

# Safe to share?

## Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration status



A joint investigation by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the College of Policing and the Independent Office for Police Conduct



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# Introduction and summary



## Senior panel foreword

Super-complaints provide a voice for designated bodies to raise concerns on behalf of the public about patterns or trends in policing that are, or appear to be, significantly harming the interests of the public. Liberty and Southall Black Sisters put forward this super-complaint about the treatment of victims of crime and witnesses with insecure immigration status. It focuses on how information about them is passed to the Home Office for immigration enforcement.

HMICFRS, the College of Policing and the Independent Office for Police Conduct (IOPC) are responsible for assessing, investigating and reporting on police super-complaints. We have collaborated on the investigation and on drawing conclusions. This super-complaint is the first we've investigated. It is important because it raises complex concerns that may not otherwise have been a focus of our combined work.

Information sharing between police and the Home Office can be important for people's safety, and in certain instances is required by law. We have investigated just one form of information sharing between police and the Home Office. This concerns migrant victims in highly vulnerable circumstances – usually arising from crimes of domestic abuse or modern slavery and human trafficking.

### What we found

We have found many inconsistencies in police practice and a lack of clarity in policy. Police officers are not always clear on their priorities on safeguarding victims and immigration enforcement. We have found no evidence of an intention within the police service to operate a culture that prioritises immigration enforcement, nor that this is the primary purpose of information sharing.

However, there is little information available on the outcomes of contact between police and the Home Office about victims and witnesses. This means that we must rely on case examples of victims' experiences to understand the impact of current arrangements. We found the testimony in these examples to be clear and troubling.

Unreported crime is a significant problem for society, and therefore for police. We have found multiple factors in this investigation that may contribute to a perception that police prioritise immigration enforcement. These factors may also be enabling offenders and abusers to use police involvement as a threat to their victims, rather than a source of protection.

Liberty and Southall Black Sisters said that victims and witnesses with an unsettled immigration status are currently deterred from engaging with the police because of fears

that this may make their situation worse. Consequently, victims are denied justice, while offenders go unpunished and remain a threat to the public. Based on the findings of this investigation, we share this concern.

The scale of this problem is unknowable. However, people who are living with these 'hidden' crimes, or who are at risk of becoming a victim, must be better served by our police and the offenders must be prosecuted.

### **Moving from fear to protection**

The UK aspires to be a humane, liberal democracy where the criminal justice system does not punish people for being victims but recognises and protects them. Government policy is clear that victims of crime should be treated without discrimination. We agree with Liberty and Southall Black Sisters that harm is currently being caused to the public interest, and that this needs to be addressed. That is why we are recommending a review of the law and policy in this area, to provide clarity to police on their priorities. We also recommend establishing safe reporting pathways, informed by the realities of victims' experiences, that reflect existing laws on everyone's right to data protection.

For victims of domestic abuse, we have gone further and recommended a separation between the police response to a victim's report of domestic abuse and the handling of their immigration status. Victims should have every confidence in approaching the police for protection. They should expect and receive protection at times when they are vulnerable and so desperately need the assistance of the agents of the state. Victims should never be in a position where they fear that the actions of the police could unintentionally but severely intensify their vulnerability, and thereby strengthen the hands of organised criminals and others whose motives and objectives are to inspire fear and do them harm.

We are grateful to Liberty and Southall Black Sisters for raising these complex concerns. The findings and recommendations from this investigation must be acted on to ensure that our society's protections are available to everyone, including those in the most vulnerable and uncertain circumstances.

## Summary

### What is a super-complaint?

A super-complaint is a complaint that “a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public” (section 29A, Police Reform Act 2002).

The system is designed to examine problems of local, regional or national significance that may not be addressed by existing complaints systems. The process for making and considering super-complaints is set out in the Police Super-complaints (Designation and Procedure) Regulations 2018 (the regulations).

### What does this super-complaint say?

This super-complaint is about two features of policing:

1. the police passing victim and witness data to the Home Office for immigration enforcement purposes; and
2. the operation of and/or perception of a culture of police prioritising immigration enforcement over the investigation of crime and safeguarding.

Liberty and Southall Black Sisters say that these features cause significant harm to the interests of the public because they deter victims and witnesses with an unsettled immigration status from engaging with the police. Consequently, victims are denied justice, while offenders go unpunished and remain a threat to the public. The evidence Liberty and Southall Black Sisters provide focuses on the experiences of female victims of domestic abuse, sexual violence and modern slavery offences. This is because of the type of casework completed by Liberty and Southall Black Sisters, and their partner organisations. However, they argue that the same problems affect all victims and witnesses whose immigration status is not settled.

Liberty and Southall Black Sisters propose several solutions to the problems in the super-complaint, including establishing a ‘firewall’. They say a firewall would prevent data-sharing on victims and witnesses of crime between the police and the Home Office.

## Background: policing and immigration status

The difficulties faced by people with uncertain immigration status in reporting crimes to the police have been the subject of increasing attention in recent years. This has been evident through parliamentary reports,<sup>1</sup> media interest,<sup>2</sup> and a range of publications from academic sources and campaigning groups.<sup>3,4</sup>

Until 2018, there was no specific guidance for police on the appropriate response to victims or witnesses of all crime types with uncertain immigration status. The National Police Chiefs' Council (NPCC) addressed this gap in October 2018 with a [guidance paper](#) for the police service. The NPCC is a co-ordinating body for the police service in England and Wales. It is not a legal entity and has no statutory powers. A revised version of this paper was provided to this investigation in June 2020. Liberty and Southall Black Sisters say that the guidance does not stop or restrain the sharing of data of victims and witnesses of crime with the Home Office, and that it is unclear what status the guidance has and whether it has been adopted by all forces.

## Our approach and methodology

We established the following lines of enquiry to structure an investigation of current police practice, examine its rationale and assess evidence of harm:

- the nature of information sharing between the police and the Home Office/Immigration Enforcement of personal data of victims and witnesses of crime with an insecure immigration status;
- the implementation of national and local police policies, guidance, training and practice in safeguarding victims and witnesses of crime who have insecure immigration status;
- the risks of harm to victims and witnesses arising from information sharing about people at high risk of domestic abuse who have an insecure immigration status, within formal and informal multi-agency discussions – for example, at multi-agency risk assessment conferences (MARACs); and

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<sup>1</sup> For example, [Human Trafficking: Twenty-sixth Report of Session 2005–06, Vol 1](#), House of Lords and House of Commons Joint Committee on Human Rights, 9 October 2006, para 140; [Domestic Abuse: Ninth Report of Session 2017–19](#), House of Commons Home Affairs Committee, 17 October 2018, para 102; [The Windrush generation: Sixth Report of Session 2017–19](#), House of Commons Home Affairs Committee, 27 June 2018, para 83.

<sup>2</sup> For example, 'Government must protect domestic abuse victims "trapped" due to hostile environment, Sadiq Khan says', [The Independent](#), 15 August 2018.

<sup>3</sup> For example, 'Policy Evidence Summary 1: Migrant Women', Bates, L., Gangoli, G., Hester, M. and Justice Project Team, University of Bristol, 2018.

<sup>4</sup> [The Right to be Believed: Migrant women facing Violence Against Women and Girls \(VAWG\) in the 'hostile immigration environment' in London](#), McIlwaine, C., Granada, L., Valenzuela-Oblitas, I., King's College London and The Latin American Women's Rights Service, May 2019.

- the risks of harm to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes.

Our investigation team:

- submitted a request to all 43 territorial forces in England and Wales for information on current relevant policies;
- consulted interested parties including the NPCC and Home Office;
- completed a data-mapping exercise to identify the information-sharing pathways between the Home Office (specifically its Immigration Enforcement division) and police forces, and to assess any available information on the scale of this practice;
- conducted a review of relevant national policy, guidance and research;
- conducted limited fieldwork in six forces<sup>5</sup> across England and Wales including interviews with the relevant senior lead officer, data protection officer and the MARAC lead, and a focus group with frontline response officers; and
- considered the victims' voices through an analysis of case examples and a focus group with specialist victim support agencies (see Annex C). In these focus groups, participants were asked for recent and relevant case examples.

A decision was made not to seek any further evidence from victims. The victims' voice is clear within the body of the super-complaint submitted by Liberty and Southall Black Sisters, and there are several case examples available in the public domain.

The three decision-making authorities – HMICFRS, the IOPC and the College of Policing – collaborated throughout the investigation.

## Our findings

The subject of this super-complaint is immensely complex and our findings must be qualified in certain ways.

There are many reasons why the police service and the Home Office need to share information when carrying out their main public functions. These functions are to investigate and detect crime, maintain public order, and protect life and limb. Information sharing between the police and the Home Office can be important for people's safety, and in certain instances is required by law (for example, under the National Referral Mechanism for victims of modern slavery and human trafficking). This super-complaint is focused on one form of information sharing between the police and the Home Office. It doesn't touch on the many other reasons why the two organisations may need to share information.

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<sup>5</sup> North Yorkshire Police, Humberside Police, Essex Police, Kent Police, North Wales Police and the Metropolitan Police Service.

## **Our observations on policy**

This report offers some observations from the investigation that the police service and the Home Office should consider in any future policy development in this area.

The investigation findings uphold Liberty and Southall Black Sisters' view that the NPCC guidance has been inconsistently adopted by police forces in England and Wales.

## **Data limitations**

The investigation found limitations in available data on the outcomes of police responses to migrant victims of crime that are a concern for the police, the public and immigration enforcement services. The available data on people referred to Immigration Enforcement by the police did not, at the time of the investigation, record a distinction between victims/witnesses and offenders.

There is currently no data available, from either the Home Office or the police, that links the crime in which a person was victim or witness with individual referrals to the Home Office for immigration purposes. Therefore, it is not possible to use these sources to assess whether referrals by the police to Immigration Enforcement affect criminal justice outcomes.

This means that neither the police nor the Home Office are able to assure the communities they serve that all people with whom they have contact will be treated fairly and safely, and that allegations of discriminatory behaviour are unfounded. Data from the victim case examples we've seen suggests that police referrals to the Home Office do affect criminal justice outcomes.

## **Features of policing**

### **The passing, by the police, of victim and witness data to the Home Office for immigration enforcement purposes**

We found that sharing information between the police and the Home Office on victims and witnesses of crime with insecure immigration status is a feature of policing. It is not clear that the purpose of this sharing is immigration enforcement. But it does appear, in some cases, that this information may be used for this reason.

Information sharing between the police and the Home Office can be important for people's safety, and in certain instances is required by law (for example, under the National Referral Mechanism for victims of modern slavery and human trafficking).

The difficult judgment required of police officers in responding to migrant victims of crime is how to balance the interests of criminal justice and victims' safety against the interests of the state in upholding immigration law, and how to understand the circumstances in which one should be prioritised over the other. Existing guidance to the police service does not

help here. It doesn't adequately reflect the realities of some victims' circumstances, particularly those arising from domestic abuse.

These difficulties are made worse by the lack of shared knowledge between the police service and the Home Office on the outcomes for migrant victims when information has been shared.

Overall, there was a lack of awareness in forces about the implications of sharing information with Immigration Enforcement and the potential enforcement activity that might be taken as a result. During the interviews for this investigation, many interviewees started to recognise the problems raised by the super-complaint.

Some officers thought that the lack of policy or protocols between the police and Immigration Enforcement was likely to make victims less willing to report crimes to them.

**The operation of a culture, within the police, of prioritising immigration enforcement over public safety and fair treatment of victims**

We found no evidence of an intention within the police service to operate a culture that prioritises immigration enforcement over the investigation of crime and safeguarding. However, there is a perception of such a culture by some victims and the specialist organisations that support them. There is also clear evidence in some of the victim case examples we've seen that the police do sometimes prioritise immigration enforcement.

We found evidence that police officers are not always clear on their priorities in safeguarding victims and immigration enforcement. Consequently, and without any national policy guidance, the police approach to safeguarding migrant victims of crime is inconsistent.

The appropriate police response to migrant victims of crime will be determined by the type of crime and the individual circumstances of each victim. These considerations are currently more clearly documented for victims of modern slavery and human trafficking than for migrant victims of domestic abuse.

The investigation has found no evidence that sharing of personal victim data between the police and the Home Office supports safeguarding of victims of domestic abuse. There may be reasons to share intelligence in certain circumstances for the protection of people or the public interest. But the parameters and expectations in these circumstances are not currently clear.

## Harm caused to the interests of the public

**The risks of harm to victims and witnesses arising from information sharing about people at high risk of domestic abuse who have an insecure immigration status, within formal and informal multi-agency discussions – for example, at multi-agency risk assessment conferences (MARACs)**

The investigation has found that immigration enforcement and data sharing with the Home Office may be indirectly influencing the operation and priorities of some MARACs. The absence of guidance for MARACs on information sharing on victims of domestic abuse with insecure immigration status may exacerbate victims' concerns about this influence. It also raises the risk of inconsistent practice.

**The risks of harm to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes**

Our investigation found that significant harm is being caused to the public interest. This is 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 cause of this fear is difficult to establish definitively. However, there are clear contributing factors. These include the perception of a police culture that prioritises immigration enforcement over safeguarding and crime investigation, the experiences of victims that this sometimes happens in practice and demonstrable inconsistencies in police practice.

## Solutions

In the super-complaint, Liberty and Southall Black Sisters propose some solutions that the investigation considered:

### 1. Consistent policy

Clear policy and accompanying guidance are crucial. It is very hard to ensure that victims are treated consistently without any guidance that reflects the realities of their experiences, and so the realities of situations to which the police service must respond. To achieve this objective, policy and protocols must be developed in consultation with the specialist agencies that understand the barriers to reporting faced by migrant victims of crime.

We support this solution and address this point in our recommendations.

## **2. Identify and share good practice**

Good criminal justice outcomes are achieved when victims of crime are made safe and the crime is investigated in the full knowledge of the victim's immigration status.

We heard that positive outcomes are possible when police recognise immigration status as a risk factor for victims and work in partnership with specialist agencies, with a priority given to safeguarding. The importance of identifying and sharing good practice cannot be overstated in such a complex area. The investigation has heard some local examples of victim-focused good practice that might be considered more widely.

## **3. Develop robust advocacy and partnerships**

The super-complaint proposes the establishment of clear referral pathways to specialist agencies and immigration advisers so that victims have access to sound legal advice and emotional support on their immigration matters.

The investigation has heard consistent messages that, when forces have access to such services, the partnership is highly valued by the police as a means of achieving positive outcomes. For example, North Wales Police referred to partnership work with [Bawso](#) – an all-Wales organisation providing services for those affected by or at risk of domestic abuse and other violence.

