

Audrey Nicoll MSP  
Convener  
Criminal Justice Committee  
Scottish Parliament  
Edinburgh EH99 1SP

*By email*

19 April 2024

Dear Convener

#### **HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021: POLICE SCOTLAND**

Further to our letter of 10 March, we are writing to inform Committee members that we recently met DCC Alan Speirs, Deputy Chief Constable for Professionalism, Strategy and Engagement, and colleagues. We raised with them some of the issues referred to in our letter to you. The following points are based on our informal notes of the meeting. We are sharing these now to assist the Committee in its scrutiny of the unresolved issues here. We would urge the Committee to follow up directly with Police Scotland any points of interest to it in this letter.

#### **Training on the Hate Crime and Public Order (Scotland) Act 2021**

Police Scotland (PS) representatives explained that around 80% of officers had completed the online training package, which was also helpfully shared during the meeting. The material we were shown is contained in a PowerPoint slide show. DCC Speirs told us that staff and officers can also attend voluntary workshops on the Act, and PS plan to offer more workshops. We were not told how many PS staff and officers had attended these workshops to date.

We were advised that PS has 95 'hate crime advisors' who advise colleagues on interpretation of the Act. We did not discuss how officers are selected for that role, although we understood that some officers had progressed from the 'hate crime champion' role (see below). We were told that advisors have undertaken a two-day training course and

are required to accompany an existing advisor on a 'live deployment' before qualifying. There are a further 515 'hate crime champions'. This is self-selected role, which involves a one-day training course. We are not clear whether all staff who ask to become a hate crime champion are automatically accepted for that, or whether there is any sort of further selection process. We did not have sight of any training materials for these two groups.

We would suggest that to help secure trust and confidence in how the Act is policed, greater transparency is needed, and that Police Scotland should publish the training and guidance for hate crime advisors and champions, and any further guidance they are issuing to frontline police officers. How these roles are filled, and their internal lines of accountability could also be made clear. We would also suggest the Committee members seek sight of the PowerPoint material we were shown.

We expressed concern that the online training did not refer to the Forstater ruling. We were told this was because hate crime laws do not criminalise stirring up hatred on the basis of non-religious beliefs. We are concerned that this overlooks that, in carrying out their duties, police officers need to be aware that they must not unlawfully discriminate against or harass those with gender critical beliefs, as protected under the Equality Act 2010.

#### **Recording practices and non-crime hate incidents (NCHIs)**

We asked about recording practices and the handling of NCHIs. Police Scotland advised that all not all calls/reports translate into logged 'incidents', which is consistent with their recent data publication. A single incident may also relate to multiple reports.

NCHIs continue to be recorded on the iVPD. We were told that any alleged perpetrator details would only be retained "for policing purposes" and recorded in a free text box that could not be searched. It was unclear to us why this explanation had not been offered more publicly, given that a great deal of concern centres on the police's retention of data on alleged perpetrators of NCHIs, and what can be done with this, given the issues raised south of the border by the Harry Miller case.

At the meeting, and in follow-up correspondence, Police Scotland advised us that it is reviewing and updating its Hate Crime Standard Operating Procedure and other supplementary documentation, including its NCHI policy. Police Scotland also confirmed that this would take College of Policing Guidance on NCHIs into account. We were advised that the documentation was undergoing internal consultation, prior to consultation with external stakeholders. This appears consistent with recent news reports, although again, does not appear to have been communicated in a public statement. At the meeting, we suggested that Police Scotland consult women's groups with concerns about the policing of this Act.

We were grateful for the opportunity to meet and discuss these issues with DCC Speirs and his colleagues. We have sent PS several follow up questions, seeking more clarity in relation

to recording practices, as some of the information published by Police Scotland in this area appears confusing or contradictory at times, and there was not time to address this in full when we met. This includes seeking clarity on the threshold for recording NCHIs. We also know that women are worried about how their details will be held or handled, if a complaint is made against them, even that turns out to be unevidenced. Our follow-up questions are attached for the Committee's information. We will share any response we get with you and the Scottish Police Authority (SPA).

The recent publication of data on the HCPOA also raises issues and questions that may be of relevance to Committee members and to the Scottish Police Authority. We are looking further at this and will share with you any additional analysis we undertake.

We also draw Committee members' attention to a [letter](#) sent by over 200 women last month to the Chief Constable, expressing concern about hate crime training material developed by Police Scotland officers which "contained offensive tropes that women who are concerned about the erosion of their sex-based rights are akin to Nazis". The letter called on the Chief Constable to ensure that those involved in developing the materials were removed from any aspect of policing the new Act. We do know what if any action has been taken in response to this.

