

Free Speech Union briefing

The Urgent Need to Teach the Police About Free Speech

Carrie Clark

March 2023



Summary

- In March 2023 the British Government released a draft Code of Practice¹ on the recording and retention of ‘non-crime hate incidents’ (NCHIs).² The guidance was produced following repeated failures by the British Police to uphold Article 10 of the European Convention on Human Rights (ECHR), the right to freedom of expression, and as a result of the Court of Appeal’s judgment in [Miller v College of Policing \(2021\)](#), which found that the College’s guidance on NCHIs had led to an interference in Miller’s right to freedom of expression under Article 10 of the European Convention on Human Rights.
- The Free Speech Union (FSU) used freedom of information (FoI) requests to assess how well the British Police understand freedom of speech. We found that a majority of police forces conduct almost no training on freedom of speech while a disproportionate amount of police time is spent on Equality, Diversity and Inclusion (EDI) training. Partly as a result, the police have neglected Article 10, as well as common law free speech protections, when investigating and recording NCHIs.
- We submitted FoI requests to all 41 English and Welsh police forces, excluding the British Transport Police, Civil Nuclear Constabulary and Ministry of Defence Police. Nine forces failed to respond within the statutory deadline or notified us that their response was indefinitely delayed, 10 forces provided partial information, and 22 answered in full.
- We asked British police forces to send us copies of any policies or training materials they held concerning their duty to comply with Article 10. Thirty-two forces answered this question, seven of whom declined to answer on cost grounds. Of the remaining 25, 11 claimed to hold **no information on the duty to comply with Article 10**. Eight provided information showing that Article 10 was mentioned in training no more

1 Home Office. 2023. Non-Crime Hate Incidents: Draft Code of Practice on Recording and Retention of Personal Data. Available [here](#).

2 A ‘non-crime hate incident’ is any non-crime incident that 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, a person’s religion or perceived religion, a person’s sexual orientation or perceived sexual orientation, a person’s disability or perceived disability, and a person who is transgender or who is perceived to be transgender.

than once, often just as a single line definition. Six forces acknowledged that Article 10 should be covered in training somewhere but could not specify where, or supplied information that proved to be irrelevant, containing no information about Article 10. This means that **78% of the police forces who responded to our requests are providing no training on Article 10, or inadequate training.** The remainder did not answer the question.

- Thirty-two forces also answered a question asking for details of the training carried out in relation to EDI. One force claimed to hold no information on the subject and a further four stated that EDI was so highly integrated into every aspect of their training that it would exceed the cost limit of the Freedom of Information Act (FOIA) to extract the necessary information. Fourteen forces described EDI training as a “golden thread” running through every part of their training or reported that EDI was integral to standard training. This means that for 56% of the police forces we surveyed, EDI is inextricably embedded in police training.
- We asked police forces whether they collaborated with external third-party providers to deliver EDI training. Thirty-two forces answered this question. Sixteen (50%) said they collaborate with at least one third-party provider to deliver EDI training and Essex Police reported they had paid £193,000 to third-party provider Pearlcatchers to deliver EDI training. Police involvement with Stonewall is, thankfully, declining. Only five police forces reported they were currently members of the Stonewall Diversity Champions Scheme.
- A further nine forces reported that their LGBT+ Staff Networks were involved in the delivery of EDI training. The activities of Police LGBT+ Staff Networks are not subject to the FOIA and the organisational structure of the individual networks and their coordinating national body, the National LGBT+ Police Network, make it almost impossible to scrutinise what their input into police training is. A survey of the National LGBT+ Police Network social media accounts suggests they are highly influenced by critical social justice ideology, such as Critical Race Theory and Gender Identity Ideology.

Introduction

'Policing with Pride' has become the mantra of the police force but British policing, once admired around the world, is increasingly mired in controversy. Over the last two years, as rates of violent crime have increased and conviction rates have plummeted³ and the murder of Sarah Everard by a serving police officer has undermined public confidence in the police,⁴ the British police have nonetheless found the time and resources to investigate over 250,000 NCHIs.⁵ Well-meaning efforts by the British police to correct for past bigotry and intolerance towards minority groups have found expression in the aggressive misuse of police powers to harass citizens engaged in pressing current debates about issues like gender self-identification and religious freedom, but who, in the eyes of the police, are on the 'wrong' side. Over the last few years, the police have become proactive at responding to complaints of subjective 'offence' while at the same time failing to solve even a single burglary in 46% of British neighbourhoods since 2019.⁶

These issues came to a head in late February 2023, when a copy of the Quran was reported to have received "slight damage" after being accidentally dropped by a pupil at Kettlethorpe High School in Wakefield.⁷ The book had been brought into the school by an autistic fourteen-year-old, who had purchased it online after losing a dare with his friends while playing

3 Home Office, 2022. Crime outcomes in England and Wales 2021 to 2022. Available [here](#).

4 Dodd, V. and Haque, S. 2022. '80% of UK police accused of domestic abuse kept jobs, figures show.' *Guardian*. Available [here](#).

5 The concept of 'non-crime hate incidents' first surfaced in a guidance document published by the College of Policing in 2014 and within five years 119,934 non-crime incidents had been recorded by 34 police forces in England and Wales, according to Fol requests submitted by the *Telegraph*. Nine police forces didn't respond to the *Telegraph's* Fol requests, but if we assume they were recording NCHIs on the same scale – and the practice has continued since – it's likely that over a quarter of a million have been recorded to date.

6 Khan, I. and Aoraha, 2022. 'Police forces failed to solve a single burglary in nearly half of the country's neighbourhoods over the past three years, figures reveal.' *The Daily Mail*. Available [here](#).