## **4. A complete firewall between police and immigration authorities**

We recognise that a complete firewall preventing all communication between the police service and the Home Office on migrant victims of crime could undermine the public interest and the interests of bringing to justice individuals breaking the law. Such a firewall might also have implications for other forms of information sharing between the service and the Home Office, which have not been considered as part of this investigation. Information sharing between designated organisations (including police forces) and the Home Office is required in law for victims of modern slavery through the National Referral Mechanism. However, there are no such legal requirements in relation to victims of domestic abuse.

We conclude that the current situation is not serving the interests of victims of crime. Our research in this investigation has highlighted the fact that there is no widely agreed definition of 'firewall' in this context, in terms of what it means in detail and in practice. It is clear that firewalls can be and are being implemented in different ways around the world to create a separation between public services and immigration enforcement. Any policy decision to adopt a 'firewall' would have to be informed by evaluation to minimise the risk of unintended consequences.

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<sup>6</sup> in accessing the police service. We would expect that associated reporting pathways would include access to specialist support and legal advice to address a victim's immigration status, as necessary.

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<sup>6</sup> For the purposes of our recommendations, the definition of domestic abuse should be understood to include honour-based abuse and female genital mutilation.

## Recommendations and actions

### **Recommendation 1. To chief constables**

As an interim measure, pending the outcome of recommendation 2, where officers only have concerns or doubts about a victim's immigration status, we recommend that they immediately stop sharing information on domestic abuse victims with Immigration Enforcement. Instead, police officers should link the victim to a third party that can provide advice and assistance, as set out in recommendation 4 (on the creation of safe reporting pathways).

This applies where police officers have doubts about a victim's immigration status, not where they have evidence that an offence has been committed. The College of Policing will immediately develop guidance for the police service to clarify this aspect of practice.

### **Notes to recommendation 1**

- This recommendation to stop information sharing only applies to victims of domestic abuse.
- The College of Policing guidance will also clarify the difference between insecure and uncertain status and immigration offending.
- Any sharing of information should be done in compliance with Information Commissioner's Office (ICO) guidance.
- 'Third party' could include a local or national specialist victim support organisation or another individual/organisation that can act as an intermediary and advocate on the victim's behalf in communications with Immigration Enforcement – as required.

### **Recommendation 2. To the Home Office**

Review the legal framework and policy underpinning the matters raised in this super-complaint with the aim of providing clarification to the police service, other public services and immigration authorities on priorities regarding all migrant victims and witnesses of crime with insecure immigration status.

The review should address the wider matters of public policy raised in this super-complaint as well as those relating to policing and domestic abuse. It should include consideration of the interim measure outlined in recommendation 1, associated guidance and further consideration of a mechanism for establishing a firewall between police and immigration enforcement services for all migrant victims of crime with insecure immigration status. It should determine a working definition of a firewall in this context with reference to the conclusions of this report, international examples of such practice and any relevant academic research. The review should identify the correct basis on which any proposed firewall should be implemented.

The effect of the review should be to establish safe reporting mechanisms for all migrant victims and witnesses, including those with insecure immigration status, in accessing the police service. The review should be conducted in consultation with victim and survivor representative groups, practitioners and other interested parties. The Home Office should publish a report that sets out its considerations and conclusions, and includes an equality impact assessment, within six months of the date of publication of this super-complaint report.

### **Recommendation 3. To the Home Office and the National Police Chiefs' Council**

With the objective of preventing harm to the public interest, develop a safeguarding protocol between the Home Office and the police service to guide responses to all migrant victims and witnesses of crime by the police service, the Home Office and other law enforcement agencies as relevant. The protocol should reflect the realities of victims' and witnesses' experiences, drawing on the expertise of the relevant specialist organisations for supporting victims with insecure immigration status. The protocol would need to have some inbuilt flexibility and also:

- address the respective roles and responsibilities of the police and the Home Office in safeguarding migrant victims of crime, with explicit attention to differences in approach that may arise for victims in different circumstances;

- for victims of domestic abuse or other gender-based violence, clarify that it is the responsibility of the police service, working with suitable specialist partner agencies, to provide safeguarding functions, and that sharing information on victims of domestic abuse with Immigration Enforcement does not constitute safeguarding;
- address the purposes of sharing information, as well as who does what with the information, how it will be acted on by the Home Office, and in what circumstances, with agreement about the terms of assurances that can be provided to victims and witnesses;
- specify the circumstances in which information may be shared by police with the Home Office and ensure that victims and witnesses are told what information is to be shared and why, with reference to their clear basis in law to share;
- be supported by appropriate governance processes to ensure that:
  - personal data is processed in accordance with data protection law;
  - due consideration is given to security (both in sharing and storage), retention and deletion of personal data; and
  - all organisations can demonstrate accountability.
- reflect consultation with data protection officers and reference to relevant Information Commissioner's Office guidance to ensure that data sharing is compliant with data protection law and clearly documented;
- address the implications for data sharing within multi-agency risk assessment conferences (MARACs) and other multi-agency safeguarding groups;
- set out a nationally equitable position on access to specialist victim support services that can assist victims in resolving uncertainties associated with immigration status;
- enable the victim or witness to contribute to any potential prosecution so that perpetrators are held to account and that the victim or witness is supported to contribute to any potential prosecution, in the public interest; and
- be publicised through the appropriate channels to promote migrant victims' and witnesses' confidence in the existence of safe reporting pathways to receive support from the police and other statutory agencies without fear that their immigration status will be prioritised over their complaint to the police.

This protocol should be adopted by the police service across England and Wales. When the protocol has been agreed, the National Police Chiefs' Council should consider how to operationalise it in consultation with the College of Policing so that the contents inform police responses.

#### **Recommendation 4. To chief constables**

With reference to recommendation 1, and in consultation/collaboration with local or national specialist organisations, chief constables should take steps to ensure that all migrant victims and witnesses of crime are effectively supported through safe reporting pathways to the police and other statutory agencies. They should:

- ensure there is a proper policy and practice framework in place for officers to work within;
- develop victim and witness support policies that reflect the characteristics of the safeguarding protocol set out in recommendation 3, and:
  - draw on all relevant national guidance with particular reference to the Code of Practice for Victims of Crime and data protection legislation;
  - are developed in partnership with and include pathways to the relevant specialist organisations for supporting victims and witnesses with insecure immigration status;
  - are clear about the circumstances in which information will be shared by police with immigration enforcement;
  - provide clarity about the purpose of sharing information at different points of the pathway; and
  - explicitly recognise the importance of telling victims, witnesses and supporting agencies whether information will be shared with Immigration Enforcement, and if so, when and in what circumstances.
- promote understanding among police officers and staff to differentiate between responses to victims of modern slavery/human trafficking and victims of domestic abuse;
- promote awareness within their forces of any existing pathways to specialist organisations for supporting victims with insecure immigration status;
- ensure the policy and practice framework is adopted by all officers and staff who come into contact with victims of crime who have insecure immigration status; and
- promote police engagement in regular outreach community work, as highlighted as good practice in this report.

**Recommendation 5. To chief constables and police and crime commissioners (or equivalents)**

With reference to recommendation 1, pending the developments outlined in other recommendations, and in consultation/collaboration with local or national specialist organisations, chief constables and police and crime commissioners should take steps, through the appropriate channels, to promote migrant victims' and witnesses' confidence in reporting crimes to the police through safe reporting pathways, without fear of prioritised immigration control.

**Recommendation 6. To police and crime commissioners (or equivalents)**

Conduct an assessment of local access to specialist victim support organisations or networks and take any necessary steps to build up such networks.

**Recommendation 7. To the Home Office**

Improve the recording and assurance processes related to sharing information with the police. In particular, record the status, ethnicity and nationality of people referred, or enquired about, to the National Command and Control Unit within Immigration Enforcement in order to understand and record whether the caller believes the individual to be a victim, offender or both. Collect and monitor data on the use of the Police National Computer for immigration purposes, including the number of live markers in operation. This is broader than addressing the lack of data. The investigation considers it is essential to understanding and differentiating the appropriate range of actions in individual cases, including compliance with the Code of Practice for Victims of Crime. Such data will aid transparency with the particular objective of assuring the public that all victims and witnesses are treated fairly and equitably regardless of their protected characteristics.

**Recommendation 8. To all recipients of recommendations from this investigation**

Provide an update to Her Majesty's Chief Inspector of Constabulary on progress in implementing these recommendations within six months of the date of publication of this report.

**Action 1. To the College of Policing**

Work with interested parties to consider how domestic abuse risk assessment tools used by the police and partner organisations can include immigration status as a risk factor.

**Action 2. To the College of Policing**

When updating knowledge and training products, ensure that the messaging across all relevant guidance is consistent about the need for policing to balance the needs for safeguarding a victim or witness against the national interest in investigating crime.

**Action 3. To HMICFRS**

Subject to available funding from the Home Office, HMICFRS will consider whether future inspection activity and/or monitoring could review how the issues raised by this super-complaint are being addressed by forces, once they have had an opportunity to make changes in the light of this investigation.

## The police super-complaint system

### **What is a super-complaint?**

A super-complaint is a complaint that “a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public” (section 29A, Police Reform Act 2002).

The system is designed to examine problems of local, regional or national significance that may not be addressed by existing complaints systems. The process for making and considering super-complaints is set out in the Police Super-Complaints (Designation and Procedure) Regulations 2018 (the regulations).

For more information on super-complaints, see Annex B.

# The police super-complaint made by Liberty and Southall Black Sisters

On 18 December 2018, Liberty and Southall Black Sisters made a super-complaint to Her Majesty's Chief Inspector of Constabulary.

It was the first super-complaint to be made since the enactment of the scheme envisaged by section 29A of the Police Reform Act 2002. The super-complaint concerns two features of policing:

1. the passing of victim and witness data to the Home Office by the police for immigration enforcement purposes; and
2. the operation of and/or perception of a culture of police prioritising immigration enforcement over safeguarding and the investigation of crime.

As set out in the legislation, super-complaints identify practices that are alleged to cause significant harm to the interests of the public. In this super-complaint, Liberty and Southall Black Sisters have said that these features of policing cause significant harm to the public by deterring all victims and witnesses with an unsettled immigration status from engaging with the police.

The specific harms they identify include:

- the 'weaponisation' of immigration status by perpetrators;
- victims/witnesses are too afraid to report crimes to the police;
- discrimination against Black, Asian and Minority Ethnic (BAME) migrants leading police to:
  - conduct immigration checks on BAME victims/witnesses; and
  - prioritise immigration enforcement when dealing with BAME victims/witnesses;
- the criminalisation of victims/witnesses;
- an adverse effect on other proceedings or potential avenues of recourse being contemplated by victims, caused by police failures to deal appropriately with domestic abuse;
- police participation in formal and informal multi-agency discussions leading to a prioritisation of immigration enforcement across state agencies;
- members of the general public are exposed to the risk of becoming future victims of perpetrators who have not been dealt with by police; and

- the prioritisation of immigration enforcement generates a culture of impunity for perpetrators who are not brought to justice.

## Our investigation

### Background: policing and immigration

The difficulties faced by people with uncertain immigration status in reporting incidents and crimes to the police have been the subject of increasing attention in recent years. See Annex H for more information on immigration status.

This increased focus and interest is reflected in parliamentary reports,<sup>7</sup> media interest<sup>8</sup> and publications from academic sources and campaigning groups.<sup>9</sup> The difficulties highlighted in these reports and publications include:

- control exerted over victims by perpetrators of abuse, who use their victims' insecure immigration status as a tool for coercion;
- language barriers, which may make it difficult for migrant victims to find information, seek support and explain their situation;
- mistrust of the police – based on experiences of police conduct in other cultures, or on the experiences of victims whose reports to police have resulted in immigration enforcement action against the victim, at the expense of investigating the crime; and
- the fear of reprisals from the perpetrator of the crime.

Many of them have focused on the risks of harm to people and the public that arise from the practice of police sharing data on migrant victims and witnesses with the Home Office. For example, the House of Commons Home Affairs Committee's report on domestic abuse stated:

“We are particularly concerned to hear that many police forces continue to share details of victims with the Home Office for the purposes of immigration control. This practice is contrary to national police guidance, makes it harder for particularly vulnerable victims to seek protection and access justice, and conflicts with the Government's stated objective that all vulnerable migrants, including those in the

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<sup>7</sup> For example, *Human Trafficking: Twenty-sixth Report of Session 2005–06, Vol 1*, House of Lords and House of Commons Joint Committee on Human Rights, 9 October 2006, para 140; *Domestic Abuse: Ninth Report of Session 2017–19*, House of Commons Home Affairs Committee, 17 October 2018, para 102; *The Windrush generation: Sixth Report of Session 2017–19*, House of Commons Home Affairs Committee, 27 June 2018, para 83.

<sup>8</sup> For example, 'Government must protect domestic abuse victims 'trapped' due to hostile environment, Sadiq Khan says', *The Independent*, 15 August 2018.

<sup>9</sup> For example, 'Policy Evidence Summary 1: Migrant Women', Bates, L., Gangoli, G., Hester, M. and Justice Project Team, University of Bristol, 2018; *The Right to be Believed: Migrant women facing Violence Against Women and Girls (VAWG) in the 'hostile immigration environment' in London*, McIlwaine, C., Granada, L., Valenzuela-Oblitas, I., King's College London and The Latin American Women's Rights Service, May 2019.

UK illegally, receive the support and assistance they need regardless of their immigration status.”<sup>10</sup>

Please see Annex H for more information about what we mean by ‘victim’ and other language in this report.

In this super-complaint, Liberty and Southall Black Sisters say that these risks of harm arise not only for individual victims in terms of concerns for their own safety and ability to access justice, but also in respect of the wider public interest:

“There is a wider public interest in ensuring that criminals are prosecuted and punished, and less able to commit further crimes.”<sup>11</sup>

The scale of this problem is impossible to ascertain. Victims and witnesses who are afraid to report to the police are ‘hidden’ from the view of both the Home Office and the police. This super-complaint is mainly concerned with female victims of domestic and sexual abuse and violence. This is because “this group of women appears to have the most well-collated information put together by various groups that are working on this issue”.<sup>12</sup>

However, Liberty and Southall Black Sisters acknowledge that similar issues affect victims of and witnesses to other crimes. This is evident from the case examples within the super-complaint, which include cases of modern slavery and human trafficking as well as various forms of domestic abuse.

