

Joint response to the “Home Office and Police data-sharing arrangements on migrant victims and witnesses of crime with insecure immigration status”

February 2022

Summary

Data sharing between the police and Immigration Enforcement is an issue that has raised concerns about its impact on migrant victims and witnesses of crime for years. It forms part of the government’s ‘hostile environment’ that has led organisations such as the Latin American Women’s Rights Service to report a significant increase in the number of women who are deterred from reporting serious crimes (including domestic abuse and modern slavery) owing to the legitimate fear and real possibility of facing detention and deportation.

Based on the harmful impact of data-sharing between the police and Immigration Enforcement, in 2018, Southall Black Sisters and Liberty lodged the first-ever super-complaint.¹ In December 2020, the findings of the super-complaint investigation, led by three independent police watchdogs, were published. It concluded that these arrangements are significantly harming not only victims of crime but also the public interest, as crimes are not reported and therefore remain unpunished. The report also confirmed that in domestic abuse cases, data-sharing with Immigration Enforcement does not constitute safeguarding.² Among the many recommendations made, the police inspectorate bodies called for immediate action to stop this practice and recommended a review of the data-sharing schemes. The aim being to establish safe reporting mechanisms for all migrant victims and witnesses of crime.

In December 2021, the Government published and laid before Parliament the Home Office and police data-sharing arrangements on migrant victims and witnesses of crime

¹ Super-complaint prepared by Liberty and Southall Black Sisters, 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767396/Super-complaint_181218.pdf

² Safe to share? Report on Liberty and Southall Black Sisters’ super-complaint on policing and immigration Status, 2020. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf p.17

with insecure immigration status review (the Review).³ Its content contradicts the police complaints findings and instead states that data-sharing with Immigration Enforcement is essential to protect victims. The Review rejects the call made by sector representatives to establish a firewall⁴ that makes it safer for victims with insecure immigration status to approach the police to report crimes safely. The Review proposes an Immigration Enforcement (IE) Migrant Victims Protocol which it is said will prevent immigration enforcement action against victims whilst criminal investigations and proceedings are ongoing, and while the victims are being supported.

We wholeheartedly disagree with the Government's response and argue that there remains a conflict of interest at the heart of Immigration Enforcement, given that its overriding role is to enforce immigration rules and not provide a safeguarding function. As organisations supporting migrant victims and witnesses of crime, we reject this protocol because we know this approach will not inspire let alone enhance victims' confidence in reporting a crime. On the contrary, we maintain that the active involvement of Immigration Enforcement will have a detrimental effect on victims and witnesses with insecure or uncertain immigration status leaving them unprotected.

Introduction

Despite a strong body of evidence as to how data-sharing practices between the police and Immigration Enforcement can undermine trust amongst migrants, and migrant communities and organisations continuously fighting to end such practices, data continues to be shared, in particular through the Immigration Enforcement National Command and Control Unit (NCCU).⁵

LAWRS' research shows that in cases of domestic abuse and other forms of VAWG, victims with insecure immigration status are unlikely to approach the police because they believe that the police will prioritise their lack of legal status instead of being protected as victims of serious crimes.⁶ On the frontline, specialist *by and for*

³ Home Office and Police data sharing arrangements on migrant victims and witnesses of crime with insecure immigration status, 2021. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041124/HO_Review_Police_and_HO_data_sharing_migrant_victims.pdf

⁴ The term 'firewall' is used in this response to reflect the language used in the Review. We nevertheless prefer the terms 'secure reporting' or 'safe reporting' over the broader term 'firewall' to describe a mechanism to ensure that victims and witnesses with insecure status can report a crime without facing negative consequences in regards to their legal status.

⁵ Ibid. Paragraph 7.