7 Tingle, R., 2023. 'Home Secretary Suella Braverman expresses "concern" after police recorded a "hate incident" at school where pupils caused "slight damage" to a copy of the Quran when it fell on the floor.' *The Daily Mail*. Available [here](#).

a PlayStation game. Before relating the remainder of events it is worth reminding readers that there are no blasphemy laws in the UK, that anyone may purchase a copy of the Quran and that British citizens are at liberty to drop, ridicule or otherwise disrespect the symbols of any and all religions.⁸

School authorities were the first to overreact. Headteacher Tudor Griffiths immediately launched an investigation into the ‘incident’, reportedly interviewing 30 students about what had happened. Despite finding that there had been “no malicious intent”, four students were nonetheless suspended following this investigation.

In addition, West Yorkshire Police swiftly designated the episode a ‘hate incident’ and proceeded to record NCHIs against the names of the four schoolchildren who had been suspended.⁹ (The FSU has written elsewhere about the pernicious influence of NCHIs on free speech.)¹⁰ Unlike actual crimes, which are ‘spent’ when an individual reaches the age of majority, NCHIs remain on an person’s record after they reach the age of 18 and can show up in an enhanced criminal records check. Because they are recorded solely according to the perception of the ‘victim’, or indeed anyone else, and are supposedly ‘non-criminal’ they are essentially a form of extrajudicial punishment meted out by the police to people whose views they disapprove of but which aren’t unlawful. Following the Court of Appeal judgement in the Miller case, the College of Policing updated its Hate Crime Operational Guidance (HCOG)¹¹ to make it clear that ‘irrational’ or ‘vexatious’ complaints should not be recorded as NCHIs, but the actions of West Yorkshire Police make it clear that some British police forces are ignoring the revised guidance.

The reaction of West Yorkshire Police to the imbroglio in Wakefield illustrates how politically biased the recording of NCHIs is. Chief Inspector Andy Thornton and Inspector Glen Costello were filmed participating in what appears to have been an informal sharia trial convened by Wakefield’s Jamia Swafia Mosque a few days after the episode on Kettlethorpe High School. Representatives of the mosque describe visiting the autistic child at his home and “testing” him on his knowledge of the Quran. While

8 Ehsan, R., 2023. ‘Great Britain has no place for blasphemy laws.’ *The Telegraph*. Available [here](#).

9 Jamia Masjid Swafia Mosque, 2023. ‘Community meeting in relation to the Qu’ran incident.’ Available [here](#).

10 Tylecote, R., 2021. ‘An Orwellian Society: Non-Crime Hate Incidents and the policing of free speech.’ Free Speech Union. Available [here](#).

11 College of Policing, 2021. Court of Appeal hate crime guidance ruling. Available [here](#).

stating his opposition to violence, the imam of the mosque makes openly threatening statements, including:

When it comes to the honour of the Quran we will stand and we will defend the honour of the Quran no matter what it takes.

The slightest bit of disrespect [to the Quran] is not accepted and it is not going to be tolerated at any point, in any city, in any country, by any Muslim and that's the fact of the matter.

The difficulty that we have in this incident is that these are not adults that have carried out this act. Had it been, for example, a teacher who had disrespected the holy Quran. Had it been, let's say, an adult that had thrown the holy Quran, then the matter would be different. We probably wouldn't be sitting in the [mosque] right now, we'd probably be standing outside that school... without any doubt whatsoever.

Let me make categorically clear... Any Muslim in Wakefield... will never tolerate disrespect of the Holy Quran. Never. We will sacrifice our lives for it. We will give anything... We don't let this go. The Quran is more important to us than our lives.

Chief Inspector Thornton can be seen nodding along to this last statement, which appears to be a barely concealed incitement to whip up mob violence against anyone guilty of 'disrespecting' the Quran in future. Notably, Chief Inspector Thornton says nothing when the mother of the autistic teenager, also in attendance at the meeting and wearing a hijab despite not being Muslim, explains that her son has received death threats and that he is "beside himself" with fear. Likewise, the Chief Inspector apparently has no comment to make when Councillor Akef Akbar, also in attendance, praises the mother for not bringing criminal charges against those who have threatened to murder her child.¹² Why record the schoolboy antics of a 14-year-old as a 'hate incident' but not the threats to kill him?

The Government was prompted by the events in Wakefield to publish a draft Code of Practice on the recording and retention of NCHIs. The FSU welcomes this new guidance, which makes it clear that NCHIs must not be recorded unless there is "a real risk of significant harm to individuals

12 Jamia Masjid Swafia Mosque, 2023. 'Community meeting in relation to the Qu'ran incident.' Available [here](#).

or groups with a particular characteristic(s) and/or a real risk that a future offence may be committed against individuals or groups with a particular characteristic(s)". In addition, the new guidance says that NCHIs must not be recorded against children and places a welcome emphasis on the need for police to exercise their common sense and have due regard for freedom of speech.

However, as the FSU's research shows, there is a deficiency in the way the police are trained on free speech issues, so it may be difficult for them to have due regard for it when deciding whether to record an episode as an NCHI in future. This paper presents a series of case studies that illustrate the lack of regard for free speech in British policing and then provides one possible explanation of this: extensive police training informed by critical social justice ideology has led the police to prioritise complaints of 'offence' from favoured identity groups and to ignore legal protections for free speech.