Also of note is evidence given to the Home Affairs Select Committee on Modern Slavery that sets out concerns from a number of witnesses about the police prioritising immigration offences over the protection of modern slavery victims. This evidence is summarised in the police super-complaint submitted to HMICFRS by Hestia, currently under investigation.<sup>13</sup>

Liberty and Southall Black Sisters use the term “insecure immigration status” in their super-complaint. For this reason, we have focused on this category of people in this investigation and use that term throughout this report. Note that a person who enters the country legitimately on a spouse or other family visa may become someone committing an immigration offence if they leave their abusive partner.

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<sup>10</sup> [Domestic Abuse: Ninth Report of Session 2017–19](#), Summary, House of Commons Home Affairs Committee, 17 October 2018.

<sup>11</sup> [Police data sharing for immigration purposes: a super-complaint](#), Liberty and Southall Black Sisters, 20 December 2018, para 11.

<sup>12</sup> As above, para 17.

<sup>13</sup> [Underground Lives: Police response to victims of modern slavery](#), Hestia, March 2019.

## Scope: what we can and can't cover

The investigation centred on the alleged features of policing, the alleged significant harms and associated matters raised in the super-complaint. The super-complaint also raised questions about the lawfulness of some aspects of information sharing between the police and the Home Office.

It is not the role of the decision-making authorities in the super-complaint process to determine lawfulness or otherwise of particular actions: that is a matter for the courts.

During this investigation, a legal challenge was brought that focused on the framework of law relevant to the issues raised in this super-complaint.<sup>14</sup> The challenge was withdrawn, so the courts were unable to consider and provide a judgment on the legal issues.

The focus of the super-complaint investigation is on assessing current policing policy and practice, and the available evidence of its effect on the public. For the purposes of the investigation we have focused on what others understand by the legal framework governing information sharing and asked for input from the Information Commissioner's Office (ICO). We are grateful for the material it has prepared for this report.

## Methodology: how we investigated the super-complaint

The following lines of enquiry were established to structure the investigation of current police practice, examining its rationale and assessing evidence of harm:

- the nature of information sharing between the police and the Home Office/Immigration Enforcement of personal data of victims and witnesses of crime with an insecure immigration status;
- the implementation of national and local police policies, guidance, training and practice in safeguarding victims and witnesses of crime who have insecure immigration status;
- the risks of harm to victims and witnesses arising from information sharing about people at high risk of domestic abuse, who have an insecure immigration status, within formal and informal multi-agency discussions, for example at multi-agency risk assessment conferences (MARACs); and
- the risks of harm to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes.

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<sup>14</sup> A judicial review claim was brought in respect of the Metropolitan Police Service's policy on passing information to the Home Office about victims of crime with unsettled immigration status. It was withdrawn in October 2020 as it became an academic challenge given the claimant's particular circumstances.

To address these lines of enquiry, the investigation team:

- requested information on current relevant policies in use from all 43 forces in England and Wales for information;
- consulted interested parties including the National Police Chiefs' Council (NPCC) and the Home Office;
- conducted a data mapping exercise to identify the information-sharing pathways between the Home Office and police forces and to assess any available information on the scale of this practice. The Immigration Enforcement division of the Home Office co-ordinated the response of this government department, consulting with all relevant departmental groups;
- reviewed relevant national policy, guidance and research;
- conducted limited fieldwork in six forces<sup>15</sup> across England and Wales including interviews with the relevant senior lead officer or strategic lead,<sup>16</sup> the data protection officer, the multi-agency risk assessment conference (MARAC) lead and a focus group with frontline police officers; and
- considered victims' accounts and perspectives through:
  - a review of case examples from the super-complaint and in the wider public domain;<sup>17</sup> and
  - a focus group with specialist victim support agencies,<sup>18</sup> in which participants were asked for recent and relevant case examples. The focus group participants were invited by the investigating team with the assistance of Southall Black Sisters. The group was led and facilitated by the investigating team.

The three decision-making authorities – HMICFRS, the Independent Office for Police Conduct (IOPC) and the College of Policing – collaborated throughout the investigation.

## **Review of national policy framework: identifying existing policies**

The purpose of this policy review was to identify existing guidance to police relevant to the alleged features of policing in the super-complaint, and the mitigation of alleged harms.

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<sup>15</sup> North Yorkshire Police, Humberside Police, the Metropolitan Police Service, Essex Police, Kent Police and North Wales Police. Our aims in selecting forces were to include, in a small sample, a mix of urban and rural policing environments, force(s) with embedded immigration enforcement officer(s) in force custody suite(s), at least one port location with likely passage of migrants through force area and any outliers indicated through data received from the Home Office.

<sup>16</sup> The strategic lead is the person who takes the lead in policy and planning on a particular issue for the police force.

<sup>17</sup> A decision was made not to seek any further evidence from victims. The victims' voice is clear within the body of the super-complaint submitted by Liberty and Southall Black Sisters and there are several case examples available in the public domain.

<sup>18</sup> See Annex C for a list of participants.

The priority given by Government to protecting vulnerable people and communities is clearly outlined in the [Home Office's Single Departmental Plan](#). It is particularly outlined in two objectives relevant to this super-complaint, to "Improve public safety and security" and "Strengthen the border, immigration and citizenship system". The Home Office sets out actions under each of these objectives.

The Ministry of Justice [Code of Practice for Victims of Crime](#) sets out the support and minimum standards for services to which all victims of crime are entitled. There is now a substantial body of national policy and professional guidance on the police response both to victims of domestic abuse<sup>19</sup> and to victims of modern slavery/human trafficking.<sup>20</sup>

The Home Office [Statutory Guidance Framework: Controlling or Coercive Behaviour in an Intimate Family Relationship](#) recognises some of the obstacles faced by migrant victims of domestic abuse wishing to report to the police:

"Those subject to immigration control may face additional barriers when attempting to escape domestic abuse. These circumstances may make them more reluctant to come forward and report abuse. Such circumstances may also be exploited by perpetrators to exert control over victims, for example, by threatening to inform immigration authorities, or to no longer support their stay."

Police guidance on responding to victims of domestic abuse recognises that one of the barriers to reporting abuse to the police may be immigration status.<sup>21</sup> Police guidance on investigations lists circumstances in which police contact with Immigration Enforcement is appropriate when responding to victims of human trafficking and modern slavery, for example when police forces are the first responder to 'lorry drops' (clandestine entry) of vulnerable migrants.

This guidance is clear that policing priorities should focus on safeguarding vulnerable people and then on conducting an investigation to identify the criminal exploiters as abusers. However, in relation to some victims of human trafficking or modern slavery, the guidance says that:

"The arrest of any illegal migrants should be considered at the first available opportunity to facilitate an effective investigation, however welfare and safeguarding of illegal migrants should always be considered, as well as the potential future risk to illegal migrants from the criminals who may have arranged their transport and illegal entry."

The Government has been explicit in giving priority to tackling violence against women and girls using multi-agency approaches to understand and meet the needs of victims.<sup>22</sup> It has

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<sup>19</sup> [Authorised Professional Practice on domestic abuse](#), College of Policing, 16 September 2015.

<sup>20</sup> [Authorised Professional Practice on modern slavery](#), College of Policing, 28 July 2015.

<sup>21</sup> [Authorised Professional Practice on domestic abuse](#), College of Policing, 16 September 2015.

<sup>22</sup> [Violence Against Women and Girls: National Statement of Expectations](#), Home Office, 7 December 2016.

recognised that while all victims of crime should be supported, particular hidden crimes merit their own individual response. The Government made further commitments to ensure that responses to vulnerable people and programmes of work to tackle modern slavery and child sexual abuse and exploitation remain joined up and support this agenda.<sup>23</sup>

The Joint Committee on the Draft Domestic Abuse Bill recognised the challenges faced by migrant victims of domestic abuse in seeking help and justice and recommended that:

“a more robust Home Office policy is developed to determine the actions which may be taken by the immigration authorities with respect to victims of crime who have approached public authorities for protection and support.”<sup>24</sup>

The Government's response<sup>25</sup> to the Joint Committee's report confirms that all victims of domestic abuse should be treated first and foremost as victims, and recognises that:

“there may be circumstances in which some perpetrators may use their partner's insecure immigration status as a form of abuse and we are clear that such abuse is unacceptable.”

The Government also committed to a review of the overall response for migrant victims of domestic abuse. This review was published by the Home Office in July 2020.<sup>26</sup> It included an examination of the role of information sharing between public bodies, most often the police and immigration enforcement agencies. The review concluded that the Government would return to consideration of this issue once the outcomes of this super-complaint and of the (at that time) pending judicial review against the Metropolitan Police Service policy are known.

During the concluding stages of this investigation the government published its pilot Support for Migrants Scheme.<sup>27</sup> This is part of its response to the recommendations of the Joint Committee on the draft Domestic Abuse Bill. The scheme invites bids from potential providers of support services to migrant victims. We note that the Government states that the service provider will not be able to guarantee to people who seek assistance that sharing their information with Immigration Enforcement will not trigger immigration enforcement action being taken against them.

Concerns about sharing victims' information between the police and immigration services were also highlighted in the inquiry into the Home Office's treatment of the

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<sup>23</sup> [Ending Violence Against Women and Girls 2016–2020 Strategy Refresh](#), HM Government, 7 March 2019, p7.

<sup>24</sup> [Draft Domestic Abuse Bill: First Report of Session 2017–19](#), Joint Committee on the Draft Domestic Abuse Bill, 14 June 2019, para 251.

<sup>25</sup> [Government Response to the Report from the Joint Committee on the Draft Domestic Abuse Bill](#), 16 July 2019, para 141.

<sup>26</sup> [Migrant Victims of Domestic Abuse: Review Findings](#), Home Office, 3 July 2020.

<sup>27</sup> [Support for Migrant Victims \(SMV\) Pilot Scheme: Support for Migrant Victims of Domestic Abuse with No Recourse to Public Funds: Draft Bid Prospectus](#), Home Office, 19 October 2020.

Windrush generation.<sup>28</sup> The Government's response confirmed a commitment to supporting vulnerable migrants:

"Our immediate priority is to ensure that all vulnerable migrants, including those in the UK illegally, receive the support and assistance they need regardless of their immigration status."

The Government's response suggested that there may be circumstances where this kind of information sharing is justified:

"There is no legal obligation on the police to share data on victims of crime with Immigration Enforcement. However, it is clearly appropriate in some cases to do so, for example where an individual needs support to regularise their immigration status."

and

"The sharing of information between the police and immigration system helps us to protect vulnerable people in a range of circumstances including ensuring that we provide accommodation for asylum seekers and keeping unaccompanied migrant children safe."<sup>29</sup>

Until 2018, there was no specific guidance for police on the appropriate response to victims or witnesses of all crime types with uncertain immigration status. The NPCC addressed this gap in October 2018 with a guidance paper for the police service. The NPCC is a co-ordinating body for the police service in England and Wales. It is not a legal entity and has no statutory powers.

This paper (referred to as 'the Information Exchange paper' in the paragraphs below) aimed to achieve:

"a national position regarding the exchange of information with Immigration Enforcement ... about victims or witnesses to a crime who identify, or are identified to police, during the course of enquiries as suspected of being in the UK illegally or without leave to remain. It seeks to reinforce the principle that they are safeguarded and protected and that both police and immigration enforcement are able to manage their response to the individual appropriately."<sup>30</sup>

In June 2020 the NPCC provided a revised and expanded version of this paper to us. This version is called [\*Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender\*](#).

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<sup>28</sup> [\*The Windrush generation: Sixth Report of Session 2017–19\*](#), House of Commons Home Affairs Committee, 27 June 2018.

<sup>29</sup> [\*The Windrush generation: Government Response to the Committee's Sixth Report of Session 2017–19\*](#), House of Commons Select Committee, 4 September 2018, Response to paragraph 83.

<sup>30</sup> [\*Chief Constables' Council: Information Exchange regarding Victims of Crime with No Leave to Remain\*](#), NPCC, 3 October 2018.

## Review of national policy framework: our findings

The review revealed a wide range of potentially relevant policies. These covered:

- modern slavery;
- human trafficking;
- domestic abuse;
- honour-based violence;
- forced marriage;
- female genital mutilation; and
- broader policies focused on vulnerability and safeguarding, the prevention of violence against women and girls, police investigations and immigration enforcement.

All these policies fall within the responsibilities of the Home Office.

Prevention of violence against women and girls and the draft Domestic Abuse Bill are explicitly recognised as parts of the Home Office's objective, in its Single Departmental Plan, to improve public safety and security.

However, these developments are not included in the immigration objective, even though it includes actions to "protect vulnerable people and communities". Elsewhere, the Government has confirmed that all victims of domestic abuse should be treated first and foremost as victims.

Police guidance on responding to victims of domestic abuse recognises that one of the barriers to reporting abuse to the police may be immigration status. It does not advise on whether, and if so at what point during an investigation, police should share information with the Home Office on a victim's immigration status.

Until 2018, there was no specific guidance for police on the appropriate response to victims or witnesses of all crime types with uncertain immigration status. National police guidance was revised and re-issued during the course of this investigation.

## Data sharing: legal requirements

We asked the ICO to explain how data protection applies to the sharing of data, distinguishing between data sharing for immigration purposes, for law enforcement purposes and for safeguarding purposes. The ICO is an independent UK authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The ICO states:<sup>31</sup>

“Data protection law enables data to be shared when there is a legitimate purpose and the sharing is necessary and proportionate for that purpose.

The UK data protection regime consists of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA2018). Processing<sup>32</sup> for immigration and safeguarding purposes will be largely governed by the GDPR and Part 2 of the DPA2018, while processing for law enforcement purposes by ‘competent authorities’<sup>33</sup> will be governed by Part 3 of the DPA2018.<sup>34</sup>

Law enforcement purposes are defined in section 31 of the DPA2018 as:

‘the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security’.<sup>35</sup>

When police forces process personal data under Part 3 of the DPA2018 for law enforcement purposes, and then share it for non-law enforcement purposes (such as for immigration or safeguarding individuals) they have to:

### **1. Assess compatibility**

Consider whether the new purpose is compatible<sup>36</sup> with the original purpose for which personal data was collected.

### **2. Identify a basis in law**

Ensure the processing is “authorised by law”. This authorisation might be provided by statute, common law, royal prerogative or statutory codes.

If forces are able to point to the basis in law under which they can share data for non-law enforcement purposes, this further processing will fall under the GDPR and Part 2 of the DPA2018.

### **3. Identify a lawful basis under the GDPR**

Forces will need to identify an appropriate lawful basis under the GDPR to ensure that sharing complies with data protection legislation. This means they will need to identify

<sup>31</sup> Information from the ICO in response to our request for advice in connection with this investigation.

<sup>32</sup> ‘Processing’ is defined in Article 4(2) of GDPR and section 3(4) of the DPA2018.

