

### Scifety Before Status

### How to ensure the Victims and Prisoners Bill meets the needs of all victims

Many victims and survivors of domestic abuse with insecure immigration status do not report to the police or other statutory services due to the fear that their information will be passed onto Immigration Enforcement. This allows dangerous offenders to continue to abuse with impunity; safe in the knowledge that their victims and survivors are too afraid of enforcement action to report to the police.

In 2020, the first response to a super-complaint by His Majesty's Inspectorate of the Constabulary, Fire and Rescue Services (HMICFRS) found that "victims of crime with insecure immigration status are fearful that, if they report to the police, their information will be shared with the Home Office and/or the reported crimes will not be investigated."<sup>1</sup>

The Domestic Abuse Commissioner has heard from many migrant victims and survivors that any interaction with Immigration Enforcement can instil fear and insecurity, regardless of whether any enforcement action will be taken.

The Domestic Abuse Commissioner has revealed new evidence that every single police force in England and Wales has shared the data of a victim of domestic abuse with Immigration Enforcement over a threeyear period. This practice leaves migrant victims and survivors with no safe place in the country to report domestic abuse without the fear that their data may be shared with the Home Office. The evidence - obtained from the Home Office – shows that the data of 537 victims was shared with Immigration Enforcement. While some forces shared the data of just a handful of victims – even one victim's data being shared is enough to deter others from ever reporting to the police and other public services.

The Victims and Prisoners Bill returns to Parliament in Autumn 2023, and provides a unique opportunity to address this. As Alex Chalk, Secretary of State for Justice, stated, the Bill aims to "boost victims' entitlements; make victims' voices heard…and deliver further safeguards to protect the public." Yet the Victims and Prisoners Bill, as it currently stands, fails to include migrant victims in these entitlements and safeguards.

In this briefing, the Domestic Abuse Commissioner sets out her recommendation for an amendment to the Victims and Prisoners Bill so that all victims are treated as victims first and foremost, regardless of their immigration status. The Commissioner is calling for a firewall between Immigration Enforcement and statutory services, including the police, so that migrant victims and witnesses can safely report domestic abuse and other crimes. This would increase victims' confidence in reporting and provide statutory services with the intelligence and clarity needed to protect not only the victim but the wider public, without major impact on the wider work of Immigration Enforcement.

# The fear of reporting

Migrant victims and witnesses hold a very real – and justified – fear that reporting crime and disclosing abuse will lead to contact with the Home Office and potential immigration action being taken against them.

Many perpetrators exploit this fear of reporting through a form of coercive and controlling behaviour known as immigration abuse, which includes the use of threats of deportation and separation from their children if the victim reports abuse. Imkaan has reported over 90 percent of women with insecure immigration status who experienced domestic abuse had their abusers use the threat of their removal from the UK to dissuade them from reporting.<sup>2</sup> This was a key tool that serial perpetrator David Carrick used to control one of his victims, by threatening to report her to Immigration Enforcement if she disclosed or reported the abuse he had perpetrated towards her.<sup>3</sup>

Instead of being assured that statutory services will prioritise their safety, migrant victims and survivors face a stark choice: staying silent and risking further violence from the perpetrator, or reporting their abuse and fearing immigration action. To date, legislation and guidance provides no protection for these victims. It is currently the case that statutory services including police, health services, and social care, can and are actively encouraged to share information about victims and witnesses of crime with the Home Office, which may result in immigration enforcement action. In the case of policing, for example, National Police Chiefs' Council (NPCC) guidance states that "officers will not routinely search police databases for the purpose of establishing the immigration status of a victim/witness" but that "when a victim/witness

is suspected by an officer of being an immigration offender, the police will share information about them with the Home Office...without delay." This puts migrant victims and witnesses in particular at significant risk and undermines the government's objective of treating all victims as "victims first and foremost."<sup>4</sup>

An immigration status enquiry is when police share basic information, including current address, with Immigration Enforcement if they suspect that a victim or witness may not be legally residing in the UK, which they are encouraged to do under NPCC guidance. When police make such an enquiry, the Immigration Enforcement National Command and Control Unit (NCCU) will subsequently establish the immigration status of referred individuals and determine what action is appropriate - this may include passing information to Immigration Compliance and Enforcement teams for further investigation in relation to an immigration offence. In some circumstances, the victim or witness is informed that their information has been or will be shared with Immigration Enforcement unless it is unfeasible to do so. This knowledge alone can leave victims and witnesses in fear of reporting or disclosure, even if deportation or removal processes are not pursued.