Case Studies

In June 2021, an evangelical Christian street preacher, David McConnell, was arrested for repeatedly calling a transwoman heckling him in Leeds City Centre a “man” and a “gentleman” and convicted of intentionally causing them harassment, alarm or distress, a public order offence, at Leeds Magistrates Court. McConnell appealed and in March 2023 Leeds Crown Court overturned his conviction. The Recorder who upheld the appeal said: “We live in a time when free speech is important and vital...”¹³

In January 2022, Gwent Police arrested 53 year-old women’s rights campaigner Jennifer Swayne after they received reports that she had put up stickers perceived as ‘offensive’ to transgender people. The stickers called for the maintenance of single sex spaces and bore slogans such as “No men in women’s prisons”. Officers searched her home, confiscating as evidence a book of academic essays on transgender identity by Dr Heather Brunskell-Evans, and Swayne, who uses a mobility scooter, was bundled into the back of a police van before being detained in custody for 12 hours.¹⁴ The Crown Prosecution Service (CPS) declined to prosecute, judging she had not done anything unlawful. Despite this, the notification of no further charges received by Swayne’s solicitor reportedly contained a warning that Gwent Police intended to treat any future complaints against her in the same way, namely with no regard for her right to freedom of expression.¹⁵ Gwent is currently described by the Office for National Statistics as the eighth most dangerous place to live in the UK.¹⁶

In June 2022, the gender critical women’s group Standing for Women held an event entitled ‘Let Women Speak’ on Bristol’s College Green. The event was so aggressively protested by a group called Bristol Against Hate

13 Moss, A., 2023. ‘Leeds preacher’s sentence for trans woman’s harassment quashed.’ BBC. Available [here](#).

14 Averre, D., 2022. ‘Police arrest women’s rights activist, 53, on suspicion of “hate crimes” and seize “anti-trans” academic book from her home after she put up posters about protecting single-sex prisons.’ *The Daily Mail*. Available [here](#).

15 Merched Cymru, 2022. ‘All charges dropped against disabled “sticker woman” – along with our trust in Gwent Police.’ *Merched Cymru*. Available [here](#).

16 Bilderbeck, P., 2023. ‘Official data shows the most dangerous places to live in the UK.’ Available [here](#).

(BAH) that attendees had to be evacuated to a local pub under police escort. The pub was forced to close early when it was surrounded and besieged by BAH protestors, with Avon and Somerset Police advising they couldn't guarantee the safety of the gender critical occupants.¹⁷ Despite this, the force announced on Twitter that the event had been a huge operational success in which both sides were "facilitated" to express their views.¹⁸ This claim was denounced by former Home Office Official Ian Acheson who used video footage of the event to identify "a fistful of public order legislation that could have enabled officers to first warn and then arrest" aggressive BAH protestors who were clearly committing offences. Acheson has described the event as "a small group of women besieged by an ugly, baying mob of protestors determined to stop them exercising their democratic right to gather and discuss issues that matter to them".¹⁹ Officers from Avon and Somerset police appear to have ignored the offences being committed by the BAH protestors because they disagreed with the gender critical views expressed by Let Women Speak attendees.

Also in June 2022, the Metropolitan Police arrested Christian street preacher Hatun Tash at Speaker's Corner. Tash is a Muslim convert to Christianity who carries a copy of the Quran with holes drilled in it, a symbol of her belief that Islam is a religion "full of holes". Tash has repeatedly been the victim of criminal acts by Muslim men at Speaker's Corner who are offended by her views. She has been a victim of assault and theft and in July 2021 she was hospitalised after being stabbed. Her attackers have frequently boasted about their violence against her in videos posted online. However, instead of arresting her attackers, the police have repeatedly arrested Tash instead. In June 2022, Met Police officers strip searched her, deprived her of her spectacles, detained her for 24 hours and asked her bizarre questions like: "Are you not aware that might offend someone?" The officers involved seemed unaware that they had no business interrogating Tash about her views, regardless of how "offensive" they or others might find them. Having failed to find any evidence for their initial accusation that Tash was guilty of criminal damage – presumably, a reference to her own copy of the Quran – the police then attempted to get Tash to admit to a public order offence but were finally

17 Perry, L., 2022. 'Why the gender wars become so extreme.' *The New Statesman*. Available [here](#).

18 ASPolice Bristol, 2022. Twitter Statement. Available [here](#).

19 Acheson, I., 2022. 'A mob threatening women is not a "protest" – and police in Bristol should have known that.' *CapX*. Available [here](#).

obliged to release her without charge.²⁰ Some months after these events, the Metropolitan Police apologised to Hatun Tash and paid her £10,000 in compensation.²¹

In July 2022, women's rights campaigner Kellie-Jay Keen was visited by officers from Wiltshire Police investigating a hate crime report that accused her of being "untoward about paedophiles". The complaint concerned a YouTube video in which Keen had stated her belief that male sexual predators would exploit gender self-identification to abuse women and girls.²² This was not the first time Parker had been investigated for expressing her beliefs. In 2018, she was twice interrogated by officers from West Yorkshire Police for Twitter posts in which she criticised the provision of sex reassignment surgery to minors.²³ Needless to say, the CPS declined to prosecute her for being "untoward about paedophiles". Undeterred by this failure, the Sussex Police interviewed Keen again in 2023 in relation to something said at a women's rights event in Brighton.²⁴ Two officers from Sussex were obliged to spend a day travelling in order to conduct the interview in Wiltshire,²⁵ raising questions about resource allocation at a time when Sussex Police secure a conviction in only 3% of the rape cases reported to them. In October 2022, Detective Inspector Amanda Zinyama, head of a specialist unit investigating sexual offences in Sussex, told the press, "I need more detectives – and that is the bottom line."²⁶

Also in July 2022, Hampshire Police visited the home of Darren Brady, an army veteran they accused of causing "anxiety" by sharing a picture of the "Progress Pride" flag arranged as a swastika on Twitter. Officers informed Brady that he could avoid prosecution for a hate crime if he

20 Dieppe, T., 2022. 'The police are enabling Islamic intolerance.' *The Critic*. Available [here](#).

21 Chain, B., 2022. 'Met Police apologises to Christian preacher and pays £10,000 in damages after she was "wrongly" arrested TWICE at Speakers' Corner having complained to officers about threats by Islamic protestors.' *The Daily Mail*. Available [here](#).