<sup>33</sup> A person specified in Schedule 7 of the DPA2018; or any other person if, and to the extent that, they have statutory functions to exercise public authority or public powers for law enforcement purposes.

<sup>34</sup> At the end of 2020, a UK version of the GDPR will be written into UK law (UK GDPR) to sit alongside the DPA2018, and forces should read references to the GDPR as references to the equivalent provisions in the UK GDPR. From this date, forces should also review their safeguards for transferring data to and from the European Economic Area, as rules on international transfers will start to apply. See [Law enforcement processing and the end of the transition period: five steps to take](#), ICO, 2020.

<sup>35</sup> See [section 31 of the DPA2018](#).

<sup>36</sup> See [sections 36\(1\)\(b\) and 36\(4\) of the DPA2018](#).

an [Article 6 lawful basis under the GDPR](#) and if sharing special categories of data<sup>37</sup> (such as health status, ethnicity, political opinions) also identify an [Article 9 condition](#). If forces are sharing data relating to criminal offences (Article 10), they will also have to identify an appropriate legal gateway under data protection law. More information is available in our [guidance](#).

#### 4. Assess necessity and proportionality

The word 'necessary' is a thread that runs through data protection legislation and is a threshold common to a number of provisions. This means forces have to demonstrate their processing (including disclosing and sharing) is necessary and proportionate. While 'necessary' does not mean that processing has to be essential, it must be more than just useful and must be a targeted and proportionate way of achieving a specific purpose. For example, if the purpose can be achieved through other less intrusive means, then it cannot be said to be 'necessary'.

To ensure data sharing is compliant with data protection requirements, we would expect police forces to:

- demonstrate accountability and ensure compliance with the requirements of data protection law;
- be clear with people about how their data is going to be processed, unless an exemption applies;
- be clear about the purpose for sharing the data and how it achieves the purpose (to make sure the necessity threshold is met);
- consider the type of data they need to collect and share, ensuring it's adequate, relevant and not excessive;
- consider having data-sharing agreements in place to underpin data-sharing arrangements;
- undertake a Data Protection Impact Assessment (DPIA) if the data sharing involves high risks to the rights and freedoms of individuals; a DPIA is also recommended as good practice because it is an invaluable tool for an organisation and can help promote trust in the people whose data is shared;
- consult with their data protection officer when undertaking a DPIA and for advice on data protection; and
- document their decisions, in the event of any challenges, including their legal power and lawful basis under data protection law.

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<sup>37</sup> Special category data under the GDPR equates to sensitive processing under the DPA2018 and comprises: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

There might be situations where the lines between processing for law enforcement and safeguarding/immigration are blurred. For instance, when there is a criminal element to why someone has gone missing, or when the immigration status of an individual may be relevant to the investigation of a crime (as in trafficking cases).

Forces should have regard to the primary purpose for processing and ensure that data is processed in accordance with the relevant data protection framework – whether the GDPR/Part 2 or Part 3 of the DPA2018.

The ICO hopes the statutory code for data sharing will be laid before Parliament soon. In the meantime, a draft is available at [Data sharing code of practice: Draft code for consultation.](#)”

# Our findings



## The nature of information sharing between the police and the Home Office/Immigration Enforcement of personal data of victims and witnesses of crime with an insecure immigration status

### **Liberty and Southall Black Sisters' super-complaint**

- The guidance published by the NPCC to the police service on this issue does not stop or restrain the sharing of data of victims and witnesses of crime with the Home Office, nor is its status or adoption in police forces clear.
- There are inconsistencies in the policies and practices of all police forces in England and Wales with respect to passing on the data of victims and witnesses of crime to the Home Office for the purpose of immigration enforcement.
- There is no formalised arrangement or lawful agreement in place between the police service and the Home Office regarding the sharing of data for immigration enforcement purposes, and there is a lack of clarity about the grounds in law or policy that police rely upon to share information with the Home Office.
- There is an absence of certainty or consistency in the sharing of data when a victim reports a crime which is contrary to established principles of public law.
- Police National Computer (PNC) checks are routinely carried out where victims are from ethnic minorities or have an accent.
- Police forces are in breach of their public sector equality duty as they discriminate in their service provision on the basis of a victim or witness's nationality.

This chapter addresses the first feature of policing alleged in the super-complaint:

The police passing victim and witness data to the Home Office for immigration enforcement purposes.

Information sharing between the police service and the Home Office and all its departments, including Immigration Enforcement, is an established part of policing. It supports the core public functions of policing. These functions are to investigate and detect crime, to maintain public order and protect life and limb.

Information sharing between the police and the Home Office can be important for people's safety, and in certain instances is required by law (for example, under the National Referral Mechanism for victims of modern slavery and human trafficking). This super-complaint is focused on one form of information sharing between the police and the Home Office. It doesn't touch on the many other reasons why the two organisations may need to share information.

## **The National Police Chiefs' Council paper**

We put a series of questions to the National Police Chiefs' Council (NPCC) about the Information Exchange paper. You can find a fuller account of the NPCC's response to the investigation at Annex E. The main points from this response on the background, development, purpose and status of the Information Exchange paper are set out below.

- The NPCC occasionally produces Council papers to promote a common approach in all forces to a particular policing issue. Annex E contains further information on Council papers.
- Development of the Information Exchange paper was led by the national policing lead for modern slavery and human trafficking.
- The Information Exchange paper was not discussed with the NPCC's national policy leads for domestic abuse. This is because the incidents that were the catalyst for the paper were not understood to be related to domestic abuse. However, the NPCC advised us that the national lead for domestic abuse would have seen the paper and had an opportunity for feedback.
- Police forces don't have to comply with a Council paper. Chief officers of police forces have wide discretionary powers, including the power to set and publish local policies for their forces.
- The Information Exchange paper was not limited to any specific type of crime.
- The police purpose for sharing information with Immigration Enforcement may be to safeguard the victim and/or to support the police's duty to investigate and detect crime, or assist the Home Office in upholding immigration law.
- There are currently no national protocols in place to clarify how Immigration Enforcement and the police may act on information exchanged about victims or witnesses of crime with insecure immigration status, independently of the initial reason for the exchange.

The NPCC produced a revised version of this paper in April 2020. It was supplied to us in June 2020, after we'd gathered most of the information for this investigation. The revised version differs from the 2018 paper in several ways. These are the main changes.

- It is broader in scope and explicitly references vulnerabilities associated with migrant victims of domestic abuse.

- It includes an acknowledgement of 'insecure' immigration status as a factor that perpetrators may exploit to coerce or control their victims.
- It contains more detailed guidance about what information should be shared and when.
- It details the record that should be kept by a police force when information about a victim or witness is shared with the Home Office.

The investigation considered forces' relevant policies. We did this to understand national adoption of the Information Exchange paper. We also wanted to assess how much sharing data between the police and Immigration Enforcement in relation to victims with insecure immigration status is a feature of policing.

### Police policies on information sharing with the Home Office

We sent the 43 police forces in England and Wales a request for information about their policies on responding to victims and witnesses who may have an insecure immigration status. All forces replied. A summary of this request and the responses received is in table 1.

**Table 1: Summary of information request**

Question	Summary of force responses
Do forces have a written policy on responding to victims and witnesses who may have an insecure immigration status?	Six forces have a specific bespoke policy.
If a force does not have a written policy, what is the main reason for this?	Of the 37 forces which do not have a specific policy, 11 did not consider a policy necessary, 5 indicated they were currently developing a policy and 21 gave other reasons for not having one. Some forces said that this area was covered by existing policies, such as their modern slavery and human trafficking policy or the national guidance provided by the NPCC. Another force said that they were currently considering the need for a specific policy.
Did forces review local policies in light of the NPCC Information Exchange paper of October 2018?	Twenty forces reviewed their policies.
What was the main outcome of this review?	Fourteen forces said that this resulted either in changes to an existing policy or in a new policy being developed. Six forces made no changes as a result of this review.

Question	Summary of force responses
If a force did not review local policies in light of the NPCC paper, what was the main reason?	Of the 23 forces which did not review their local policies, 4 didn't consider a review necessary. Eight said that their policy was already under review at the time of the Information Exchange paper. Other reasons for not reviewing local policies were given by 11 forces. For example, one force said that it did not have a specific policy to review.

In our interviews with senior lead officers in the fieldwork forces for this investigation,<sup>38</sup> we found that all but one thought their force had adopted the NPCC's guidance (in the form of the Information Exchange paper).

Each of these forces had located the guidance in a different area of force policy, including protecting vulnerable people, victims and witnesses, modern slavery/human trafficking and foreign national offenders.

In five of the forces, frontline police officers were unaware of specific guidance on responding to victims with insecure immigration status. This was even when their senior leads had expressed confidence to us that officers would be aware of relevant policy. They variously referred to modern slavery guidance and generic guidance on responding to victims. None of the force data protection leads were aware of the NPCC's guidance before our interviews with them.

### **Formal arrangements for sharing information between the police and the Home Office on victims and witnesses of crime**

Information sharing between the police service and the Home Office is governed by a Memorandum of Understanding between the Home Office, the National Counter Terrorism Police Functions Command and Police Scotland.

At the time of the investigation, the Memorandum of Understanding in use was dated 2016 and was under review. It provides an overarching framework for the police to share information with the Home Office. The Home Office has also published internal guidance for Immigration Enforcement staff on data sharing with other enforcement bodies, including the police.

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<sup>38</sup> Interviews were conducted on a sample, or 'dip test' basis.

Data protection legislation provides the framework on how personal data is processed<sup>39</sup> but it does not mandate or require the sharing of information.<sup>40</sup> We asked both the NPCC and the fieldwork forces about the legal basis the police are relying on to share personal data on victims and witnesses of crime with the Home Office.

The NPCC advised us that the police have both statutory powers<sup>41</sup> and common law powers to share information with the Home Office. This is set out in the revised version of the NPCC's guidance. However, it is not clear which of these powers are relied on by the police in the circumstances described by the super-complaint. We asked the Information Commissioner's Office (ICO) for advice about what police forces must consider in order to share personal data in compliance with data protection legislation. We include a summary of its response at the end of this section.

Forces have a range of data-sharing agreements in place to ensure that their information-sharing arrangements with other agencies are consistently compliant with the law. However, as one interviewee told us, it is possible that some exchanges "fall into the gaps" between different agreements because they happen in many different contexts. Sharing information on immigration status was given as an example.

Forces provide training for police officers and frontline staff on data sharing. Humberside Police have recognised that officers need further guidance on the legal basis for sharing information in particular circumstances. They told us that they are developing a training package that includes flow charts with simple yes/no questions to guide officers' decision-making.

All but one of the force strategic and data protection leads we spoke to were unaware of any information-sharing agreement between their force and the Home Office. One force referenced a historic national data-sharing agreement from 2002. Another advised us that they have now put in place specific protocols, in response to recent operational experience.

There were differing views about the legal basis relied on by forces to share personal data on victims and witnesses, depending on the perceived purpose of the exchange (for example, the purpose might be law enforcement or safeguarding). No forces in our fieldwork sample had formal arrangements governing information sharing between the Home Office and the police specific to victims and witnesses.

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<sup>39</sup> The data protection regime consists of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. Data processing is defined in Article 4(2) of the GDPR and section 3(4) of the DPA. Data processing is: any operation, or set of operations, which is performed on personal data, or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

<sup>40</sup> [Data Protection Act 2018 section 3\(4\)](#).

<sup>41</sup> [Immigration and Asylum Act 1999 section 20](#).

## **Police encounters with victims and witnesses who have insecure immigration status**

The victim case examples examined in this investigation (see '[Victim case examples: the effect of police involvement](#)' below) and our interviews with police officers and staff indicate most victims with insecure immigration status encountered by police will be victims either of domestic abuse/sexual violence or modern slavery and human trafficking. For forces covering ports of entry to the UK, these encounters may also occur through joint operations with Border Force officers.

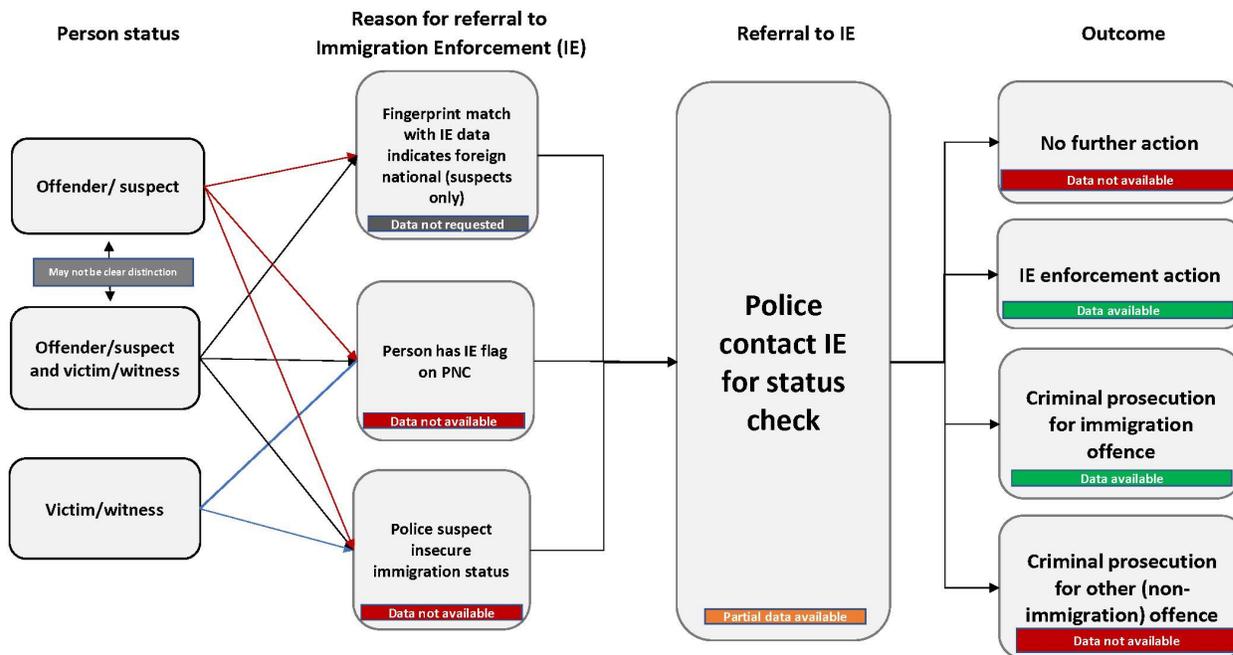
## **Nature of information sharing between the police and the Home Office**

We have drawn on several sources to assess the nature of information sharing between the police and the Home Office. These are: investigation responses from the NPCC and the Home Office, the force fieldwork interviews and the focus group with third sector specialist victim support agencies.

