



**FSU**  
FREE SPEECH UNION

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Inspector Andy Thornton  
West Yorkshire Police Headquarters  
6 Laburnum Rd  
Wakefield  
WF1 3QP

1<sup>st</sup> March 2023

Dear Inspector Thornton,

I am writing to you in my capacity as General Secretary of the Free Speech Union, a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely.

We are deeply concerned by the official response to the troubling events at Kettlethorpe High School in Wakefield, following an accusation that a Year 10 pupil caused 'slight damage' to a copy of the Quran. We understand that this has resulted in death threats being made against the pupil in question, and that no police action is to be taken against those who have made these threats after the mother of the pupil who received them was visibly placed under pressure not to pursue the matter at an event held at a local mosque.

At that event, you stated that this minor damage to the pupil's private property was being treated as a 'hate incident', despite an investigation by the school having concluded that there was 'no malicious intent' behind the *minor* damage to one page of this book. We know from dealing with other cases, that when the police conclude a 'non-crime hate incident' has been committed by an individual or group of individuals, that information is kept on file and can show up when an enhanced criminal records check is shown up. Our purpose in writing to you is to ask for your assurance that no such data has been recorded about any of these four boys and, if it has, to request its immediate deletion.

#### Guidance on Non-Crime Hate Incidents

As you will be aware, the College of Policing updated its guidance<sup>1</sup> on the recording of Non-Crime Hate Incidents (NCHIs) following the judgment in the case of *Miller v The College of Policing* [2021] EWCA Civ 1926.<sup>2</sup>

According to the College of Policing, 'Not all incidents reported need to be recorded. A record should only be made where it meets the threshold' set out in the *National standard for incident recording counting rules* (NSIR).

Those rules define a Hate Incident as:

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<sup>1</sup> <https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime>

<sup>2</sup> <https://www.judiciary.uk/wp-content/uploads/2022/07/Miller-v-College-of-Policing-judgment-201221.pdf>

Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person as being motivated by prejudice or hate.

Does West Yorkshire Police accept the conclusion of the school's own investigation that there was no 'malicious intent' on the part of the four children involved in these events? If so, the recording of this NCHI is *prima facie* inconsistent with the definition contained in the NSIR as there was no motivation of prejudice or hate.

Further, NCHIs should be recorded by 'the least intrusive method' for a 'legitimate policy purpose'.<sup>3</sup> What legitimate policing purpose is there in recording an incident against a child for accidentally damaging their own, or a friend's, book?

The College of Policing also says that:

officers and staff must apply proportionality, common sense and discretion when deciding, based on the available facts, whether a report, perceived by the reporting person as motivated by hostility, should, or should not be recorded as a non-crime hate incident.

Finally, the College of Policing specifies that 'a non-crime incident must not be recorded as such where it is trivial'. There could not be a more trivial matter than a schoolboy dropping a book, resulting in minor scuffing of a single page (as we understand it). To record this episode as a 'hate incident', if that is what you've done, is not proportionate, and is lacking in common sense.

### Human Rights

Even if the damage was a premeditated act designed to ridicule Islam, or contained an element of hostility towards Islam, the schoolboy would still be able to invoke his rights under the Human Right Act 1998 and the European Convention on Human Rights.

Article 10 of the Convention states:

(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.

As you may be aware, the Court of Appeal held that 'the recording of non-crime hate incidents is plainly an interference with freedom of expression and knowledge that such matters are being recorded and stored in a police database is likely to have a serious "chilling effect" on public debate'.

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<sup>3</sup> <https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime>

It is likely that the teenager's rights to freedom of expression are not engaged because the damage occurred as a result of an accident and not as some kind of protest. But we are hard pressed to imagine a sequence of events more likely to chill public debate and freedom of expression than recording this episode as a 'hate incident' and attaching that data to the children's records, in spite of the absence of any malicious intent. I daresay you felt under pressure to reassure your audience at the mosque that West Yorkshire Police was taking the incident seriously, but doing so by claiming the episode was being treated as a 'hate incident' was inappropriate.

West Yorkshire Police's actions also seem to constitute a violation of the child's Article 1 rights, namely the 'the peaceful enjoyment of his possessions.'

### Data Protection

Section 35 of the Data Protection Act 2018 ("DPA") sets out the first data protection principle with which public authorities must comply in processing personal data for law enforcement purposes:

- (1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.
- (2) The processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law and either—
  - (a) the data subject has given consent to the processing for that purpose, or
  - (b) the processing is necessary for the performance of a task carried out for that purpose by a competent authority.

In determining the 'necessity' of processing, the courts apply a proportionality test: see *South Lanarkshire v Scottish ICO* [2013] UKSC 55 at paragraph 27; *R (II) v Commissioner of Police of the Metropolis* [2020] EWHC 2528 (Admin) at paragraph 85.

The second data protection principle is set out at section 37 of the DPA: 'Personal data processed for any of the law enforcement purposes must be adequate, relevant and not excessive in relation to the purpose for which it is processed.'

Section 31 defines 'the law enforcement purposes' as follows:

the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

### Grounds for deletion

From the above, *at least* the following grounds for deleting the 'hate incident' record emerge:

- 1) If the incident was motivated by dislike of Islam – and that motive is very much undemonstrated – any damage to a copy of the Quran would still be a protected exercise of Article 10 rights, and the recording of an NCHI would be an infringement of the same. The recording also chills freedom of expression, irrespective of whether the act itself was expressive of any belief, because it amounts to the imposition of a law against blasphemy, enforced by official sanction by West Yorkshire Police.
- 2) Furthermore if, as we understand it, the damage was entirely accidental and not demonstrative of a belief, then the NCHI is unlawful simply by virtue of West Yorkshire Police's failure to exercise

common sense or give due regard to proportionality or for you to exercise your discretion not to record an NCHI.

- 3) Further or alternatively, the NCHI you have recorded is likely an unlawful interference in the teenager or teenagers' right to the peaceful enjoyment of his/their own property (or property shared with them by a friend).
- 4) In addition to the grounds above, your decision to record an NCHI is unlawful under the DPA because
  - a. the teenager or teenagers has/have, presumably, not consented, and;
  - b. the recording is, as above, entirely unnecessary for the prevention, detection or prosecution of criminal offences or the prevention of threats to public safety (section 31).

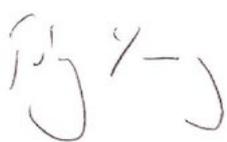
In fact, the recording is contrary to those purposes: by tainting this teenager or these teenagers in the eyes of the local community by recording a 'hate incident' against his or their names, West Yorkshire Police is likely fuelling the anger against him or them and suggesting a motive of hostility or anti-Islamic belief that was, according to the school's investigation, entirely absent.

#### Further Action

On the grounds set out above, we are therefore calling on West Yorkshire Police to delete this 'hate incident' from the record(s). This is especially urgent given that a 'hate incident' recorded against a teenager will remain on their record as an adult. This further demonstrates the lack of proportionality in your decision-making.

We would also like an explanation as to why police action has been taken against the schoolboy(s), and not against those who have threatened them. We would welcome an assurance at the very least that the boys and their families are being properly protected by West Yorkshire Police and advised on their safety.

Yours sincerely,



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Cc. The Rt Hon Suella Braverman KC MP  
Chief Constable John Robins QPM DL, West Yorkshire Police  
Mark Burns-Williamson, Police and Crime Commissioner for West Yorkshire