22 Reduxx Team, 2022. 'UK Women's Rights Campaigner Visited by Police for Being "Untoward About Pedophiles".' *Reduxx*. Available [here](#).

23 Keen-Minshull, K., 2018. 'Kellie-Jay Keen-Minshull (Posie Parker)'. FairCop. Available [here](#).

24 Sales, D., 2022. 'Police threaten to arrest women's rights campaigner Kellie-Jay Keen if she doesn't attend "voluntary" interview after being accused of hate crime over "Let Women Speak" demo that was targeted by pro trans activists.' *The Daily Mail*. Available [here](#).

25 Keen-Minshull, K., 2023. Twitter post. Available [here](#).

26 Alsford, C., 2022. 'Rape conviction rate "embarrassing" says senior Sussex officer.' ITV. Available [here](#).

agreed to pay £60 to attend a “hate crime awareness course”. Because sharing an image on social media that satirises the symbols of a political movement is not, in fact, a hate crime Hampshire Police were forced to announce that they would take no further action against Brady when he refused to pay the £60. Understandably, the case caused a public backlash and Hampshire Police and Crime Commissioner Donna Jones announced that the “hate crime awareness course” had been scrapped.²⁷ However, it emerged in February 2023 that Hampshire Police were continuing to offer hate crime suspects the option of attending the course as an alternative to prosecution.²⁸ Meanwhile, figures show that the vast majority of thefts reported to Hampshire Police go unprosecuted.²⁹

In August 2022, Twitter user Bella Doe recorded a Police Community Support Officer (PCSO) berating her for displaying a sticker in the window of her home that read “Trans Ideology Erases Women”.³⁰ Doe was told by the PCSO that the sticker was equivalent to a racist slur and advised that “where you are in your thinking is very much needed [sic] a lot of enlightenment and reading. I find that very offensive and I’d like you to take it off.” Throughout the seven-minute recording, the PCSO repeatedly tells Doe that she needs to educate herself in order to understand that transwomen are ontologically indistinguishable from biological women and that it is unacceptable to think otherwise, saying “you’ve got in your head that a transwoman is not a woman”, as if she was clearing up an elementary factual misunderstanding.³¹ The PCSO appears quite convinced that it is the role of the police to ‘correct’ members of the public who do not subscribe to gender identity ideology.

In September 2022, a Sussex Police social media account reprimanded a Twitter user for pointing out that John Stephen Dixon, a recently convicted paedophile, was a biological male, despite now identifying as a woman and going by the name of Sally Ann Dixon. Sussex Police responded by saying, “Sussex Police do not tolerate any hateful comments towards their gender identity regardless of crimes committed. This is irrelevant to the crime that has been committed and investigated” before advising,

27 Evans, M., 2022. ‘Hate-crime awareness courses scrapped by Hampshire police.’ *The Telegraph*. Available [here](#).

28 FairCop, 2023. Twitter post. Available [here](#).

29 Broom, C., 2023. ‘Vast majority of reported thefts in Hampshire unlikely to lead to prosecution say Home Office statistics.’ *The News*. Available [here](#).

30 Bella Doe., 2022. Twitter post. Available [here](#).

31 Linehan, G., 2022. ‘A visit from the religious police.’ *The Glinner Update*. Available [here](#).

incorrectly, that the Twitter user's views might amount to a hate crime and signposting them to official hate crime guidance.³² Knife crime has doubled in Sussex over the last decade.³³

In November 2022, Swindon Magistrates Court found Christian street preacher Shaun O'Sullivan not guilty of religiously motivated harassment. In conversation with a member of the public, O'Sullivan had stated that the Prophet Muhammad had married a six-year-old girl and would today be considered a paedophile. During questioning, Wiltshire Police reportedly asked him whether he had been trying to "devalue" the Prophet Muhammad, something that is not against the law.³⁴

Policing with pride? Few members of the public will feel pride in a police force that spends time and resources trying to get people to use the preferred gender pronouns of trans people while violent crime rates rise. Fewer still will understand the logic of persecuting a disabled women's rights campaigner for putting up stickers or strip searching a female Muslim apostate. How have the police come to regard 'offensive' speech as a form of harm it is their duty to prevent, while rates of actual violence soar in their communities?

The Police Don't Know Anything About Free Speech

That might sound like a bold or sweeping claim. But Freedom of Information (Fol) requests made by the Free Speech Union (FSU) show suggest it is true. The principle cause of the free speech crisis in British policing appears to be that the police simply do not know anything about the laws protecting free speech.

Thirty-two English and Welsh police forces responded to an Fol question from the FSU asking them to provide any policies or training materials they held regarding the duty to comply with Article 10 of the European Convention on Human Rights. Article 10 is the principle piece of legislation protecting the right to freedom of expression in the UK (although there are common law protections for free speech too).

32 Hymas, C., 2022. 'Minister rebukes police in trans pronoun row over paedophile.' *The Telegraph*. Available [here](#).

33 Smith, M., 2023. 'Knife crime is growing faster in Tory controlled areas, figures reveal.' *The Mirror*. Available [here](#).

34 Christian Concern, 2022. 'Heckler turned street preacher found not guilty after police arrest for "hate speech".' Christian Concern. Available [here](#).