## **Available data about information transfer between the police and the Home Office**

Figure 1 summarises the investigation's findings on information transfer between the police and the Home Office on victims and witnesses of crime with insecure immigration status. It outlines the most common ways in which information about victims and witnesses may be shared between the police and the Home Office. Information may be shared in other ways and for reasons not included in this diagram, like through joint intelligence operations. The diagram also shows where data exists (if requested as part of the investigation).

**Figure 1: Investigation findings on information transfer between the police and the Home Office for immigration purposes**



### Telephone enquiries to the National Command and Control Unit

The National Command and Control Unit (NCCU) is the 24/7 point of contact for police within Immigration Enforcement. The police may make a telephone enquiry directly to the NCCU about a person or persons. This may be following the discovery of an immigration marker on the Police National Computer (PNC), which we explain in more detail below. Or it could be because they are suspicious that the people in question have committed an immigration offence.

We asked the Home Office to provide the number of enquiries it received from police officers on people who may have committed an immigration offence in the past three years. It told us that, although all enquiries are recorded on a local database, it is only able to provide the number of telephone enquiries in which the person being referred was identified as an immigration offender or where their immigration status couldn't be confirmed. This meant doing more investigation work.

In 2018/19, the Home Office received 18,065<sup>42</sup> telephone enquiries of this type. This doesn't include telephone enquiries where the person was immediately found to have a secure immigration status or where no offence was established. This means the total number of enquiries made by the police is likely to have been higher.

<sup>42</sup> This is the number of phone calls received, not people referred, as a call can be about multiple people.

At the time of the investigation, the Home Office was not able to provide data on whether the individuals referred were a victim or witness of a crime. However, it has since told us that the database at the NCCU has been adapted and it is now able to record this information.

In 5,029 of the 18,065 enquiries described above, immigration papers were served by the Home Office within two days of the enquiry. In other cases, the immediate service of papers may not have been appropriate, either due to the person having secure immigration status or because of other factors. It could be that the person had already been served papers or there was another consideration, for example the enquiry related to a National Referral Mechanism case.

The police may also pass information to the Home Office through the Immigration Enforcement Hotline, a service managed by the independent UK charity Crimestoppers. In 2018, the police made 2,853 reports through this service, accounting for just over 4 percent of the total reports that the hotline received. The Home Office told us that this service may be used by the police, or other law enforcement agencies, to refer intelligence to Immigration Enforcement – for example, immigration-related information uncovered on a police visit, such as blank passports. Police enquiries on the immigration status of an individual are routed to the NCCU.

#### **Use of Police National Computer markers**

Using markers on the PNC is one of the ways in which information can be shared between the Home Office and the police. PNC markers can be entered onto the PNC by the police or another authorised organisation. There are several types of marker that can be inputted to a nominal record.

In certain circumstances, the Home Office currently places a marker onto the PNC indicating that a person is subject to immigration control. The super-complaint alleges that the police routinely use the PNC to check the immigration status of victims and witnesses from ethnic minority groups. This results in the immigration offence being prioritised over other offences.

The Home Office told the investigation that “for immigration offenders, circulation on the PNC is only considered once all avenues to locate them have been exhausted”.

It is not able to provide the number of markers that it has placed on the PNC for this purpose. Nor is it able to provide information on the personal characteristics (such as ethnicity) of those people who have been subject to a PNC record with a marker.

The Home Office advised us that there are local assurance processes<sup>43</sup> to manage placing and removal of these markers and that the presence of a PNC marker is recorded on an immigration database. However, we would expect a robust assurance process to include collecting and monitoring data on the use of the PNC.

Home Office advice to the police is to contact Immigration Enforcement before taking any action, including arrest, as a result of a PNC marker. The NCCU's telephone contact details are attached to the PNC marker.

We found no evidence that forces collect data on PNC access by individual officers, and their reasons for accessing the PNC. Given that forces may check details on the PNC for several reasons, self-reporting would be the only way to identify the reason for accessing the PNC.

The NPCC advised that during an investigation there are several reasons for police to do checks on victims. Primarily, this will be PNC and local intelligence checks. The PNC holds information that helps police make risk assessments, both in how they deal with the victim and for their own safety. This includes information on police/court decisions, warnings about mental health, use of weapons and any potential danger to police.

We conclude that there is currently no way to identify the number of PNC checks of victim and witness details made by the police, nor the ethnicity of subjects of PNC checks. It is not possible to use police and Home Office data to identify the scale of this practice nor to evidence what this means on outcomes for victims and witnesses.

In our interviews with forces, frontline officers consistently told us that they do not routinely carry out PNC checks on victims. These checks may be made by the force control room, before sending officers to incidents, to assess any potential risks relating to officers' safety. Police responses may vary according to crime type, rather than because the victim is a foreign national.

In some incidents, forces may conduct PNC checks on both the alleged perpetrator and victim. Generally, evidence gathered by this investigation indicates that officers don't believe they should be conducting either PNC or other additional checks for witnesses and victims. However, one force said they would contact Immigration Enforcement for a status check. This point echoes a finding in HMICFRS's 2017 inspection of the policing response to modern slavery and human trafficking:

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<sup>43</sup> There are over 100 non-police organisations that have access to the PNC, including the Home Office. HMICFRS has carried out 12 inspections of non-police organisations that have access to the PNC. The Immigration Service was not included. Non-police organisations that are granted access to the PNC have a Memorandum of Understanding with the PNC services (Home Office) by which they are required to adhere to the standards and rules of the PNC. Expectations on monitoring and internal audit are included in this Memorandum of Understanding. Source: PNC access template Memorandum of Understanding, HMICFRS.

"[HMICFRS] found a tendency in some forces to refer both suspects and victims without legal status in the UK to immigration authorities rather than to investigate modern slavery and human trafficking offences and enable potential victims to understand and access the services available to them."<sup>44</sup>

### **Criminal justice and immigration enforcement outcomes for victims and witnesses of crime**

It is not currently possible to use data to assess whether the police prioritise immigration enforcement over safeguarding or the investigation of crime.

As part of our investigation, we sought information about both the criminal justice outcomes and the immigration enforcement outcomes for victims and witnesses referred to the Home Office.

There is currently no data available, from either the Home Office or the police, which links the crime in which someone was a victim or witness and individual referrals to the Home Office for immigration purposes. So it is not possible to assess, from Home Office or police data, whether referrals to immigration enforcement affect criminal justice outcomes.

There is some data about the immigration outcomes for people who are referred by police to the Home Office, such as the number of people served immigration papers within two days of a police referral. However, it is not possible to separate the outcomes for victims or witnesses.

### **Current practice in forces**

We wanted to understand forces' current expectations about communication between the police and Immigration Enforcement on victims with insecure immigration status.

Senior lead officers' expectations on officers' primary responsibilities in these cases were consistently described as "safeguarding the victim" and "initiating an investigation into the reported crime". Some expected that a 'status check' on immigration status would be done, though did not say when. One force specified that this would be done only in circumstances where police suspected or had knowledge about immigration offences committed by the victim.

There were more mixed views across forces about how far police officers are responsible for immigration-related matters, and the ways the two agencies might work together. One force expected officers to speak to Immigration Enforcement to establish any existing immigration-related measures in place, and to identify the appropriate response to the victim. Some saw immigration status checks as important, but discretionary, elements of risk assessment and planning for safeguarding the victim. They told us that working in partnership with Immigration Enforcement can help officers better understand the right

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<sup>44</sup> *Stolen freedom: the policing response to modern slavery and human trafficking*, HMICFRS, 24 October 2017, p13.

thing to do by that victim. One strategic lead told us that officers are not responsible for enforcing immigration matters: they don't consider it to fall within their remit.

There was mixed evidence from frontline officers about when they would make referrals to Immigration Enforcement or ask it for status checks. Most agreed that victims should be treated first and foremost as victims. Some believed a referral to Immigration Enforcement would be appropriate "just to make them aware". Others said they would seek supervision from a sergeant, though one observed that "sergeants are different, so their advice varies". There was a lack of experience in dealing with this situation in most forces. The rationale for referral appeared to be because they viewed Immigration Enforcement as the "experts" (on immigration matters) and because they might have different information from the police.

All forces were clear that the decisions about the nature and purpose of such information exchanges are made on a case-by-case basis and at the discretion of officers, in consultation with their supervisors, where appropriate.

In some circumstances, Immigration Enforcement contacts police officers to request assistance. Examples given by forces included requests for intelligence or for operational assistance – such as in targeting known perpetrators of trafficking. Only one force referred to the existence of any protocol between the police and Immigration Enforcement to clarify the limits of information sharing and the responsibilities of each agency in joint operations.<sup>45</sup>

This protocol was developed to improve the strategic and operational response to illegal entry, counter terrorism and organised crime through local ports. Although not directly relevant to the concerns raised in the super-complaint, it offers an example of an initiative designed to support a co-ordinated multi-agency response between police and Immigration Enforcement services.

There are no figures collected by forces on the number, purpose or outcomes of contacts between the police and the Home Office on victims and witnesses with insecure immigration status. This is apart from other data collected under the National Referral Mechanism for victims of modern slavery and human trafficking.<sup>46</sup>

Overall, there was a lack of awareness in forces about the implications of sharing information with Immigration Enforcement and potential enforcement activity which might

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<sup>45</sup> Humberside Police Operation Newlyn.

<sup>46</sup> The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive appropriate protection and support. The NRM is also the mechanism through which the Modern Slavery and Human Trafficking Unit collects data about victims. Since 1 November 2015, specified public authorities (including the police) have been required to notify the Home Office about any potential victims of modern slavery they encounter in England and Wales.

be taken as a result. During our interviews for this investigation, there was an emerging recognition of issues raised in the super-complaint among interviewees.

#### **Home Office expectations regarding information exchange on victims and witnesses of crime with insecure immigration status**

The Home Office told us that it expects that if a police officer comes to know or suspect that someone, not under arrest, is an immigration offender, they will refer the relevant information to the Home Office according to the NPCC's guidance. The Home Office also told us that it is "committed to reducing the size of the illegal population and the harm it causes" and encourages police colleagues to refer details of immigration offenders to Immigration Enforcement.

It will be for individual forces to liaise with Immigration Enforcement as to the best course of action in each individual case. Police staff are made aware of how to conduct immigration checks through a variety of means. At a local level, Immigration Compliance and Enforcement (ICE) teams and NCCU officers provide input on training courses. Posters are displayed in staff areas of custody suites and ICE staff also raise awareness when they attend custody suites in relation to immigration matters.

#### **Evidence from third sector specialist support agencies**

Evidence from the police and Home Office needs to be considered alongside evidence gathered from our focus group of third sector agencies that provide specialist advice and support to victims with insecure immigration status. Most people supported by these agencies are victims of domestic and/or sexual abuse.

The organisations represented in this group provided 28 case examples in total through the super-complaint and in the focus group. These case examples outline situations where police referral to Immigration Enforcement made victims' problems worse, and harmed trust in the police. These are examined in more detail in ['Victim case examples: the effect of police involvement'](#) below.

One of the elements of control to which victims may be subjected by perpetrators of their abuse focuses on their immigration status. The specialist support agencies told us that perpetrators sometimes tell the victim that the police will not believe that they are a victim – they will just act on their immigration status.

These agencies said that if the threats made by the perpetrator are then apparently carried out by the police (the police refer the victim to Immigration Enforcement and Immigration Enforcement acts on this information) this leaves the perpetrator free to abuse other people. In these agencies' experience, if Immigration Enforcement takes enforcement action in response to the information supplied by the police, this sometimes means that victims are denied access to advice and support from a specialist local agency on their potential right to remain in the UK.

### **Advice from the Information Commissioner's Office**

The ICO advised us that under data protection law,<sup>47</sup> if data has been collected for a specific purpose, it cannot be further processed in a way that is incompatible with that purpose. If the purpose for sharing data with the Home Office is to safeguard, forces would need to be able to explain how sharing this information enables safeguarding.

While the super-complaint is about data sharing between police forces and the Home Office, compliance with data protection law should not focus on data sharing in isolation. The data minimisation principle requires that data processed should be adequate, relevant and not excessive to the stated purposes. Forces have to consider the reasons they are collecting different categories of data on people, including their immigration status, and be able to justify how this is necessary for law enforcement purposes.

While immigration status data is one kind of personal data that is processed, police forces must have particular consideration for the collection of other categories of personal data that constitute sensitive processing under the DPA2018, such as ethnicity and religious beliefs. Where such data is processed, higher thresholds of justification and protection are required.

Forces are expected to demonstrate their compliance with data protection law as part of the accountability requirements set out in data protection legislation. The mechanisms in place include undertaking Data Protection Impact Assessments (DPIAs) when processing is likely to lead to high risks to the rights and freedoms of individuals, as well as consulting their data protection officer in the process.

The ICO advised us that, under data protection law, the overarching approach taken by the police should be one where sufficiently clear information is provided to people so that they understand and have reasonable expectations about how their data will be processed.<sup>48</sup> This should take account of the fact that people's first language may not be English.

The ICO is working on a statutory code on data sharing to be laid before Parliament in the near future.

We didn't check the lawfulness of current data-sharing practices as part of this investigation. However, the confusion and inconsistencies we found in forces on these points show that it is an issue of concern. We address this in our recommendations.

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<sup>47</sup> Data Protection Act 2018 and the GDPR.

<sup>48</sup> There are exemptions that police can rely on in specific circumstances, for example if informing someone will prejudice the prevention or detection of crime.

## In summary, the investigation has found:

- The NPCC's guidance on this issue has been inconsistently adopted by police forces in England and Wales.
- The NPCC's guidance to the police on this issue is not intended to stop them sharing data on victims and witnesses of crime with the Home Office. It is intended to set out what information will be shared by the police about victims/witnesses of crime with the Home Office, and when.
- The NPCC says its guidance should be used by chief officers to shape police responses to ensure that the general public receive consistent levels of service. Each chief officer can use the guidance at their discretion.
- Research in six police forces shows inconsistencies in passing on the data of victims and witnesses of crime to the Home Office for any purpose, including immigration enforcement.
- There is a high-level Memorandum of Understanding between the police and the Home Office on data sharing. The investigation has found no evidence of any other formal arrangements governing information sharing between the Home Office and the police that is specific to victims and witnesses.
- The inconsistencies tend to confirm a lack of certainty or consistency in the sharing of data when a victim reports a crime.
- This investigation cannot determine whether current arrangements are lawful, but it has identified concerns that should be addressed.
- There is currently no way to identify the number of PNC checks of victim and witness details made by the police, or the subjects' ethnicity. It is not possible to use police and Home Office data to identify the scale of this practice or to understand what this means for victims and witnesses.
- There is no data available from forces or the Home Office on the number, purpose or outcomes of contacts between the police and the Home Office regarding victims and witnesses with insecure immigration status, apart from data collected under the National Referral Mechanism for victims of modern slavery and human trafficking. It is therefore not possible to test the allegation that police forces are in breach of their public sector equality duty through discrimination in their service provision on the basis of a victim or witness's nationality or ethnicity.