⁶ The Right to be Believed Migrant women facing Violence Against Women and Girls (VAWG) in the 'hostile immigration environment' in London, 2019. Available at: <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-key-findings-final-1.pdf>

organisations that support migrant women are witness to the anxiety that women have in approaching any law enforcement authority. They fear that in doing so, they will face a real risk of being detained or deported and, in cases where women have children, being separated from them. These fears are not unjustified but based on years of hostile immigration policies that prevent migrant victims from accessing safety and justice.⁷

This lack of confidence is concerning as it prevents crimes from being reported and, in addition to failing victims, it allows perpetrators to evade justice. The Government is well aware of this since its own *Domestic Abuse Draft Statutory Guidance Framework* states that perpetrators routinely use immigration status as a tactic of coercive control towards migrant women who have a “[...] fear of being detained in immigration centres and being deported and/ or having their children removed from their care;”⁸ when seeking support from statutory services or reporting to the police. Our experience shows that perpetrators are empowered by immigration laws and the heightened collaboration that exists between Immigration Enforcement and the police.

Immigration Enforcement so-called ‘safeguarding role’

In their recently published Review, the Home Office states that information sharing between the police and Immigration Enforcement is necessary to safeguard and protect vulnerable victims of crime. We disagree. This statement not only contradicts the findings from the HMICFRS super-complaint investigation but the considerable evidence provided by frontline specialist organisations working with vulnerable migrant victims and survivors.

We remain highly concerned about the lack of recognition of the conflict of interest that lies at the heart of the suggestion that Immigration Enforcement can perform a contradictory function that involves pursuing enforcement action against migrant victims and witnesses of crime, whilst at the same time seeking to ‘safeguard’ them. It was precisely this contradiction that led to the finding from the police super-complaint that data-sharing between the police and Immigration Enforcement causes ‘significant public harm’.

⁷ Rape victim arrested on immigration charges after going to police, 2017. Available at: <https://www.theguardian.com/lifeandstyle/2017/nov/28/victim-arrested-on-immigration-charges-after-going-to-police>

⁸ Domestic Abuse. Draft Statutory Guidance Framework, 2021. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007814/draft-da-statutory-guidance-2021-final.pdf para 85.

We also disagree with the Government's view that Immigration Enforcement can and is playing a safeguarding role. No amount of 'rebranding' of the role of Immigration Enforcement can detract from the fact that its primary role is to enforce immigration laws, using detention and deportation as its primary tools.

Victims, survivors and witnesses of crime justifiably do not perceive the Home Office as a neutral space that is conducive to making full disclosures of abuse, trafficking, exploitation or criminality in general because it is not a neutral space. The reluctance to engage with Immigration Enforcement is not borne out of a misperception as to the role of Immigration Enforcement by victims, survivors and witnesses of crime; it is based on fear and knowledge of the very real consequences that can result from detection. Nor is the Home Office capable of providing an appropriate safeguarding function due to its primary function which is to enforce immigration controls.

During the workshops conducted last year as part of the Review, the Home Office and Immigration Enforcement presented a list of so-called 'safeguarding interventions'. This included, among other things, signposting to voluntary returns services and tasking Immigration Compliance and Enforcement (ICE) to undertake pastoral visits to migrants' homes or workplaces to offer advice and support. Apart from the obvious fear that such a move would generate amongst migrants in particular there was a lack of understanding that what migrant victims and witnesses of crime need is a holistic approach; one that provides wraparound support to address their multiple needs and concerns. We were compelled to set out our concern that such an approach will lead to further harm for victims, survivors and witnesses who are even less likely to report a crime, even when the Home Office believes it is acting in the best interests of the victim.

Immigration Enforcement (IE) Migrant Victims Protocol

Based on the misguided idea that Immigration Enforcement holds a safeguarding function, the Review suggests the creation of an *Immigration Enforcement (IE) Migrant Victims Protocol*. This provision will, in our view, further institutionalise, legitimise and consolidate cooperation (through data-sharing) between the police and Immigration Enforcement to the detriment of victims. The Protocol states that there won't be any immigration enforcement against victims of crime while criminal investigations and proceedings are ongoing, and while the victims are being supported. This gives no guarantees to victims and witnesses of crime prior to reporting, as they do not know if a criminal investigation or related proceeding will take place. The Protocol assumes that migrant victims and witnesses will want to come forward to report a crime simply because no enforcement action will take place. But research has shown how in cases

involving migrant women, the police are even less likely to conduct criminal investigations and bring criminal charges.⁹

