” test is not met.

“If personal information relating to the subject was recorded by the call taker when the initial report was made, this personal information should be deleted from the relevant policing system by the recording authority once it has been determined that the threshold test has not been met.”

Who to contact to delete personal data

Records Management.

Unlinking personal data from Niche

The Data Quality Team will action tasks to delete or unlink personal data and will keep a record of all such requests/action taken for audit purposes.

Personal details held on an Occurrence enquiry log OEL.

Requests to delete personal data from an OEL will be sent by the authorising Inspector following their assessment to Head of Information Management and Assurance for final approval to delete personal information from an OEL.

Subjects must be informed if personal data is held in relation to non-crime hate incidents

Responsibility for Informing a subject that the force holds their personal data in relation to a non-crime hate incident falls to the staff member or officer investigating that incident. Staff should follow the guide on how to do this in the least intrusive way. A template has been created and is held within the allocations department. If the NCHI is allocated to Allocations they will send the template letter to the subject informing them of their data being retained under subject status but that they are not a suspect or a crime and no further action is being taken against them.

What terminology should we use to identify people involved in the incident?

The code states

“For the avoidance of doubt, where an individual is making, or has made, a complaint about another person, this code refers to them as the ‘complainant.’ The person being complained about is referred to as the ‘subject.’ These are neutral terms with no criminal connotations.”

When writing entries on an investigation log or choosing the persons role you must use neutral, non-criminal terminology. **“Victim and Suspect” must not be used for non-crime hate incidents.**

Whilst we await changes to niche please use non-criminal terminology such as ***Reporting person and subject.***

How will Non crime hate incidents be recorded?

If a decision is made that we should record a NCHI we now have a new Occurrence Type. **“OTHER – NON-CRIME HATE**

INCIDENT.” This occurrence type should only be used when the decision to record as a hate incident has been made.

Historic Non-crime hate incidents identified.

Any rights of access request or disclosure requests relating to Disclosure and Barring Service (DBS) that highlights that we hold personal information regarding a historic non-crime hate incident recorded before this code (June the 5th 2023) should be assessed against this code.

The assessment will be undertaken by the Inspector with responsibility for the community area. This Inspector will be best placed to determine current threat harm and risk considering community tensions and the relevance of the historic incident.

If the incident does not meet the criteria for recording a NCHI or pass the additional threshold test for recording personal data then we should delete the incident or personal information in line with this code by requesting the on duty FORS and data quality team to delete the relevant data off of STORM and NICHE. If we hold the information at the time of the request, it should be disclosed that we held the information and that it has been either deleted or held in line with the code.

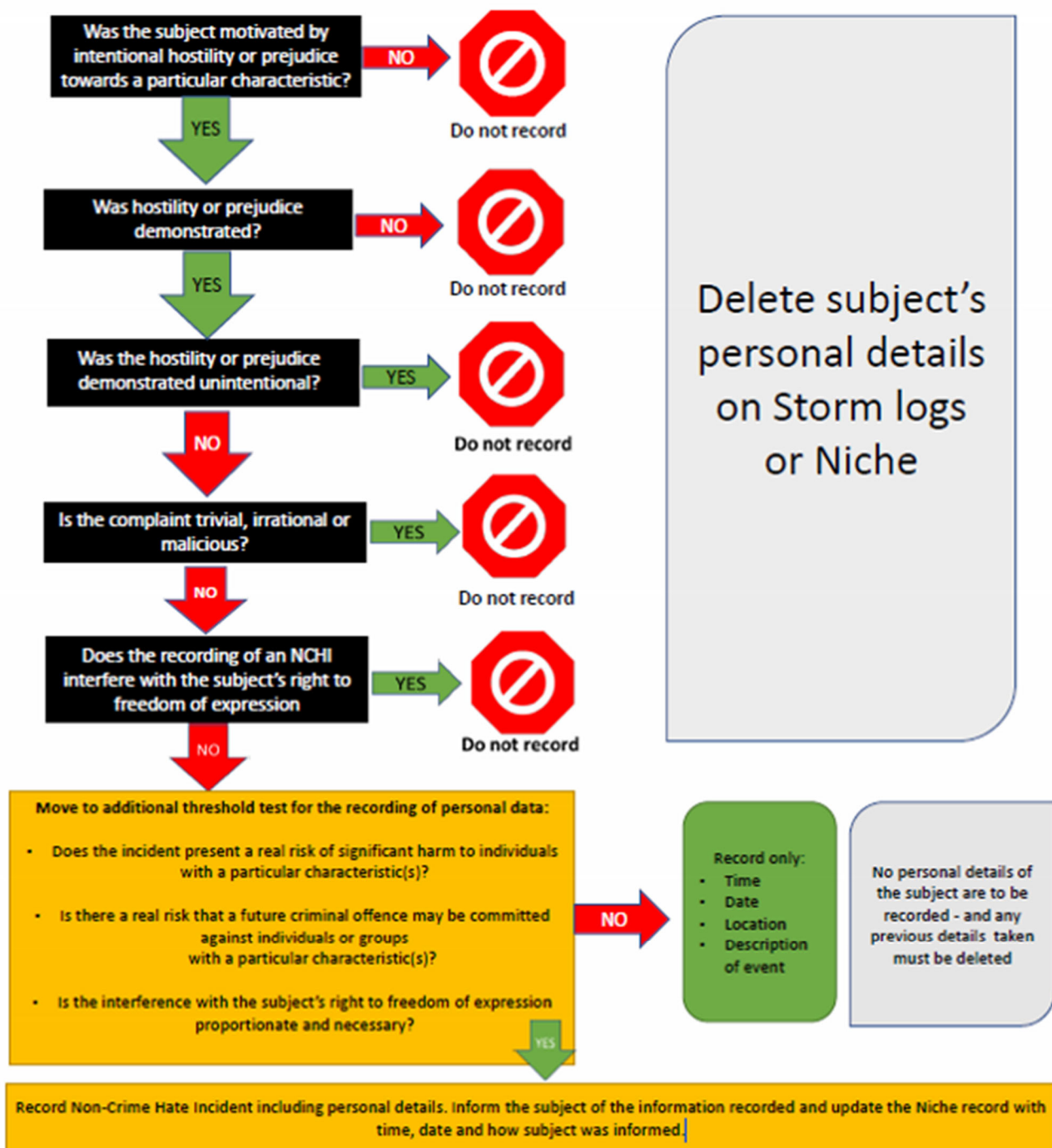
Records Retention

Non crime hate incidents will be retained in line with the code
The review before deletion will sit with Records Management dept who will run checks on the reporting person and subject against local databases and PND and PNC and pass their recommendation to the W10 (Inspector level) for final sign off.

Non-Crime Hate Incidents – decision making

This does not apply to hate crime. Please record hate crime in the usual way.

Hate incidents during school hours on school premises should be dealt with by the school and not recorded.



Resources

Code of practice for non-crime hate incidents

<https://www.gov.uk/government/publications/non-crime-hate-incidents-code-of-practice/non-crime-hate-incidents-code-of-practice-on-the-recording-and-retention-of-personal-data-accessible>

College of policing decision tree

[Interactive Decision Tree for Recording Non-Crime Hate Incidents - Overview \(college.police.uk\)](#)

College of policing APP

<https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime/responding-non-crime-hate-incidents>