New data, obtained by the Domestic Abuse Commissioner from the Home Office, shows that every police force across England and Wales referred victims of domestic abuse to Immigration Enforcement at some point between April 2020 to March 2023, meaning that there is nowhere that victims could safely report to police without fear of immigration action. In this same three-year period from April 2020 to March 2023, there were 537 immigration status enquiries made by police to the NCCU – the primary point of contact within Immigration Enforcement for all UK Police Forces – for victims of domestic abuse.

2 2012+\_+Imkaan+\_+Vital+Statistics+Two+(Low+res).pdf (squarespace.com)

- 3 https://www.theguardian.com/uk-news/2023/mar/05/uk-police-reported-sexually-exploited-children-to-immigration-enforcement
  4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1146909/victims-and-prisoners-bill-equality-statement.pdf
- domestic abuse commissioner

Despite knowing that reporting to police could put them at risk of immigration action, these victims and survivors were willing to report in the hope that it would protect them from the violence of their perpetrator – only to have their fears realized when police did refer them to Immigration Enforcement.

The high cost to both personal and public safety of inciting further fear and disincentivizing victims from reporting crime resulted in no enforcement action that might be considered to justify the sharing of information. Of the immigration status check referrals made by police where the Immigration Enforcement NCCU had reached an outcome in the 3 years to March 2023, no victims or witnesses were detained or removed from the UK. This means that Home Office processes indicated that neither detention nor removal were necessary for the maintenance of public safety or upholding of immigration law. The number of victims of domestic abuse referred to Immigration Enforcement may only make up a small proportion in the wider context of efforts to uphold immigration law,

but for these individual victims and those who hear their stories, every referral to Immigration Enforcement is another deterrent to reporting abuse, accessing support, and bringing perpetrators to justice.

The Domestic Abuse Commissioner is aware of multiple examples of victims and survivors of domestic abuse who have taken brave steps to report domestic abuse – only to be told that their information has been passed on to Immigration Enforcement. Lucia's story is one such example.

Although Lucia's story primarily illustrates the role that police play in sharing migrant victims' data with Immigration Enforcement, there are also other statutory services who allow for and even encourage the sharing of this data, meaning survivors often have nowhere to turn to disclose abuse. In some cases – as in Teresa's story – these services provide support and advice which fails to consider the nuances of their circumstances and can increase their fear of immigration action.

### Lucia's story\*

(Shared by Latin American Women's Rights Service)

Lucia came to the UK on a visitor visa. She met her partner online, and he said he would marry her before her visa expired. As time passed, he became aggressive and began isolating and controlling her. At the end of 2022, she ended the relationship. After that, he would send her messages and emails insulting and threatening her.

Lucia sought support from the Latin American Women's Rights Service. She was experiencing high-risk threats and stalking, which led to a deterioration of her mental health and the development of suicidal thoughts. Lucia was fearful of contacting the police due to her lack of legal status, but her caseworker supported her to report him to the police.

When the police came to her home, they asked for an ID and looked through her passport and expired visa. They then called Immigration Enforcement in front of her and told her that she should be ready to leave at any moment.

This was the first time Lucia sought support from the police after three years of being in an abusive relationship. She felt let down by the police and fearful of removal from the country as a consequence of having reported the crime. The perpetrator continued to harass and threaten her.