## The implementation of national and local police policies, guidance, training and practice in safeguarding victims and witnesses of crime who have insecure immigration status

### **Liberty and Southall Black Sisters' super-complaint:**

- The guidance published by the NPCC to the police on this issue undermines the concept of safe reporting for victims and witnesses of crime who have insecure immigration status.
- Police have adopted at best an inconsistent and at worst a discriminatory approach to migrant victims of crime.
- Police officers are confused about their priorities in respect of safeguarding victims and immigration enforcement.
- Safeguarding of victims is compromised by the police sharing data with the Home Office.

This chapter addresses the second feature of policing alleged in the super-complaint:

The operation of and/or perception of a culture of police prioritising immigration enforcement over the investigation of crime and safeguarding.

The NPCC's Information Exchange paper of 2018 says that "police will share information to ensure effective safeguarding, identify potential exploitation and vulnerabilities, and allow other law enforcement agencies to manage their response to victims".<sup>49</sup>

The revised paper of April 2020 states that officers share information with the Home Office for a number of reasons. The purposes are listed and include: "To provide information that may assist the Home Office in the enforcement of immigration law, identifying a victim/witness as vulnerable to harm and/or taking measures to protect them from harm."<sup>50</sup>

<sup>49</sup> *Chief Constables' Council: Information Exchange Regarding Victims of Crime with No Leave to Remain*, NPCC, 3 October 2018, para 4.5.

<sup>50</sup> *Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender*, NPCC, June 2020, para 5.4.6.

The super-complaint alleges that there is no evidence that taking immigration enforcement steps against a victim of crime, either by arresting them or passing their details to the Home Office, can be considered safeguarding<sup>51</sup> for the victim.

## Evidence from the police

### Safeguarding

All forces were clear that the police have an important role to play in safeguarding victims. In our interviews with forces, officers consistently told us that they would treat victims with insecure status as a victim first and foremost and deal with the immigration issue as a secondary matter. Addressing a victim's vulnerability is the priority.

Taking into consideration the comments of frontline staff on this matter, we concluded that the judgment about if or when to contact Immigration Enforcement is made at officers' discretion. Most said they would ask supervisors for support in making this decision. Some said it wouldn't necessarily cross their mind to refer to Immigration Enforcement because they are victim-focused.

### Safeguarding and Immigration Enforcement

There were differing views among frontline officers about whether referral to Immigration Enforcement was a safeguarding option. Some said the referral would form part of their risk assessment for the victim. Others thought Immigration Enforcement were the experts so would be able to discuss safeguarding options available.

One force was clear that safeguarding is done locally by the police. Some officers were not aware of what Immigration Enforcement could offer so thought they would make a referral to ask the question. Frontline officers usually deal with referrals to support local safeguarding, but some thought Immigration Enforcement could offer different advice. Some officers regarded referral to Immigration Enforcement as a tactical option, for example with victims of modern slavery who may be moved on by their traffickers before police officers can take the necessary safeguarding measures.

Most officers were clear that Immigration Enforcement would not be an appropriate source of safeguarding support for victims of domestic abuse. However, one group of frontline officers told us that some of their colleagues had said they might use victim referral to

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<sup>51</sup> Safeguarding vulnerable adults is defined in the [Care and Support Statutory Guidance](#) issued under the Care Act 2014 as: (i) protecting the rights of adults to live in safety, free from abuse and neglect; (ii) people and organisations working together to prevent and stop both the risks and experience of abuse or neglect; (iii) people and organisations making sure that the adult's wellbeing is promoted including, where appropriate, taking fully into account their views, wishes, feelings and beliefs in deciding on any action; and (iv) recognising that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances and therefore potential risks to their safety or wellbeing.

Immigration Enforcement as a tool to separate the perpetrator and the victim. We did not hear directly from any officers giving this view.

In general, officers talked positively about joint work with Immigration Enforcement and thought it was evident that Immigration Enforcement also has safeguarding at the heart of its work. There was very little evidence of awareness of possible risks or tensions created for victims by police referrals to Immigration Enforcement. This is a matter of concern because it was recognised in the aforementioned HMICFRS inspection of the policing response to modern slavery and has been widely documented elsewhere – as summarised in the policy section above.

### **Leadership**

One recurring theme was the recognition that this is a very complex area of police practice and that more could be done to improve this area of policing.

“I found the super-complaint concerning – if this is happening it’s worrying. I’m confident this isn’t happening in [this force] because we put victims first. But, on reflection, the force could be clearer about its expectations of officers.”

Strategic lead

Senior lead officers acknowledged the difficulties for frontline response officers in understanding their responsibilities for victims with insecure immigration status. We were given no evidence of how these difficulties are being addressed in practice to mitigate the risks of inconsistent frontline responses arising from the reliance on officers’ discretion in judging if and when to refer a victim to Immigration Enforcement.

It was not clear whether officers understood the difference between the safeguarding functions they can provide to victims with insecure immigration status, the functions they should provide, and the other functions that it may be appropriate to offer, such as signposting to specialist legal advice.

### **Access to specialist victim support services**

The capacity of forces to put in place longer-term safeguarding measures for victims depends on access to specialist victim services. In this sense, some strategic leads told us that their force’s capacity to safeguard locally was not as good as it needs to be. One lead suggested that policing would benefit from a shared approach (with Immigration Enforcement) to safeguarding, even if that simply meant having a conversation about the appropriate action to take and agreeing which agency would take the lead.

## Training

Our force interviews provided consistent evidence that frontline officers have received regular training on safeguarding and vulnerability, covering domestic abuse and modern slavery. However, they have not received training on the appropriate response to victims and witnesses with insecure immigration status. Any training on foreign nationals has focused on offenders and custody.

The College of Policing ('the College') has developed an e-learning product and a general awareness course on modern slavery to educate police officers about the National Referral Mechanism process and statutory duty to notify the Home Office of victims.

The College sets national standards for training police officers. These include national victim and witness care learning standards. These cover the need for officers to safeguard victims and refer to considerations for police officers when responding to foreign national or migrant victims.<sup>52</sup> Training is carried out in forces using the national standards for victim care subjects. The College does not provide training to officers on immigration rights or on joint work with Immigration Enforcement.

The College's Authorised Professional Practice on 'Major investigation and public protection', which includes understanding risk and vulnerability in the context of domestic abuse, refers to the allowance within immigration rules for certain migrant victims of domestic abuse to apply independently of their spouse for leave to remain in the UK. Those who might be able to apply for leave under this rule may be eligible for access to public funds while they submit their application.<sup>53</sup> None of the officers we spoke to in the investigation expressed any awareness of this provision.

## Evidence from the Home Office

The Home Office told the investigation that in some circumstances passing details to the Home Office will help safeguard the victim. The NCCU has a person-first approach and advises police officers of possible safeguarding options in addition to those already available to the police.

These circumstances may include:

- referrals to case-working teams within the Borders Immigration and Citizenship System (BICS);
- placing victims in emergency accommodation;

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<sup>52</sup> *National Policing Curriculum Learning Standard: Victims and Witnesses*, v3.3, College of Policing, 2020, section 2.5. Supplied to the investigation by the College of Policing.

<sup>53</sup> The Destitution Domestic Violence Concession (DDVC) was introduced by the UK Border Agency on 1 April 2012.

- signposting to voluntary departure options; and
- explaining the option to seek legal advice to regularise stay.

The Home Office provided the investigation with a copy of its guidance on partnership working for Immigration Enforcement staff, which includes a section on working with the police. This document provides guidance on how Immigration Enforcement staff should respond to police officers across various situations, mainly relating to foreign national offenders. There is no explicit guidance on how Immigration Enforcement staff should respond when police officers call them with information relating to a victim or witness of crime.

The Home Office provided case examples to illustrate safeguarding options that Immigration Enforcement has used. Safeguarding actions extend to victims and members of the public, and to removing immigration offenders who cause a great deal of harm in local communities. The Home Office told the investigation that referrals to Immigration Enforcement should not prevent victims from reporting a crime. Immigration Enforcement does not arrest or detain everyone referred to them.

A recent independent inspection of the Home Office's approach to the safeguarding and protection of vulnerable adults<sup>54</sup> found that:

“One of IE's [Immigration Enforcement's] main objectives is to 'encourage and enforce the return of illegal migrants from the UK'. Amongst the officers to whom inspectors spoke there was a recognition that this could 'rub' against the need to safeguard vulnerable individuals, and could even exacerbate vulnerabilities in some instances, for example preventing individuals with mental health issues from accessing health care. A senior IE manager pointed out, however, that the fact that an individual was vulnerable did not mean that they should not be removed, but that they should receive appropriate support and protection through the process.” (para 6.86)

“IE officers of all grades told inspectors that they believed some individuals claimed to be vulnerable in order to prevent or delay their removal. Frontline officers reported that this happened regularly, and they believed some of it was co-ordinated. They cited 'mental health' as a particular example of something they were not in a position to dispute, which could mean that such cases ended up in the 'too difficult pile'.” (para 6.87)

The same inspection highlighted recurring deficiencies in data collection as a way to monitor the effect of Home Office policies:

“The 'Compliant Environment' measures introduced in the 2014 and 2016 Immigration Acts to make the UK less attractive to irregular migrants by limiting their access to benefits and services, including health care, accommodation and paid employment, have been widely criticised. Some critics are concerned that the measures target

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<sup>54</sup> *An inspection of the Home Office's approach to the safeguarding and protection of vulnerable adults, February–May 2018*, Independent Chief Inspector of Borders and Immigration, 10 January 2019.

people whose immigration status already makes them vulnerable, and make them more vulnerable, including to exploitation by unscrupulous people and criminals. Previous inspections have highlighted the absence of any monitoring or measurement by the Home Office of any negative effects of the measures.” (para 3.20)

## **Evidence from the focus group of third sector specialist support agencies**

The focus group was unanimous in its view that safeguarding victims is the responsibility of the police service and other local agencies. They were not able to provide any examples of the Home Office safeguarding victims.

The following points arose from the focus group on the police approach to safeguarding victims of crime who have insecure immigration status:

- Roles are blurred between the police and Immigration Enforcement. The police play an important role in safeguarding but are not clear on their priorities.
- Sometimes police officers don't know what to do and don't seek advice.
- Some police officers don't have the confidence to ask victims about their immigration status.
- In emergencies, the police will always be the first port of call for victims of crime. The initial police response to victims and crimes informs everything that follows and the support available to the victim.
- This is a systemic problem – it is not just about the actions of the police. Because of the 'hostile environment' everyone has become an immigration enforcement officer: police, teachers, landlords. Every migrant is seen as illegal.

The group unanimously agreed the situation has become worse recently in terms of negative effects for victims arising from police referrals to Immigration Enforcement. The group members saw this as a consequence of the government's 'hostile environment' (now known as 'compliant environment') policies on immigration. Some of the groups are offering training to the police and social services to address these issues.

All were also clear that, in spite of their misgivings about the process, they will still advise victims to report to the police. This advice comes with the caveat that they do not do so on their own and, where possible, only after they have received immigration advice. Critically, the police are the only public service that can grant immediate protection in an emergency.

## **In summary, the investigation has found:**

- No evidence of intent within the NPCC's guidance to operate a culture that prioritises immigration enforcement over the investigation of crime and safeguarding. However, there is a perception of such a culture by some victims and the specialist organisations that support them that is harming trust in the police and deterring victims from reporting to police.
- There are no mechanisms in place either within the police or the Home Office to assess the effect of the NPCC's guidance on migrant victims of crime.
- The inconsistencies revealed in police practice tend to confirm an inconsistent approach to safeguarding migrant victims of crime.
- The absence of data collected by forces or the Home Office on outcomes for migrant victims referred by the police to the Home Office means that it's not possible to test whether the police are operating a discriminatory approach; this possibility cannot therefore be ruled out.
- Police officers are not always clear on their priorities in respect of safeguarding victims and immigration enforcement.
- No positive evidence that sharing personal victim data with the Home Office explicitly supports the safeguarding of victims of domestic abuse.
- In the absence of data on outcomes for victims it is not possible to know whether safeguarding of victims is compromised by the police sharing data with the Home Office, other than by observations from individual case examples.
- Overall, there was very little evidence of awareness among the police of possible risks or tensions created for victims by police referrals to the Home Office.

## The risks of harm to victims and witnesses arising from information sharing about people at high risk of domestic abuse, who have an insecure immigration status, within formal and informal multi-agency discussions, for example at multi-agency risk assessment conferences (MARACs)

### **Liberty and Southall Black Sisters' super-complaint:**

- Immigration enforcement and data sharing with the Home Office is influencing the operation and priorities of MARACs.
- This approach is shaping the outcomes in a negative way for victims whose cases are discussed at MARACs.

This chapter addresses the allegation made in the super-complaint about harm caused to the interests of the public by information sharing on immigration status within multi-agency risk assessment conferences (MARACs).

MARACs are regular, confidential local meetings that discuss how best to help domestic abuse victims at high risk of serious harm or murder. The agencies include police, social services, health services, domestic abuse specialists and other relevant organisations.

The meetings produce an action plan for each victim focused on keeping them safe. MARACs work in different ways. The referral process is different in different areas, as is the scoring system on risks to assess the threshold for referral to a MARAC. Much of the work depends on professional judgment, which will also vary, not only between individuals, but between different agencies.

The purpose of this element of the investigation is to examine the super-complaint's assertion about the influence of Immigration Enforcement and police data sharing on the operation and priorities of MARACs.

The investigation's findings on this aspect of the super-complaint are drawn from:

- publicly available information on the operation of MARACs;
- analysis of a sample of MARAC minutes and risk assessments requested from the fieldwork forces;
- interviews with MARAC leads in each of the forces visited as part of our fieldwork;
- evidence from the focus group of specialist third sector organisations;
- a meeting held with representatives of Ealing MARAC;<sup>55</sup> and
- information supplied by SafeLives, a UK-wide charity dedicated to ending domestic abuse.

### **National data on the operation of MARACs**

According to the latest data from SafeLives, 5,880 MARAC meetings were held between October 2018 and September 2019. In these meetings, a combined total of 96,000 cases were discussed.