Seven forces declined to answer the question on cost grounds, but of the remaining 25, 44% claimed to hold **no information** on the duty to comply with Article 10. Eight individual forces included irrelevant EDI policies in their answer to this question, four of whom supplied *only* EDI information, suggesting that some police forces **do not know what Article 10 is**. Fourteen forces acknowledged that Article 10 must be covered somewhere in the training syllabus but could provide no specific information about where or, alternatively, supplied information showing that the entirety of their Article 10 training consisted of little more than a one-line definition. Of this group Gloucestershire Constabulary appeared to provide the most comprehensive Article 10 training: a single page containing 210 words. This means that, of the 32 forces who responded, 78% are providing no training or inadequate training on Article 10, with the remainder declining to answer.

This training deficit helps to explain the consistent failure of the police in the case studies above to recognise that, in nearly every case, the subjects of the complaints were exercising their Article 10 rights. Article 10 reads:

This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.³⁵

This places police under a two-fold obligation of considerable complexity, one that the public might reasonably expect to be covered in their training.

Firstly, the police must be conscious of themselves as representatives of “public authority” whose “interference” can have a chilling effect on freedom of expression. This responsibility was highlighted by the case of [Forstater v CGD Europe \(2021\)](#). Mr Justice Choudhury stated that agents of the state, such as the police, must remain “neutral as between competing beliefs, refraining from expressing any judgement as to whether a particular belief is more acceptable than another”. Nowhere has the police’s failure to adhere to this standard been more evident than in the public debate over gender self-identification. Far from remaining “neutral as between competing beliefs”, the case studies above show the British police will not hesitate to investigate complaints made against those who express gender critical beliefs. This will have had a chilling effect on the willingness of people to voice criticism of gender self-identification.

³⁵ Equality and Human Rights Commission, 2021. ‘Article 10: Freedom of expression.’ Available [here](#).

Secondly, the police should distinguish between aggravated speech, which does not enjoy the protection of Article 10, and speech which is legally protected. Case law has established that a high threshold needs to be met before police can legitimately interfere with a person's right to freedom of expression, a threshold that was not met in any of the cases described above. Guidance by the Equality and Human Rights Commission on Article 10 states: "There is little scope... for restrictions on political speech or debates on questions of public interest."³⁶ The police urgently need to be made aware that contributions to "debates on questions of public interest" is, in the vast majority of cases, protected by Article 10, even if some participants in that debate find the speech 'offensive' and accuse their opponents of 'hate speech'.

This was spelt out by Lord Justice Sedley in [Redmond-Bate v DPP \(1999\)](#). He said: "Free speech includes not only the offensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having." This was reaffirmed by Mr Justice Warby, who stated in the ruling on [Scottow v CPS \(2020\)](#): "The prosecution argument failed entirely to acknowledge the well-established proposition that free speech encompasses the right to offend, and indeed to abuse another."

The Government's new guidance on the recording of NCHIs places a welcome emphasis on the importance of freedom of speech, saying "due consideration should be given to upholding the fundamental right to freedom of expression". But how can police officers do that if a majority of them will have received next to no training on Article 10? It is noteworthy that both Hampshire Constabulary and Gwent Police, the forces responsible for the mistreatment of Darren Brady and Jennifer Swayne respectively, both claimed to hold no information on Article 10. It seems unlikely that officers adequately trained on their duty to uphold Article 10 would have visited Brady's home on the grounds that he had caused 'anxiety' or arrested Swayne for supposedly causing 'offence'.

Equality, Diversity and Inclusion Training

Our FoI requests show that thousands of police hours are being spent on

³⁶ European Court of Human Rights, 2022, p.40. 'Guide on Article 10 of the European Convention of Human Rights.' Available [here](#).

EDI training. Essex Police alone reported that EDI training took up an estimated 38,750 hours of police time, a minimum of four- and three-quarter hours for officers, staff and volunteers, rising to six-and-a-half hours for senior staff. Only one force, City of London Police, provided any comparable figures for the number of hours spent in training on Article 10: training slides show that officers receive 35 minutes on the Human Rights Act. Article 10 is not mentioned specifically but “Articles” are one of 10 separate items listed to be covered in this time.

Thirty-two out of 41 police forces responded to a question that asked them to supply details of their EDI training. Only one claimed to hold no information on the subject, although a further four stated that EDI was so highly integrated into every aspect of their training that it would exceed the FoI cost limit to extract the necessary information. Another 14 forces described EDI training as a “golden thread” running through all their training, or reported EDI as integral to standard training. This means that, while a majority of forces do no more than give officers a one-line definition of Article 10, at best, 56% have embedded identity focused EDI into every aspect of policing.

What are the police being taught during these many hours of training? Some modules are of obvious practical utility – for example, sessions run by City of London Police that advise officers to:

Understand how to reduce mis-communication with colleagues and [members of the public] from different backgrounds... Give examples of how cross-cultural differences... affect interaction between individuals and groups.

Likewise, two modules entitled ‘How cross-cultural differences may affect interaction between individuals, groups and organisations’ and ‘Effect of cultures and traditions on police ethics and values’ delivered by Norfolk and Suffolk Constabularies are targeted at equipping officers with the skills to navigate policing in culturally diverse regions.

However, our FoI requests show that much police EDI training now focuses on teaching officers critical social justice ideology – such as Critical Race Theory and Gender Identity Ideology – as if they were settled matters of fact, rather than politically contentious theories. For example, an EDI training PowerPoint supplied by Avon and Somerset Police covers topics such as ‘Masculine Agender’ and ‘Feminine Genderqueer’ identities and

supplies guidance on how officers should use the pronouns 'E/em' and 'Fae/faer'. The PowerPoint instructs officers that:

Your anatomy doesn't determine your gender identity and neither does the 'gender binary'... In reality, gender is much more like a spectrum – it isn't set in stone and some people have fluid or fluctuating gender identities.