Lucia contacted her caseworker extremely distressed, saying she did not want to have any contact with the police. As abuse escalated again, her caseworker tried to convince her to make another report, which Lucia opposed as she was more afraid of deportation. Eight days after the police report, Lucia got an immigration enforcement letter. The letter exacerbated Lucia's fear and made her decide to disengage from LAWRS' support altogether.



### Teresa's\* story

(Shared by Latin American Women's Rights Service)

Teresa is from Latin America. She arrived in the UK in 2022 to work and study. After a few months of arriving, she met her perpetrator and soon became pregnant and moved in with him and his mother. She suffered from physical and emotional abuse. He threatened Teresa with deportation and destitution, and has also threatened to kill her. She tried to call the police, but the perpetrator took her phone, leaving her vulnerable to access any form of help. In one of the attacks, the perpetrator caused Teresa to bleed and she feared losing her unborn child. Teresa went to the hospital, and there she made a domestic abuse disclosure to the midwife.

Teresa has no family in the UK. She has become undocumented, and has no right to work or access public funds. Due to her immigration status and no recourse to public funds, she has very few options. Teresa is afraid of deportation and having her child taken away from her, especially as social services suggested she give her child up for adoption and return to her home country as a solution to resolve the abuse she is suffering.



## Current policy

In December 2018, Liberty and Southall Black Sisters submitted the first ever super-complaint to His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). It highlighted concerns around two systemic features of policing: the passing of victim and witness data to the Home Office for immigration enforcement purposes; and a culture of police prioritising immigration enforcement over safeguarding and the investigation of crime.

Two years later, in December 2020, HMICFRS, the College of Policing, and the IOPC responded. Their report found that significant harm is being caused to the public interest because victims of crime with insecure immigration status are fearful that, if they report to the police, their information will be shared with the Home Office and/or the reported crimes will not be investigated. The report recommended that the Home Office should undertake a review, "to establish safe reporting mechanisms for all migrant victims and witnesses" and should include consideration of a mechanism for establishing a firewall. The report also recommended that as an interim measure, the police should immediately stop sharing the data of victims of domestic abuse with Immigration Enforcement.

"We fully support the idea of an immediate change in police practice to allow a separation between the response to a victim's report of domestic abuse and the handling of their immigration status. The imperative is to establish safe reporting mechanisms for victims of domestic abuse in accessing the police service."

His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, College of Policing, Independent Office for Police Conduct

### **Code of Practice**

These issues were highlighted during the passage of the Domestic Abuse Act 2021, when amendments to implement a data-sharing firewall for victims of domestic abuse were proposed and supported by the Bill Committee. However, rather than accept these amendments, government instead committed to developing a statutory code of practice, which falls short of the legislative measures recommended.

"We support the recommendation of the Step Up Migrant Women campaign to establish a firewall at the levels of policy and practice to separate reporting of crime and access to support services from immigration control."

### Joint Committee on the Draft Domestic Abuse Bill

The Code of Practice would relate to the processing of domestic abuse data for immigration purposes, and



relevant persons (in particular, police and Home Office immigration staff) would be required to "have regard"<sup>5</sup> when sharing personal data of domestic abuse victims for immigration purposes.

As of November 2023, it has been over two years since the passage of the Domestic Abuse Act, and the Code of Practice is yet to be published.

### Immigration Enforcement Migrant Victims Protocol

Although the interim measure was not implemented, in December 2021 the Home Office published a review of data-sharing arrangements on migrant victims and witnesses of crime with insecure immigration status. This review recognised that data sharing between the police and Home Office can be a contributing factor influencing the decisions of migrant victims and survivors not to report a crime. It additionally agreed that it is the principle of threat of deportation or removal, even in the form of a letter from the Home Office, "that can cause reluctance to report to the police" – even if deportation and removal is not pursued.<sup>6</sup> Despite this, the Home Office continued to support the sharing of data, claiming that "proposals to cease or delay data sharing...would be harmful to both the safeguarding of those victims and witnesses and the public interest."7

In this review, rather than implement a firewall, the Home Office committed to introducing an Immigration Enforcement Migrant Victims Protocol for migrant victims of crime that have been referred to Immigration Enforcement from the police. The Protocol would set out that no immigration enforcement action would be taken against that victim while investigation and prosecution proceedings are ongoing, and the victim is receiving support and advice to make an application to regularise their stay. As of November 2023, the Protocol is yet to be published or implemented.