### **Analysis of MARAC minutes and risk assessments**

The six fieldwork forces were asked to supply a sample of MARAC meeting minutes covering a three-month period and copies of their risk assessments. Where forces covered more than one local authority area, they were asked to supply minutes for one area only. We analysed them using a keyword search for references to immigration status, immigration enforcement and 'no recourse to public funds'. All six forces supplied the requested minutes and risk assessments.

In the minutes of two forces, we found no evidence of immigration considerations. In one force there was a single case which showed that a referral had been made to the local specialist victim support organisation. There was an identified action point for the MARAC to write to the Home Office in support of the victim's application for leave to remain.

In the fourth force there were five relevant cases, two of which referenced communication between police and Immigration Enforcement on immigration issues. In the fifth force, there were four relevant examples, one of which related to the victim's concerns about the perpetrator's immigration status.

None of these four referenced direct communication between police and Immigration Enforcement. But they did include examples of involving a specialist third-party agency to help the victim resolve their immigration status.

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<sup>55</sup> Ealing MARAC was chosen because it is given as an example of good practice in the super-complaint.

In the final force, there were four cases that illustrated the ways in which insecure immigration status can increase risks to victims. In one of these, the Home Office had been contacted by a member of the MARAC to check the victim's immigration status. It was not clear whether this had been done with the permission or knowledge of the victim.

None of the risk assessment templates seen by the investigation included immigration status as a risk factor in the checklists of risk indicators. Some perpetrators may use their partner's insecure immigration status as a form of abuse.

Three forces used the risk checklist promoted by SafeLives.<sup>56</sup> In this checklist there is a narrative section which outlines the "recommended referral criteria to MARAC". Immigration is noted as a factor which might increase the risk to the victim.

### **Interviews with force MARAC leads**

There was no evidence of immigration officials being present in MARAC meetings. We were told by the leads that Immigration Enforcement officials are not invited. Although immigration status was not identified as a risk factor on the MARAC risk assessments in any of the forces visited, some of the MARAC leads acknowledged that it might be mentioned as a risk by referring organisations.

However, the question of immigration status did not often arise. The criteria for access to the MARAC and to safeguarding measures were no different for victims with insecure immigration status than for UK nationals. The differences relate to the protective actions that MARAC members are able to take for victims who have no recourse to public funds. This can be an obstacle to accessing services for these victims, such as refuges or other safe accommodation.

All but one MARAC lead said they would not share information on victims with unsettled status with the Home Office or refer them to Immigration Enforcement. One gave an example of providing direct support to an immigration application by writing letters to the Home Office with the victim's permission.

Another was clear that they would never make a referral to Immigration Enforcement. Instead, they would gather information on support available for these victims and ensure that the MARAC members followed these up. They would encourage the police to get information from Immigration Enforcement but not to share the victim's details.

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<sup>56</sup> [The SafeLives Dash risk checklist](#) has been developed to provide a consistent and simple tool for practitioners who work with adult victims of domestic abuse, to help them identify those who are at high risk of harm and whose cases should be referred to a MARAC meeting to manage their risk.

One lead said they would connect with Immigration Enforcement, with the sole purpose of identifying the status of the victim and making Immigration Enforcement aware that they (the MARAC) have primacy in safeguarding the victim. This force said that its information sharing was "in line with the NPCC paper". In all cases, safeguarding measures were implemented by the MARAC. None expected that this would be a role for Immigration Enforcement.

We were given an example of a victim who had been reluctant to report the abuse she had experienced to police because of her uncertainties about her immigration status. So the MARAC partner agencies led the contact with the family. After a few weeks of relationship building, the victim agreed to engage with the police. In this example the crime report was restricted, and information was not passed onto Immigration Enforcement.

There was a lack of guidance and protocols for MARACs on expectations regarding communications with other agencies and information sharing on victims of domestic abuse with insecure immigration status. The exception to this is in cases where the victim is also a victim of modern slavery/human trafficking that the MARAC wishes to refer to the Home Office through the National Referral Mechanism. There is national guidance available when this happens.

One MARAC lead referred to Immigration Enforcement officials operating within their local multi-agency safeguarding hub (MASH). These officers provide guidance and advice on immigration-related issues, though the personal details of victims are not shared with them.

Another lead recognised that if the problem of immigration status arises, the MARAC is solely reliant on a local specialist support organisation for advice. This lead suggested that a formalised process or procedures on domestic abuse victims with unsettled status would be helpful for MARACs. If this were in place for the whole force, including frontline officers and control room staff, it might help to ensure that immigration enforcement processes are not started as an unintended consequence of doing an initial status check on the victim with Immigration Enforcement.

One MARAC lead said "We shouldn't put barriers up to prevent sharing. The problem is what's happening as a result of the sharing." This lead referred to the National Referral Mechanism and the assurances given for those victims. They suggested that if there was a similar framework for domestic abuse and it was publicised, perpetrators would realise that they cannot use immigration status as a coercive tool against victims.

## Evidence from the focus group of third sector specialist support agencies

We asked the focus group members for any specific examples of perceived good or poor practice on data sharing involving multi-agency forums like the MARAC. They told us they knew of situations where victims at high risk of harm requested that their case was not taken to the MARAC because they feared their details might be shared with the Home Office.

Focus group members told us that sometimes agencies may disclose victims' personal information to Immigration Enforcement without realising the potentially bad consequences for victims. They said that many agencies involved in MARACs do not have the knowledge or expertise to properly support a victim's contact with Immigration Enforcement to address immigration status. In the experience of the group members, outcomes for victims are better when they, as specialist support agencies, can advocate to Immigration Enforcement on behalf of the victim.

In most areas the police are the lead agency for the MARAC. The group members regarded this as problematic because they felt that the police may unduly influence the MARAC's direction. They felt this might create a heightened risk that the MARAC scrutinises the victim rather than supporting them. MARACs have influence. The experience of group members was that if the police are seen to encourage or facilitate a report to Immigration Enforcement, very few agencies will challenge this. They regarded the role of the police in terms of response as critical because they believe it will lead the response of the other agencies.

### Good practice example: Ealing MARAC

The super-complaint singled out Ealing MARAC's work as an example of good practice.<sup>57</sup> In Ealing, the chair is a police detective inspector.<sup>58</sup> All the main parties have signed a confidentiality agreement, together with a MARAC operation and information-sharing protocol. At the start of every meeting, a further confidentiality agreement is read out and whoever attends must sign it. The agreement includes a declaration that the purpose of the meeting is safeguarding and that information is shared for this purpose and no other.

It also includes a commitment to equality principles enshrined in the law so that measures to protect victims are carried out without discrimination. Any requests to share information outside of this circle of confidentiality are reviewed by the chair. Immigration status is only considered in the context of effective safeguarding.

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<sup>57</sup> As yet to be confirmed by a SafeLives quality assurance process (August 2020).

<sup>58</sup> SafeLives suggests that in most areas the best placed person to chair the MARAC will be the detective inspector from the public protection unit or a senior probation officer. See [Frequently asked questions: For people involved in MARAC](#), SafeLives, February 2015.

The question has sometimes arisen within the MARAC of whether Immigration Enforcement might attend to help victims regularise their immigration status. The view of the MARAC is that this holds potential conflicts of interest for Immigration Enforcement and that it is more appropriate for a victim to be represented in dealings with them by a solicitor, with contact co-ordinated as appropriate by an Independent Domestic Violence Adviser (IDVA).

A victim won't always know their immigration status. The benefit of engaging a solicitor straight away is that if the Home Office decides to take enforcement action, the victim will have legal representation. The MARAC can help by writing a letter to say that it has heard the victim's case, to provide evidence to support (for example) an application for the Destitution Domestic Violence Concession<sup>59</sup> or to facilitate an application for Legal Aid.

Ealing MARAC has blocked direct communication between the MARAC members and the Home Office on a victim's immigration status. This is effectively a 'firewall' for victims of domestic abuse referred to the MARAC. This enables the safety of the victim to be addressed as the priority, while supporting them to engage with a solicitor who can help address their immigration status. It has formalised this approach through revising its operating and information-sharing protocols.

### **In summary, the investigation has found:**

- Immigration officials were not present in MARAC meetings. However, immigration enforcement and data sharing with the Home Office may be indirectly influencing the operation and priorities of some MARACs.
- There were inconsistencies in the approach taken by MARAC leads to this issue.
- There is a risk of harm because some victims and witnesses are therefore deterred from reporting these crimes to the police.

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<sup>59</sup> This gives the victim access to funding for a designated period while their application for leave outside the immigration rules is considered by Immigration Enforcement.

## The risks of harm to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes

### **Liberty and Southall Black Sisters' super-complaint:**

- Victims with insecure immigration status may face specific difficulties in reporting crimes to the police – they are concerned that they will be returned to their source state and/or charged and punished for an immigration offence.
- The practice of police officers sharing data of victims or witnesses with the Home Office is preventing crimes being reported, investigated and prosecuted and enables perpetrators to use the victim's immigration status as a “weapon” of control.

This chapter addresses the allegation made in the super-complaint that there are risks of harm caused to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes.

The super-complaint alleges that sharing information between the police and the Home Office on victims and witnesses of crime with insecure immigration status is causing significant harm to the interests of the public. This section of the report considers the evidence for that allegation, drawing on:

- case examples within the super-complaint and in the wider public domain;
- case examples provided to the investigation by other agencies;
- published research and commentary;
- data on prosecutions available from the Crown Prosecution Service; and
- investigation fieldwork in police forces and specialist victim support organisations.

### **Victim case examples: sources and features**

We reviewed 46 individual case examples from the following sources:

- the super-complaint: 21;
- West Midlands Police: 7 (provided as supplementary information to their response to our request for information on relevant policies in use);
- the Home Office: 3;

- the specialist victims' support organisations focus group: 7;
- Step Up Migrant Women roundtable report:<sup>60</sup> 7; and
- Step Up Migrant Women evidence to the Home Affairs Select Committee on domestic abuse:<sup>61</sup> 1.

Despite the small number of case examples, and the limited sources, the findings of this case review show the harms alleged in this super-complaint in a way that is both clear and troubling.

Most of the victims in these examples were female. Two were male and two were unspecified. The victims had been subject to one or more of various forms of abuse.

**Table 2: Types and instances of abuse**

Type of abuse	Instances of abuse
Modern-day slavery	7
Sexual abuse	6
Domestic abuse	32
Emotional abuse	11
Human trafficking	3
Female genital mutilation	2

The two victims of female genital mutilation (FGM) feared their children could also be at risk of FGM. One feared that there were plans to this effect by her husband's family and the other feared that deportation to her home country of Nigeria could put her daughter at risk.

Most of the victims had insecure immigration status. Eight were referenced as being on spouse visas. A spouse visa is the permission granted by UK Visas and Immigration to a foreign national from outside the European Economic Area or Switzerland to come to the UK to live with their partner. There were examples of victims who discovered they had insecure immigration status because their husbands had lied and said they were managing the paperwork and there was no cause for concern.

Other than examples supplied by West Midlands Police, the case examples were all anonymised and contained no identifying information on the police force they referred to.

<sup>60</sup> [Safe Reporting of Crime for Migrants with Insecure Immigration Status](#), Step Up Migrant Women UK, Latin American Women's Rights Service, May 2018.

<sup>61</sup> [Written evidence submitted by Step Up Migrant Women UK \(DVA0097\)](#), 9 October 2018.

There was no information on whether these examples had been raised with local police complaints processes.

### **Victim case examples: the effect of police involvement**

The police were involved with 36 out of the 46 case examples. The other ten were victims who were deterred from reporting to police by a fear of the consequences linked to their immigration status.

Eight of the cases referenced positive interactions between the victim and the police, such as the police ensuring the victim was safe and helping them access support services. All the case studies provided by West Midlands Police as part of their response to the information request by the super-complaints team were positive examples of police practice.

## **A place of safety: Case examples from West Midlands Police**

West Midlands Police provided seven examples of how their force has responded to domestic abuse victims who have either unsettled immigration status or no recourse to public funds. The examples included both women and men, and people they described as extremely vulnerable.

In these examples, the force's approach was first to take the victim to a place of safety. This is usually a hotel which is paid for by the force. If the victims have no access to money the force also pays for their meals.

The force contacts local refuges and women and migrant centres to find suitable accommodation for the victim. This can take a considerable amount of time because some refuges are not able to accept people with no recourse to public funds – one victim stayed in a hotel for ten days. More than once, the force has referred victims to refuges outside of their area and transported them there. This is after unsuccessfully trying to accommodate them locally. The refuges are then able to provide specialist support to the victims.

The force also works with partner agencies to support people with access to the destitute domestic violence concession and other services, such as mental health services.

In 25 of the 36 case examples in which police were involved, there was evidence of harm caused. Examples of harm included:

- Police taking no action when a crime was reported but instead referring the victim to Immigration Enforcement, leaving the perpetrator of the abuse against the victim unchallenged.

- Police missing early opportunities to safeguard the victim, for example by believing the perpetrator's account of events over that of the victim in the absence of proper analysis. This potentially left the victim exposed to further abuse.
- A victim being told to sort out her immigration status before reporting her abuse, leaving her exposed to further abuse.
- A victim being asked by police if she was only reporting as a victim to secure the right to stay in the UK, leaving her exposed to further abuse.
- Victims treated as perpetrators and detained in custody because of their immigration status, leaving the perpetrator of the abuse unchallenged.

## **No support and nowhere to go: Case example from Southall Black Sisters**

TT was a black African woman married to a white British man. She came to England on a spouse visa. Her husband regularly abused her. On one occasion he tried to smother her with a pillow. TT called the police. Her husband admitted trying to smother her but claimed it was in self-defence as TT had attacked him first. Although there was no evidence that TT had assaulted her husband, the police readily accepted her husband's claim.

They questioned TT about her immigration status at length. They took no further action against TT's husband. TT was shocked. After this, TT's husband taunted her, threatening to "send her back to her country" and frequently threw her out of the marital home in the early hours of the morning, forcing her to beg to be taken back. TT felt trapped. She couldn't leave her husband as she had nowhere to go and no recourse to public funds. Sometimes TT's husband called the police to falsely claim she was harassing him. On other occasions, TT tried in desperation to seek help from the police.

She tried to tell police that her husband had thrown her out of the house and was abusive. However, he would say that she had left of her own accord. TT said that every time the police attended, they asked her about her immigration status and this was what they seemed most interested in. She said she provided the police with "a lot of evidence" of the domestic abuse but they were not interested and never investigated. She feels that because her husband was well-off and articulate, and she by comparison was only seen as an immigrant, the police just believed her husband.