Derbyshire Constabulary continue to use the controversial 'Genderbread Person' in EDI training to illustrate the same view: that biological sex is irrelevant to an individual's innate sense of gender, which may well be at odds with their biological sex. This particular training module further specifies that "using the wrong pronouns or making assumptions about others' gender identities" is 'transphobic'. Officers in Derbyshire receive extensive training on how to be a "trans ally", defined as ensuring "a positive experience for the trans individual" at all times. Allies must be "supportive and attentive", "courteous, patient and caring", "think about the entitlements you take for granted" as a "cisgender" person and "affirm the experiences of trans people". It is not clear whether the advice to always be "courteous, patient and caring" towards trans people applied to trans people they have arrested and are holding in custody. Interestingly, in answer to the FSU's question about Article 10 policies and training materials Derbyshire Constabulary stated that "the consideration of article 10 is for each commander on a case-by-case basis as opposed to having a policy". It would appear that some police forces are quite selective about how they choose to uphold the law, treating legislative absolutes such as Article 10 on a "case-by-case basis" while enforcing expansive definitions of "transphobia" that have no basis in law.

While a belief in the concept of 'gender identity' as distinct from biological sex certainly reflects the views of some members of the public, it is very far from a consensus position. We need only glance at the headlines arising from the Scottish Government's recent efforts to reform gender recognition legislation,³⁷ or the accompanying row over whether trans identified male sex offenders should be accommodated in the female prison estate,³⁸ to realise that many of our most contentious public debates are about the issue of whether a person's innate sense of gender should

37 Matchett, C., 2023. 'Most Scots think next first minister should ditch gender reform legal challenge.' *The Scotsman*. Available [here](#).

38 Sanderson, D., 2023. 'Trans rapist Isla Bryson told "you are not the victim" before being jailed for eight years.' *The Telegraph*. Available [here](#).

trump their biological sex. It is therefore concerning to find police EDI training endorsing one side in this ongoing debate. The Forstater ruling established that belief in the immutability of biological sex is a protected characteristic under the Equality Act 2010. Therefore, training that instructs participants to affirm a belief in gender identity ideology or risk being accused of transphobia (or of committing a ‘hate crime’) may well amount to unlawful discrimination.

Primed by partisan EDI training to see any criticism of gender identity ideology as intrinsically ‘hateful’ and in the absence of the Article 10 training informing them that such speech is legally protected, the British police have taken to arresting gender critical speakers without a second thought.

Unaccountable Third-Party Training Input

Fifty per cent of the police forces we surveyed acknowledged providing EDI training in collaboration with at least one third party provider. This reliance on external providers makes it difficult for the public to scrutinise what the police are being taught about EDI, as the supposed ‘commercial interests’ of training providers are often cited as a reason not to disclose the content of training. We do know that these collaborations can be lucrative for the providers. Essex Police have paid training company [Pearlcatchers](#) £193,000 to deliver EDI training.

Essex Police reported that Pearlcatchers will deliver modules on “unconscious bias, empathetic listening and communication skills through a variety of techniques”. The Pearlcatchers social media accounts provide a clue as to what these “techniques” might be. In February 2023 the Pearlcatchers Twitter account made a series of posts about EDI and alpacas:

Be more alpaca! Inclusivity is important – how else can we learn, grow and develop? If we were all the same the world would be a very dull place. Alpacas come in 22 colours and hundreds of shades and they are naturally inclusive. Embrace your inner alpaca – be more inclusive!³⁹

Passionate about the planet? Alpacas are environmentally friendly

39 Pearlcatchers, 2023. Twitter post. Available [here](#).

& live lightly on the earth. We try & live lightly but know we can do more.⁴⁰

Alpacas are theraputic [sic] creatures. Due to their sensitive & intuitive nature, alpacas are great therapy animals. It's okay to NOT be okay.⁴¹

The Pearlcatchers account also repeats historical inaccuracies that overstate the prevalence of trans people in the past. In a post linked to Black History Month, the account incorrectly states that Marsha P. Johnson, a transwoman, initiated the Stonewall riots, which is not true.⁴² People actually present at the riots, such as Fred Sargeant, have argued that this rewriting of history by modern trans activists not only diminishes the lesbian, gay and bisexual people who were fighting for civil rights at the time but also elides the uncomfortable truth that Johnson complained of being 'oppressed' by gay people.⁴³ Yet Essex Police has spent nearly £200,000 of taxpayers' money on Pearlcatcher-branded EDI training.

The Stonewall Diversity Champions Scheme is perhaps the best known third party workplace training scheme in the UK. The influence of this lobby group, including the provision of workplace EDI training that misstates equalities law, has been extensively documented elsewhere.⁴⁴ Police membership of the Stonewall Diversity Champions Scheme is, thankfully, falling. Whereas it was estimated in 2021 that around 50% of English and Welsh police forces were enrolled in the scheme,⁴⁵ the FSU's most recent Fol requests show that only five forces of the 31 who responded to our question retained a current membership. Secrecy over the content of Stonewall training remains, however. Durham Constabulary refused to reveal the content of their most recent Stonewall Workplace Equality Index submission on the grounds that disclosure might harm Stonewall's commercial interests.