Under these proposed measures, survivors would still be open to contact from Immigration Enforcement,

meaning the fear of any engagement with Immigration Enforcement is not removed. Furthermore, victims and survivors are at risk of potential immigration action once criminal proceedings conclude.

This is particularly relevant for victims and survivors of domestic abuse, given that criminal investigations are often closed quickly, and high attrition rates are present across every stage of the criminal justice process. Data collected as part of a review by HMICFRS shows that, on average, 75 percent of domestic abuse cases are being discontinued by police due to evidential difficulties, despite the fact that, in nearly a third of these discontinued cases, victims wanted to proceed with action.<sup>8</sup> Additionally, even when cases are referred to the Crown Prosecution Service (CPS), CPS data shows that nearly a quarter of domestic abuse cases are never prosecuted, and over 15 percent of those prosecuted are dropped.<sup>9</sup> These rates are likely even lower for migrant survivors - research by the University of Bristol's Justice Project showed that, in cases where the report was made by a migrant woman, the police were less than half as likely to conduct a criminal investigation.<sup>10</sup> The study also found a similar disparity in the number of cases culminating in prosecution, with 39 percent of reports from UK/EU nationals leading to a criminal charge as opposed to just 19 percent in cases reported by migrant women.

"The Government should establish an appropriate firewall-type mechanism between the police and the Home Office to prevent data sharing for the purposes of enforcing immigration rules against victims of abuse."

### **Women and Equalities Select Committee**

- 5 https://www.legislation.gov.uk/ukpga/2021/17/section/82#:~:text=82%20Code%20of%20practice%20%281%29%20The%20Secretary%20 of,under%20review%3B%20%28b%29%20may%20be%20revised%20or%20replaced.
- 6 Home Office and Police data sharing arrangements on migrant victims and witnesses of crime with insecure immigration status (publishing. service.gov.uk)
- 7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1041124/HO\_Review\_Police\_and\_HO\_ data\_sharing\_migrant\_victims.pdf
- 8 https://hmicfrs.justiceinspectorates.gov.uk/publication-html/review-of-policing-domestic-abuse-during-pandemic/#the-exceptionally-low-volume-of-domestic-abuse-cases-resulting-in-a-charge-remains-unacceptable
- 9 https://www.cps.gov.uk/publication/cps-data-summary-quarter-4-2022-2023
- 10 Microsoft Word migrant-women-policy-evidence-summary.docx (bris.ac.uk)



### The solution

Government has rightly taken the position that victims of crime should be treated as victims first and foremost. The Victims and Prisoners Bill – which aims to improve provisions and safeguards for victims as well as the general public – provides a crucial opportunity to achieve this vision. However, victims and survivors with insecure immigration status are not adequately protected by the Bill and therefore remain locked out of the systems that they should be able to turn to for protection.

The Commissioner is calling for legislative change so that these victims and survivors feel safe to report and disclose domestic abuse, ensuring that the Victims and Prisoners Bill protects all victims.

### The solution: a data-sharing firewall

In order to tackle the inconsistency in guidance, legislative change is required to give strength and clarity for all frontline professionals dealing with migrant victims of crime.

The Domestic Abuse Commissioner's proposed amendment would institute a ban on statutory services, such as the police, health services, and social care, from sharing the data of a victim or witness of specific crimes with the Home Office without their consent. It would give victims and survivors the confidence to safely report a crime or disclose abuse by removing the fear of immigration action following a report and ensuring that investigation of crime is prioritized over enforcement of immigration rules. Implementing such a measure would provide a range of benefits to victims and survivors, police and other frontline professionals, and the public at large.