We hope the Committee and the SPA will be able to draw on this information, our list of questions, and any response we receive in due course, to lead on taking forward further scrutiny of Police Scotland's response to the new Act.

Yours sincerely

Dr Kath Murray  
Dr Lucy Hunter Blackburn  
Lisa Mackenzie

cc. DCC Speirs  
Martyn Evans, Scottish Police Authority

## Annex 1. Follow up questions for Police Scotland

We want to be clear about how hate complaints are recorded and classified; what information is held about persons who are complained about, and whereabouts; and if any information held on people who are complained about might be disclosed.

### Recording and classifying complaints

1. After investigation, depending on the evidence secured, we understand that an incident can be recorded as a hate crime (on COS), or a NCHI (on the iVPD). For hate complaints that do not meet the NCHI threshold:
  - How are they classified?
  - Where is the record held (e.g. on which systems)?
  - If the complaint was made against a named person (or people), would their details be held on any report?
2. What are the criteria for deciding that a hate complaint does not meet the NCHI threshold?
3. The 2021 National Guidance states: 'If the facts do not identify a recordable crime but the victim perceives it to be a hate crime, the circumstances will be recorded as a hate incident (non-crime incident).'

This appears inconsistent with the 'proportionate' approach to recording, as recently stated in media reports. Has Police Scotland amended its policy, to raise the threshold for NCHIs, from being perception-based?

### How often and where the details of alleged perpetrators are recorded on NCHI reports

4. In the meeting, we understood that the details of an alleged perpetrator would be held on an NCHI report in 'exceptional' circumstances. However, the iVPD '[Rules, Conventions and Data Input Standards National Guidance](#)' suggests these would be routinely recorded if known, bar some exceptions for young people:

"for **any** Hate Crime incident, an Adult / **Hate Concern** or Child / **Hate Concern** Report should **always** be raised for the victim / subject of concern, detailing the synopsis of the incident and **all known nominals**. If the **perpetrator** is a child or young person, until the child / young person responsible is traced and issued with a 'Formal Warning' or 'Cautioned and Charged', their details, including VP type and category of concern, will not be included on the Concern Report.' (2022: 9)

Could you confirm whether perpetrator details (where known), would be routinely recorded on a NCHI report, or, if this would only happen in exceptional circumstances?

5. In relation to a different type of concern, the same policy indicates that perpetrator details are recorded in the 'Incident Nominals' field:

'Where a Cross Border Concern Report has been raised on iVPD, users should ensure that when recording details of the 'Perpetrator' in the 'Incident Nominals' tab...'

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Can you confirm if this is also true of NCHI reports (i.e. if alleged perpetrator details would be recorded in the 'Incident Nominals' field), or if details would only be held in the free text area?

6. If an incident is recorded as an NCHI and an alleged perpetrator is *not known* to the police, would their details need to be first verified to be recorded on an NCHI report?
7. If an incident is recorded as an NCHI and an alleged perpetrator *is known* to the police, would that be noted on the NCHI report?
8. If a complaint is made against a person in relation to social media activity, and it results in an NCHI report, what details would be recorded on the report?

#### **Recording when there is no alleged perpetrator**

9. How are incidents recorded if there is no known perpetrator, for example in relation to stickers or graffiti that is reported as abusive? Could such reports still be recorded on the iVPD, as NCHIs? If not, where are they recorded?

#### **Searching the iVPD and disclosure**

10. It was stated at the meeting that the details of a person who is complained about cannot be searched for. We were surprised at this, as large databases are designed to be searchable. We also understand that GDPR rules require organisations to be able to query large-scale datasets to find information held on an individual. A Police Scotland [FOI response](#) also advised that a person could submit a SAR to see if their details were held on the iVPD.

Can you confirm whether it is simply not possible to search for the details of people of whom hate complaints have been made against, where that information is held on a NCHI report – or is that a search would be difficult/unreliable?

11. It was stated at the meeting that the details of an alleged perpetrator on an NCHI record would not be disclosed as part of a Disclosure Scotland check. However, the following extract from a recent press report suggests that such information could potentially be disclosed:

‘Disclosure Scotland confirmed that employers may be able to access these secret reports. It said: "Enhanced checks include conviction information and may include other relevant information about the applicant that the Chief Constable reasonably believes is relevant for the purpose of the disclosure. This may include reference to non-conviction matters.'" ([Scottish Daily Express, 27 March](#))

Can you confirm whether information held about an alleged perpetrator on an NCHI could potentially be disclosed to Disclosure Scotland (including the fact of that record existing), in either a basic or an enhanced disclosure (the latter covers 'Any relevant information')?