Secrecy also surrounds the influence of the police's LGBT+ Staff Networks on EDI training. Thirty one out of the 32 forces who responded to our Fol

40 Ibid. Available [here](#).

41 Ibid. Available [here](#).

42 Ibid. Available [here](#).

43 Sargeant, F., 2023. 'The myth of Marsha P. Johnson.' *Spiked*. Available [here](#).

44 Charlesworth, S. and Clark, C., 2021. 'Stonewall's Censorship Champions.' Free Speech Union. Available [here](#).

45 Dixon, H. and Sommerville, E., 'Police forces threatened with legal action over links to Stonewall.' *The Telegraph*. Available [here](#).

stated that they had an LGBT+ Staff Network and at least nine forces (29%) reported that their LGBT+ Staff Networks were involved in the delivery of EDI training. However, it is almost impossible to discover what that their involvement in the design and delivery of police training consists of.

In their paper “We Need to Check Your Thinking: How identity politics is warping police priorities from within”,⁴⁶ Hardeep Singh and Dr Richard Norrie identify a lack of transparency around staff networks and Independent Advisory Groups as a barrier to accountability on the part of the police. This lack of transparency was also reflected in our findings. Nine forces refused to disclose further information about the activities of their LGBT+ Staff Networks on the grounds that staff networks are exempt from the FOIA, and a further nine forces simply failed to provide the requested information without explanation. This means that 18 of the 31 forces (58%) who acknowledged having an LGBT+ Network were unwilling to disclose further information about their activities.

Individual police LGBT+ Staff Networks are co-ordinated by the [National LGBT+ Police Network](#) (NLPN), which describes its purpose as “helping to create a police service that is reflective of our diverse communities”. While the social media pages of the NLPN categorise it as a “Non-Governmental and Nonprofit Organization” it is registered with neither the Charity Commission nor Companies House. Campaign group Fair Cop has established that the College of Policing, the professional body for police in England and Wales, accepts no responsibility for the activities of the NLPN.⁴⁷ While it may theoretically be possible to make enquiries about the actions of named NLPN staff to the individual police forces they are employed by, there is apparently no way to scrutinise the organisational line promoted by NLPN itself.

Given the dubious organisational status of the NLPN and the secrecy surrounding their activities, it is difficult to assess the full impact that LGBT+ Staff Networks have on police EDI training. Just over a quarter of the police forces who responded to our FoI requests are conducting EDI training influenced by LGBT+ Staff Networks but the general public have no way of scrutinising that training. This is an issue that the police

46 Norrie, R. and Singh, H., 2022. ‘We Need to Check Your Thinking: How identity politics is warping police priorities from within.’ Civitas. Available [here](#).

47 Miller, H. and Phillimore, S., 2021. ‘The National LGBT+ Police Network’s Thin Pink Line.’ FairCop. Available [here](#).

should address. In response to our FOI request, Wiltshire Police disclosed that their LGBT+ Staff Network was being consulted about vitally important operational policing matters relating to the searching of transgender detainees and single sex spaces. In relation to the searching of transgender detainees, the information Wiltshire supplied to the FSU suggests that the LGBT+ Staff Network had significant input on the creation and implementation of the policy. Minutes from a meeting of Wiltshire Police LGBT+ Staff Network relating to the policy read: “Decision now rests with the Chief and, once he has made a decision, the guidance will come back to us to check and test then advise on the wording/communication.” It is simply unacceptable that staff networks, operating within no formal organisational framework that would enable public accountability, are being permitted to dictate police policy.

In the absence of more concrete information, the social media output of Police LGBT+ Staff Networks can provide us with some sense of the views likely to be put forward in the EDI training they help to develop. The NLPN Twitter account is particularly vocal on the issue of gender self-identification and a survey of NLPN Twitter posts from the past four months shows that transgender identity is the topic most commonly posted about. The NLPN Twitter account has posted commentary from activists like Fox Fisher,⁴⁸ who insist that it is transphobic to oppose self-identification, and from highly controversial trans rights groups such as Mermaids,⁴⁹ currently under investigation by the Charity Commission amid accusations of child safeguarding failures.⁵⁰ The NLPN account often makes openly partisan statements about live political issues, posting during the recent controversy over Scottish gender recognition reform:

We understand the increased fear & uncertainty the trans community is feeling right now due to the constant negative discourse about the T in LGBT+... If you're suffering hate crime, please don't suffer in silence, please report it.⁵¹

This post seems to strongly imply that speech critical of gender self-identification policies might, in itself, be a hate crime. Likewise, the NLPN Twitter account shared a post describing as “clickbait” a *Telegraph* article

48 National LGBT+ Police Network, 2023. Twitter post. Available [here](#).

49 Mermaids, 2022. Twitter post. Available [here](#).

50 Dixon, H., 2022. 'Trans charity Mermaids to be investigated by Charity Commission.' The *Telegraph*. Available [here](#).

51 National LGBT+ Police Network, 2023. Twitter post. Available [here](#).

that criticised the police for spending £66,000 on Pride-themed uniforms and equipment.⁵² While defensiveness on the part of a police association about such an article is understandable, the principle of press freedom means it is inappropriate for any organisation associated with the police to comment on the editorial line pursued by a British newspaper. The NLPN account also regularly shares posts that equate speech with violence, for example: “Violence starts with words”.⁵³ It therefore seems likely that EDI training influenced by Police LGBT+ Staff Networks will prime officers to treat legally protected gender critical speech as though it is a criminal offence, contributing to the police’s mistakes outlined in the case studies above.

Police Involvement in ‘Non-Crime Hate Incidents’

Many of the issues identified by this report as contributing to the free speech crisis in British policing were first brought to light in the now infamous case of [Miller v College of Policing \(2021\)](#). Police ignorance of freedom of speech, extra-judicial policing of perceived ‘offence’ and misguided workplace training all featured prominently.