- **Personal safety and support:** With the knowledge that their personal data would not be shared with Immigration Enforcement, migrant victims and survivors would feel safer to report crime. Furthermore, by feeling safe to report or disclose at any point, victims and survivors could be risk assessed and supported at an earlier stage, therefore protecting them from future abuse and potentially even saving their life. By being put in touch with specialist services, they would garner the additional benefit of receiving support to know and, if needed, regularise their immigration status without the risk of facing immigration action from the very agency which claims to be safeguarding them.
- Public safety: Domestic abuse perpetrators have high rates of repeat and serial offending - 1 in 4 high-harm perpetrators are repeat offenders and some have at least 6 different victims." By increasing migrant victims' confidence in reporting crimes and prioritising investigation of crime over enforcement of immigration rules, a firewall would improve chances for crimes to be both reported and sufficiently investigated. This, in turn, would increase the likelihood of perpetrators on the whole being brought to justice, and current or potential serial perpetrators being caught sooner, which would be of significant benefit to public safety. If victims do not feel safe to report, there is no opportunity for criminal justice action, diversion, or risk reduction to protect current and future victims.

"The lack of a firewall between the police and Immigration Enforcement denies safety to

11 Call-to-Action-Final.pdf (driveproject.org.uk)



victims and witnesses and may allow perpetrators to commit further offences. We call for an immediate end to the sharing of victims' and witnesses' data between the police and the Home Office for immigration enforcement purposes and the introduction of a complete firewall for those groups."

### Justice Select Committee, Pre-legislative scrutiny of the Draft Victims' Bill (2023)

- Clarity: The implementation of a firewall would allow for clarity in operational guidance for frontline professionals, including police, health professionals, and specialist service providers. Rather than having to align a series of policies and guidance (including the Protocol, Code of Practice, and professional guidance such as that published by the National Police Chiefs' Council for policing), professionals would have one clear policy, enshrined in legislation, which sets out their roles, responsibilities, and limitations. Furthermore, a firewall would provide clarity to migrant victims and survivors and would be easy to understand, particularly for those who may not have English as a first language. This would limit a perpetrator's ability to exploit this confusion through immigration abuse.
- **Trust-building:** Trust in statutory services, and in particular the police, has been undermined as a result of poor and unsafe practices. This is especially true for Black and minoritised women, including those who have secure immigration status and even those who are British citizens <sup>12</sup>, as they are disproportionately impacted by suspicions of immigration offences and subsequent referrals to Immigration Enforcement.<sup>13</sup> A firewall provides an opportunity for police and other statutory services to begin to build back trust with those who have been disproportionately impacted by previously policies which would be particularly beneficial at a time when public confidence in policing is notably low.<sup>14</sup>

### The amendment

The amendment is structured in three parts:

 A duty on the Secretary of State to make arrangements for ensuring that the personal data of victims and witnesses of the specified crimes is not used for any immigration control purpose without the person's consent. The consent requirement is included so as to ensure that the firewall does not limit or delay a victim or witness's access to pathways to regularise their status, such as DVILR, or access public funds, such as DDVC.

- 2. A list of the crimes covered by this data-sharing firewall, and a provision for the Secretary of State to specify additional crime types in regulations. The crimes specified in primary legislation, which the Secretary of State must include in regulations, are domestic abuse, honour-based abuse, stalking, harassment, modern slavery, rape, sexual assault, child sexual offenses, and child sexual exploitation.
- 3. Details of guidance that must be issued and published, and who must be consulted ahead of issuance and revision.

### Victims of domestic abuse: data-sharing for immigration purposes

- The Secretary of State must make arrangements for ensuring that the personal data of a victim of a crime mentioned in subsection (3), that is processed for the purpose of that person requesting or receiving support or assistance related to the crime, is not used for any immigration control purpose without the consent of that person.
- 2. The Secretary of State must make arrangements for ensuring that the personal data of a witness to crime mentioned in subsection (3), that is processed for the purpose of that person giving information or evidence to assist the investigation or prosecution of the crime is not used for any immigration control purpose without the consent of that person.
- The crimes referred to in subsections (1) and (2) are
  - a. domestic abuse as defined by section 1 of the Domestic Abuse Act 2021
  - an offence under any of sections 2, 2A, 4 or 4A of the Protection from Harassment Act 1997 or section 42A (1) of the Criminal Justice and Police Act 2001
  - c. an offence under any of sections 1, 2 or 4 of the Modern Slavery Act 2015
  - d. an offence under Part 1 of the Sexual Offences Act 2003
  - e. such other offences as specified in regulations made by the Secretary of State.