The reality is that this Protocol won't encourage victims and witnesses of crime to come forward. On the contrary, it will result in an increase in mistrust in the police and other statutory support services. As mentioned by the Domestic Abuse Commissioner "this protocol does not remove the fear of deportation for victims with insecure immigration status who report abuse [...]. The knowledge that their information can be passed onto immigration enforcement, and that immigration enforcement may be in contact with victims and survivors of domestic abuse – regardless of whether enforcement action takes place – is harmful and can reinforce the impact of immigration abuse."¹⁰

The Protocol is not a viable alternative to safe reporting. It would not increase migrant victims' trust in the police because data-sharing with the Home Office (through Immigration Enforcement) will continue and will be expanded.¹¹ As a result, victims and witnesses of crime are likely to remain fearful and therefore deterred from approaching the police and other statutory agencies to report a crime or seek support. Our experience of supporting extremely vulnerable victims of crime who have insecure immigration status confirms that any risk or fear of information being shared with the Home Office will be enough to avoid approaching the police to report their perpetrators. In addition, data-sharing for immigration enforcement purposes will not only affect migrants with insecure status but also migrants with regular status and British nationals¹² who have been misinformed about their rights or fear a punitive response from the police. This is particularly important in the aftermath of the murder of Sarah Everard, with 54% of people from ethnic minority backgrounds reporting that they do not trust the police.¹³ The Protocol therefore has the potential to continue the discrimination imperative that underlies immigration laws and policies.

The Review provides only limited information on how the Protocol will function as an alternative to a firewall. However, what is clear is that after information is shared

⁹ Bates, L., Gangoli, G., Hester, M. and Justice Project Team, 2018, Policy Evidence Summary 1: Migrant Women. University of Bristol, Bristol. Available at: https://research-information.bris.ac.uk/ws/portalfiles/portal/188884552/Policy_evidence_summary_1_Migrant_women.pdf

¹⁰ Vulnerable survivors failed as government rejects recommendations that would protect migrant victims of domestic abuse, says Domestic Abuse Commissioner, 2021. Available at: <https://domesticabusecommissioner.uk/vulnerable-survivors-failed-as-government-rejects-recommendations-that-would-protect-migrant-victims-of-domestic-abuse-says-domestic-abuse-commissioner/>

¹¹ In the review the Government states that data-sharing practices will be extended to include British Transport Police and Ministry of Defence Police.

¹² For example, British citizens who do not have a passport but who are British by birth.

¹³ Trust in the police has fallen amongst ethnic minority Britons, 2021. Available at: <https://yougov.co.uk/topics/politics/articles-reports/2021/12/15/trust-police-has-fallen-amongst-ethnic-minority-br>

between the police and the Home Office, “dedicated officers” from Immigration Enforcement will contact victims in order to provide information and signpost them to support services. We reject the suggestion that an Immigration Enforcement officer can offer guidance and advice to migrant victims and witnesses of crime on safeguarding or even their immigration status. We have several serious concerns about this measure. Firstly, Immigration Enforcement officers are not independent specialist advocates; these officers have no expertise on the particular needs of victims or witnesses of crime with insecure immigration status and would be in no position to undertake risk assessments or devise safety plans. Their lack of specialist knowledge can lead to misleading and even negligent and harmful advice may be being given. They are part of an immigration system in which their primary function, as mentioned above, is to control borders. Precisely because of this, they will not be perceived as having a safeguarding function even if there is a robust public campaign to suggest otherwise. Secondly, most migrant victims and witnesses of crime are unlikely to disclose their full circumstances of abuse and immigration histories for fear that they will be detained and deported. Obtaining such information is a painstaking task that also involves the need to provide counselling and trauma-informed support. Victims need safe spaces to access independent, trauma-informed, and rights-based advice that is culturally and linguistically appropriate, and need legal advocates to liaise on their behalf with the Home Office to regularise their status. Without such support, it is highly likely that a victim will fall or remain outside of the immigration system. Thirdly, Immigration Enforcement officers are not immigration law specialists and are not qualified to advise on immigration matters and would not be trusted by victims and witnesses to do so - and with very good reason, as set out in this letter.