Harry Miller, a former police officer, instigated a judicial review against Humberside Police and the College of Policing after he learned that the police had recorded 30 of his Twitter posts criticising and satirising gender self-identification policies as an NCHI. It emerged that the police were habitually recording NCHIs against citizens where a ‘non-criminal’ incident was perceived by the reporting person, or indeed anyone else, to have been motivated by hatred of one of the ‘protected strands’: disability, race, religion, sexual orientation and transgender identity. According to the College of Policing’s Hate Crime Operational Guidance (HCOG), perception is all important when it comes to the recording of NCHIs, meaning that no evidence of hatred, hostility or antagonism is required for police to record an NCHI against someone’s name. While an NCHI does not create a criminal record, it can be disclosed in an enhanced criminal records check and therefore has the potential to prevent a person getting a job.

Some of the statements made by Humberside Police to Miller in the run up to the judicial review are revealing. They show the extent to which EDI training informed by critical social justice ideology and ignorance of Article

52 Transcop UK, 2023. Twitter post. Available [here](#).

53 Graham Goulden, 2022. Twitter post. 2022. Available [here](#).

10 have led to the police becoming confused about their role and to engage in the kind of extra-judicial policing of 'offence' and 'anxiety', thereby threatening freedom of speech. When Miller was initially contacted at his workplace by PC Gull of Humberside Police he was warned that, although his posts were not criminal, continuing to tweet on the subject of gender identity might be seen as an escalation warranting criminal prosecution. When Miller asked why the police were wasting time on a matter they acknowledged to be non-criminal, PC Gull chillingly advised him that "I need to check your thinking". (Gull denies having said this.) He also explained to a Telegraph journalist that he had been on a "training course" and that Miller's posts were "the kind of thing that upsets the transgender community".⁵⁴ Responding to the complaint Miller initially raised with the Humberside Police Professional Standards Department, Acting Inspector Wilson stated that it was the police's responsibility to help Miller "understand the impact his comments could have on others and to prevent any possible escalation in future".⁵⁵ In a statement to the *Hull Daily Mail*, Humberside Police said of Miller's tweets that "there was never any suggestion he shouldn't engage in politics or debate around the subject, he was just asked why he would want to, knowing it would cause distress and upset to others in society".⁵⁶ These quotes illustrate the extent to which Humberside Police have come to believe their societal role goes well beyond upholding the law. Instead, identity-focused EDI training had left officers from Humberside with the impression that their job was to prevent 'upset' to members of valorised identity groups. The powers granted to police officers are here seen as tools that can legitimately be used to 'correct' the thinking of dissenting citizens.

The actions of Humberside Police, and the substance of the College of Policing HCOG they claimed to be following, were in due course found to be unlawful by the courts. Mr Justice Julian Knowles noted that there was nothing in the HCOG to "address the chilling effect which this may have on the legitimate exercise of freedom of expression".⁵⁷

In March 2023, the British Government released a draft Code of Practice on the recording and retention of NCHIs. The FSU welcomes this new guidance, which makes it clear that NCHIs must not be recorded unless

54 Tominey, C. and Walsh, J., 2019. 'Man investigated by police for retweeting transgender limerick.' *The Telegraph*. Available [here](#).

55 Miller v College of Policing, 2021, p.16. Available [here](#).

56 Kershaw, T., 2019. 'Man who liked "offensive transgender limerick" on Twitter is "fuming" after latest run-in with Humberside Police.' *Hull Daily Mail*. Available [here](#).

57 Miller v College of Policing, 2021, p.39. Available [here](#).

there is “a real risk of significant harm to individuals or groups with a particular characteristic(s) and/or a real risk that a future offence may be committed against individuals or groups with a particular characteristic(s)”. In addition, the new guidance says that NCHIs must not be recorded against children and emphasises the need for police to have due regard for freedom of speech. But, as our research shows, **many police officers may be encountering Article 10 and the legal protections surrounding freedom of expression for the first time when they read this new guidance.** Instead, these officers will have been trained to believe that protecting valorised minority groups from being offended is a legitimate primary purpose of policing. If the new Code of Practice is to rein in the police’s promiscuous recording of NCHIs, their training must be reformed to include extensive instruction on Article 10, emphasising the foundational importance of freedom of speech in our society and ensuring that officers understand their legal duty to uphold freedom of expression.

Conclusion

When confronted with the free speech abuses outlined above, commentators often call for a return to “common-sense policing”. The Government’s new guidance on the recording of NCHIs uses the term “common sense” 13 times. Unfortunately, the treatment of Jennifer Swayne, Bella Doe and Kellie-Jay Keen defies common sense. While the training the police receive emphasises the importance of respecting the identities of valorised minorities and that challenging their sacred beliefs is a ‘hate incident’ or ‘hate crime’, there can be no ‘common sense policing’. To address the free speech crisis in British policing the Government should make sure that police training is rebalanced, with less time devoted to EDI, particularly where it is delivered by questionable third party organisations, and more time devoted to Article 10. And influential police staff networks currently operating with no accountability must be brought into organisational alignment and made susceptible to public scrutiny.

In a recent film about LGBT police officers, Police Constable and National Co-Chair of the Police LGBT+ Network Amy Tapping told a dispiriting story. While on duty, Tapping was subject to homophobic abuse from a member of the public, who became aggressive and called her a ‘dirty lesbian’. Recalling the incident, Constable Tapping said:

It was quite horrible to have to deal with but I couldn’t let what she was doing affect how I treated her as an individual.⁵⁸

That commendable ethic, of impartiality in the face of views and attitudes the officers may find offensive, should be at the very heart of policing and of public sector service more broadly.

⁵⁸ Tapping, A., 2022. ‘My Policeman: What’s it like to be an LGBTQ police officer today?’ YouTube. Available [here](#).