13 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/767396/Super-complaint\_181218.pdf
 14 https://lordslibrary.parliament.uk/police-standards-and-culture-restoring-public-trust/



<sup>12</sup> Home Office data shows that the majority of domestic abuse victims on whom immigration status checks were made by UK police forces had confirmed status at the time of referral.

- 4. Paragraph 4 of Schedule 2 to the Data Protection Act 2018 shall not apply to personal data processed for the purposes of subsection (1) or (2).
- 5. For the purposes of this section, the Secretary of State must issue guidance to those persons mentioned in subsection (10) about the effect of subsections (1) and (2).
- 6. The Secretary of State may from time to time revise any guidance issued under this section.
- Before issuing or revising guidance under this subsection, the Secretary of State must consult –
  - a. The Domestic Abuse Commissioner,
  - b. the Victims' Commissioner,
  - c. the Independent Anti-Slavery Commissioner, and
  - d. such other persons as the Secretary of State considers appropriate.
- 8. Subsection (7) does not apply in relation to any revisions of the guidance issued under this section if the Secretary of State considers the proposed revisions of the guidance are insubstantial.
- 9. The Secretary of State must publish
  - a. Any guidance issued under this section, and
  - b. Any revisions of that guidance.
- 10. The persons mentioned in subsection (5) are:
  - c. persons who are victims of or witnesses to the crimes in subsection (3);
  - d. persons from whom support or assistance may be requested or received by a victim of crime in the United Kingdom;
  - e. persons providing support to, or conducting investigations or prosecutions with the support of, witnesses of crime in the United Kingdom;
  - f. persons exercising any function of the Secretary of State in relation to immigration, asylum or nationality and
  - g. persons exercising any function conferred by or by virtue of the Immigration Acts on an immigration officer.
- A Person exercising public functions to whom guidance issued under this section relates must have regard to it in the exercise of those functions.
- 12. For the purposes of this section -

'consent' means a freely given, specific, informed and unambiguous indication of the individual's

wishes by which the individual, by a statement, signifies agreement to the processing of the personal data.

'immigration control' means the exercise of any functions of the Secretary of State and of immigration officers under the Immigration Acts within the meaning of section 61 of the UK Borders Act 2007.

'support or assistance' includes the provision of accommodation, banking services, education, employment, financial or social assistance, healthcare and policing services and any function of a court or prosecuting authority.

'victim', in relation to a crime, means the particular person who appears to have been affected by the crime, and their dependent, where that dependent is also affected by the crime.

### Where this works

In the Netherlands, the Dutch Government have introduced 'Free in, Free out', in which victims are permitted freely to enter a police station to report a crime and freely leave without arrest or being held in custody.

In Spain, victims of gender-based violence see infringement proceedings and deportations immediately stopped (or not even started) once undocumented migrants have been identified as victims of these crimes; secondly, these victims become eligible for special residence and work permits.

In Belgium, victims of human trafficking or smuggling with aggravating circumstances are offered a specific form of protection via the "victim procedure" and "victim status".

In Italy, there are special permits for victims of human trafficking, sexual exploitation, domestic abuse and labour exploitation.

In New York City, the police have adopted a 'community policing' approach to law enforcement and developed guidance that prohibits officers from inquiring about immigration status of victims of crime. In cities across the United States, 'Sanctuary City' policies limit or prohibit municipal employees (such as local police) from cooperating with federal immigration enforcement, which allow migrants with insecure status to safely report crime to police.





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