For these reasons, the police must refer victims to specialist organisations which are best suited to provide the specialist support and safeguarding measures that migrant victims need.

We reject the Government’s assertion that the proposed Protocol will achieve the same goals as a firewall. We are concerned that any involvement of Immigration Enforcement in the reporting process will continue to prevent vulnerable migrant victims from approaching the police and also push them underground where they face increased risk of further harm and exploitation. In fact, institutionalising the role of Immigration Enforcement in the reporting of a crime will only serve to empower perpetrators of crime.

Firewall as a workable solution

There is a consensus emerging from both the ending Violence Against Women and Girls (VAWG) and Modern Slavery organisations on a complete firewall on data-sharing between the police and immigration enforcement as the most appropriate safe reporting mechanism. It is far more likely to improve reporting rates amongst victims and witnesses with insecure immigration status. Evidence shows that a firewall would make victims and witnesses feel confident in approaching the police to report crimes and more likely to engage in criminal proceedings which will in turn allow the police to hold perpetrators to account and prevent crime.

A complete firewall would also encourage victims and witnesses to report crime at an early stage, thus avoiding further harm and victimisation. At the same time, police referrals would also enable victims to access vital culturally and linguistically appropriate support from specialist organisations. This would also enable them to receive the legal advice to regularise their status and access the multidimensional support they need from those who can provide safe spaces and have expertise in safeguarding.

Conclusion

Establishing safe reporting mechanisms is key to building trust and ensuring that migrant victims of crime feel confident in reporting crime and engaging in the criminal justice system. Safe reporting mechanisms can also help the police protect victims, carry out successful investigations, hold perpetrators to account and prevent crime. Throughout last year, frontline organisations, independent police bodies and relevant stakeholders such as the Domestic Abuse Commissioner raised concerns about the deterrent effects of data-sharing schemes between the police and the Home Office.

In December 2020, an independent investigation by police watchdogs of the first super-police complaint confirmed the harm that those arrangements inflict on victims and on the public interest. The findings of the super-complaint recommended that the Home Office review the legal and policy framework surrounding data-sharing. Following the recommendation, we engaged in good faith with the Home Office, with the intention of supporting the establishment of safe reporting mechanisms for all migrant victims and witnesses. We are disappointed with the result of our engagement which has amounted to the proposal to set up an Immigration Enforcement (IE) Migrant Victims Protocol.

We believe that the Home Office Review and the resultant Immigration Enforcement (IE) Migrant Victims Protocol have failed to address the harm that is generated by data-sharing and failed to guarantee that victims with insecure immigration status can

report safely to the police without the fear of detention or deportation. Furthermore, we believe this proposal erodes the rights and protections afforded to survivors under the Equality Act and contradicts the Istanbul Convention on combating violence against women and girls, which prohibits the discrimination of migrant women based on their immigration status. The Protocol will only serve to institutionalise even more data-sharing practices between the police and Immigration Enforcement, which is incompatible with the protection of survivors of violence and abuse.

We reject the Protocol since it only serves to continue and heighten the Government's hostile immigration policy and as such, we will not be engaging with the Home Office in the development of the Protocol or the campaign to raise awareness around it. Our commitment is to ensure all victims can be safe, irrespective of their migrant status. This Protocol does not guarantee non-discrimination or equal access to justice for migrant victims with insecure legal status. We'll continue to campaign and advocate for appropriate safe reporting mechanisms that are meaningful to the women we serve in forthcoming legislation and policy processes.

**Latin American Women's Rights Service
Step Up Migrant Women Campaign
Southall Black Sisters
Liberty
Focus on Labour Exploitation
Kalayaan
Middle Eastern Women & Society Organisation
Asian Women's Resource Centre
The Voice of Domestic Workers
Imkaan
Safety4Sisters North West
Kanalungan Filipino Consortium
The Angelou Centre**

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