## **Examples with a direct link to police action**

We reviewed the case examples for evidence of a link between the outcome for the victim and the features of policing referenced in the super-complaint. In 24 of the cases there was evidence of a direct link to the features of policing. An example of a direct link is police taking no action at the report of crime but instead referring the victim to Immigration Enforcement, leaving the perpetrator of the victim's abuse unchallenged.

## Examples with an indirect link to police action

Eleven cases featured an indirect link between the outcome for the victim and features of policing. An example of an indirect link is where a victim's decision not to report to the police was based on fear that the police would prioritise immigration enforcement over safeguarding and investigation of the reported crime. In all cases these decisions left the victims exposed to further abuse, unless they were referred independently to a specialist victim support organisation.

Eleven of the cases did not show evidence of a link to the features of policing.

There were two recurring themes drawn from these examples:

1. Police prioritising immigration enforcement over victim safety and/or investigating reports of abuse (which featured in 17 of the cases we analysed).
2. Victims' fear of reporting to the police because of their insecure immigration status and/or fear of deportation (which featured in 11 of the cases we analysed).

## Evidence from investigation research and fieldwork

### Step Up Migrant Women

Research by Step Up Migrant Women summarises a survey of 50 migrant victims of abuse, all of whom had current or past experience of insecure immigration status.

Findings from the research included:

- Most of the victims believed that they wouldn't be supported in dealing with their experiences of gender-based violence because of their immigration status.
- More than half of the women were afraid to report their abuse to the police. They thought that they wouldn't be believed because of their immigration status, or that the police or Home Office would support the perpetrator over them.
- Almost two thirds of the women said their partners (the perpetrators) had threatened deportation if these women reported the violence committed against them.
- The most commonly cited changes that the women wanted to see in police responses were to be believed and not to be reported to immigration services.<sup>62</sup>

Victims' fears of the police may be based on experiences in their country of origin rather than in the UK.

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<sup>62</sup> *The Right to be Believed: Migrant women facing Violence Against Women and Girls (VAWG) in the 'hostile immigration environment' in London*, McIlwaine, C., Granada, L., Valenzuela-Oblitas, I., King's College London and The Latin American Women's Rights Service, May 2019.

### Focus group of specialist victim support organisations

In the focus group conducted for the investigation with specialist victim support organisations, one organisation told us that they had consulted the women they support before participating in the group. They found that all the women consulted said their abuser had used their immigration status against them.

Group members told us that a specific source of harm to the public arises from serial perpetrators.

“They get another woman when one goes. If the perpetrator is taken through the criminal justice system, it sends a strong message to them, others like them and the community.”

The group said that the likelihood of a better outcome for a victim is increased if a specialist support agency accompanies the victim when they make their first statement to the police. They suggested that the police take the victim's statement at the support agency's premises.

Migrant women are particularly vulnerable when they first report to the police, not only because of language differences but also because they may not know their rights and have no way of questioning police actions. The support agencies can advocate for the victim, advise police officers and help victims with access to legal advice:

“This must be the first thing the victims do. Getting immigration advice from the right source is critical as they [the lawyer] become the mediator between the victim and the Home Office and build the evidence for the victim's case.”

### Police engagement with victims

In fieldwork with police forces, we were given more evidence that some migrant victims and witnesses are afraid to report to the police, raising the risk of harm to the public.

One example given was an investigation by Essex Police into the deaths of 39 Vietnamese people in the back of a lorry coming into the country through Essex docks in October 2019.

The lead officer for this investigation is the force's strategic lead for modern slavery. The investigation team realised that they needed to speak to other victims and witnesses who may have also been smuggled by the same gang.

However, to do so they needed to break down barriers with relevant communities in the UK and Vietnam. A policy decision was taken and publicised, in consultation with the Home Office, to focus on building relationships with these communities.

## Safe to talk?

We asked forces about any work done to engage with local foreign national groups to build relationships and trust in reporting to the police. All forces referred to local Independent Advisory Groups.<sup>63</sup> But it was not clear that these groups are a way for communicating with foreign national communities, as opposed to local black and minority ethnic groups.

There was some evidence of such work connected with police responses to human trafficking and modern slavery. But only one force provided examples of addressing the potential deterrent effect of immigration issues on reporting domestic abuse.<sup>64</sup> As one strategic lead said, "this is something the force needs to look at".

One force said that they have to consider the risk of unintended consequences to any "it's safe to talk to us" messaging they publicise. This was a reference to political opinions from the local population and the risks of hate crime in response to these messages.

Nevertheless, the government's policy on treatment of victims and witnesses of crime makes no distinction between UK citizens and those with uncertain immigration status.

## Data on prosecutions available from the Crown Prosecution Service

Crown Prosecution Service guidance on immigration<sup>65</sup> outlines the three ways of dealing with illegal entrants:

- administratively, by the immigration authorities (Immigration Enforcement officers or the Home Office);
- diversion by way of a Foreign National Offender Conditional Caution; and
- by way of criminal proceedings.

The available data does not distinguish between migrant victims of crime and other migrants. It shows that most cases are dealt with through administrative action by the immigration authorities. Published Home Office statistics<sup>66</sup> show that 294 defendants were proceeded against for offences under Immigration Acts 1971 to 2009, in England and Wales in the magistrates' courts in 2018, with 58 found guilty. In the Crown Court, 299 defendants were proceeded against, with 238 found guilty.

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<sup>63</sup> Independent Advisory Groups are voluntary groups made up of members of the public who are independent from the police. The role of Independent Advisory Groups is to help police build insight and public confidence across all groups of the population. They review and challenge policing practices in a constructive way to help police improve their service to the public.

<sup>64</sup> Metropolitan Police Service.

<sup>65</sup> [Legal Guidance: Immigration](#), Crown Prosecution Service, 19 June 2018.

<sup>66</sup> [Immigration Statistics, year ending June 2019 second edition: List of tables](#), Home Office, 22 August 2019.

## **In summary, the investigation has found:**

- Victims with insecure immigration status may face specific difficulties in reporting crimes to the police.
- There was very limited evidence of police work addressing these risks, for example through engagement with local foreign national groups to build relationships and trust in reporting to police. The evidence that we were given related more to police responses to human trafficking and modern slavery than to the potential deterrent effect of immigration issues on reporting domestic abuse.
- The risk that perpetrators use their victims' immigration status as a 'weapon' of control, so deterring victims from reporting their crimes to the police, is well documented and recognised.
- 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 cause of this fear is difficult to establish definitively. The perception of a police culture that prioritises immigration enforcement over safeguarding and crime investigation does appear to be one factor that is creating a barrier to reporting.

# Our conclusion

## Introduction

This section summarises our assessment of the issues raised by this super-complaint and the outcome of our investigation.

It acknowledges the constraints on the investigation and provides some observations that we believe both the police service and the Home Office should consider in any future policy development in this area. It also offers some observations on the legal implications and the constraints we found in available data.

Finally, it sets out our conclusions on the alleged features of policing and harm caused to the public and addresses some of the solutions offered by Liberty and Southall Black Sisters in the super-complaint.

## Balancing priorities

Government policy is clear that victims of crime should be treated without discrimination and be given appropriate support to help them cope, recover and be protected from re-victimisation.<sup>67</sup>

The public interest requires that perpetrators of crimes be brought to justice, so the public are protected from people considered a risk to local communities. It also requires that people with an insecure immigration status are received into the immigration system, so their status can be resolved.

In the case of victims and witnesses of crime with insecure immigration status, the critical question raised in this super-complaint is how these public policy priorities are balanced by the police service without increasing the risk of harm, either to vulnerable people or to the public interest.

The police response must support joint agency working that prioritises the needs of vulnerable people, while balancing the requirements on law enforcement agencies to identify risks to local communities.

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<sup>67</sup> [Code of Practice for Victims of Crime](#), Ministry of Justice, October 2015, para 1.

## Our constraints

The subject of this super-complaint is immensely complex. The findings of our investigation must be qualified in certain ways.

### Limited data

First, our findings are inevitably a reflection of the information that was available to us. The investigation was limited in some ways by the effect of one of its main findings. This was the lack of data or other systematically collected information, from either the police or the Home Office, on outcomes for migrant victims and witnesses of crime who report to the police.

This means that our conclusions on the potential for harm to the public interest are based on an analysis of the relatively small number of case examples, many of which were provided by Liberty and Southall Black Sisters. Nevertheless, we found the victims' voices to be clear and compelling. Also, the problems raised by the victim case examples have been widely recognised and documented in the public domain.

### Focus on female victims of domestic violence

Second, the focus of the super-complaint is largely on female victims of domestic and sexual abuse and violence. Liberty and Southall Black Sisters acknowledge that similar issues can affect men as well as victims and witnesses of other crimes – particularly modern slavery and human trafficking.

The investigation looked at police responses to all migrant victims of crime. Our conclusions about harm to the public interest reflect the fact that most of the relevant evidence available to the investigation concerned migrant victims of domestic abuse. However, the findings of HMICFRS's 2017 inspection of the policing response to modern slavery and human trafficking should also be noted here, in particular:

“Some officers primarily treat potential victims of modern slavery and human trafficking as immigration offenders.”<sup>68</sup>

More recently, evidence given to the Home Affairs Select Committee on Modern Slavery sets out concerns from a number of witnesses about the police prioritising immigration offences over the protection of modern slavery victims. This evidence is summarised in the police super-complaint submitted to HMICFRS by Hestia.<sup>69</sup>

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<sup>68</sup> *Stolen freedom: the policing response to modern slavery and human trafficking*, HMICFRS, 24 October 2017, p82.

<sup>69</sup> *Underground Lives: Police response to victims of modern slavery*, Hestia, March 2019.

## **No specific standards**

Third, although there are professional practice standards for policing on responding to victims of crime, there are currently no specific standards on responses to migrant victims. This is a subject area that is highly politicised. There is not always a common view on what good outcomes are for such victims. The absence of professional practice standards raises the risk of inconsistent responses among individual police officers and between police forces.

Any proposals on good practice made by this report reflect the observations of the investigation team. In particular, these are informed by the views of those closest to the problem, who are mainly the third sector specialist victim support organisations, and the police service.

## **Observations on Home Office and police policies**

Before turning to our conclusions on the specific features of policing and associated harm raised in the super-complaint, we offer some observations arising from the investigation that the police service and the Home Office should consider in any future policy development in this area:

### **1. Considering language**

In the evidence provided to us, there was a presumption in the language used by both the Home Office and the NPCC that migrant victims are illegal immigrants, rather than people whose immigration status is insecure. This may be because they have left an abusive partner on whom their legitimate immigration status depended, or they are the victims of human trafficking.

In our interviews with police officers and staff, they tended to use the words 'illegal' and 'insecure' interchangeably. This suggests they don't recognise the differences between the two. The 2018 version of the NPCC's guidance paper refers to "victims of crime with no leave to remain", and in the 2020 version to "immigration offenders".

In fact, the victims and witnesses of crime whose case examples are presented in this super-complaint are mainly those with insecure or uncertain immigration status. A different set of considerations applies to people in these circumstances. Though acknowledged in the 2020 version of the NPCC's guidance, these aren't reflected in terms of the implications for police practice. Neither version of the NPCC's paper references or reflects the standards and entitlements expected for all victims of crime, regardless of immigration status, as set out in the national Code of Practice for Victims of Crime.

## 2. Police portfolios

The concerns presented in the super-complaint arise across several policing portfolios. The NPCC, in developing its 2018 guidance paper, determined that the relevant portfolio in which to locate the lead for this work was Modern Slavery, Organised Immigration Crime and Asylum.

The rationale for this decision is not clear to the investigation. In particular, the decision not to consult with national leads and experts on domestic abuse and victim care is difficult to understand, given the media and parliamentary focus on these matters.

This point is addressed in the April 2020 version of the NPCC's paper. Nevertheless, the findings from our fieldwork show that more work is needed by the police service to ensure these issues are well understood across all police portfolios and accepted by frontline officers and staff. We would recommend that the national domestic abuse lead in the NPCC is appointed as a co-lead in the development of future papers on information exchange.

## 3. Multiple policies

Police forces promote a culture of 'victim first' but the complexity of tasks required of the police service in this area cannot be overstated. Our policy review for this investigation revealed a wide spectrum of relevant policy and operational guidance to the police. This raised questions about how they consistently determine the appropriate action in response to migrant victims of crime.

This is of particular concern in respect of responses to migrant victims of domestic abuse, in all its forms. The realities of victims' experiences may cross several policy areas. The government's stated commitments on preventing violence against women and girls and protecting all victims from re-victimisation should be cross-referenced into all areas of relevant policy, clearly stating the need for police to prioritise the safety of all victims of domestic abuse first and foremost.

## 4. National guidance

The super-complaint states that it is unclear what status the NPCC guidance has, or whether it has been adopted by all forces. Compliance with any NPCC guidance is at the discretion of each force's chief officer.

In the absence of other national practice standards, this potentially allows for 43 different interpretations of policy across all forces in England and Wales, with associated risks of inconsistency across forces. We uphold the view that this guidance has been inconsistently adopted by forces.

## 5. Joint working considerations

We heard that in joint working between police and Immigration Enforcement there is sometimes a lack of clarity about which agency takes the lead on determining priority actions. Based on the evidence supplied to the investigation by both agencies, it appears that joint working between police and Immigration Enforcement has focused largely on foreign national offenders and/or individuals whose immigration status is known to be illegal.

We have seen little evidence of consideration given to the specific issues and risks arising for victims and witnesses, or of the associated joint protocols that these might require.

## 6. Access to specialist support agencies

Both the specialist organisations and the forces participating in the investigation told us that the existence of a local specialist group, with whom police can work in partnership, has a positive effect on the outcome of migrant victims' reports to the police. Not all forces currently have access to such groups.

## Legal implications

In addition to the alleged features of policing and associated public harms at the centre of this super-complaint, Liberty and Southall Black Sisters raised questions concerning the lawfulness of police practice in sharing victims' personal data with the Home Office. There are several interlinking legal principles and policies in the super-complaint. The precise relationship between the legal principles and provisions will vary depending on the facts of individual cases.

The super-complaint asserts that the competing interests of the two issues – investigating reported crimes and immigration control – are not of equal importance:

“We submit that investigation of the crimes being reported and ensuring witnesses come forward is a more vital issue than enforcing immigration compliance, especially since police officers are police officers, not immigration officials.”<sup>70</sup>

This assertion is beyond the scope of our investigation. It is a matter for Parliament and the courts to determine. However, clearer statutory guidance which takes account of relevant legal considerations would help the police navigate these complex problems. For example, guidance could be given on:

- The purpose of information sharing between the police and Immigration Enforcement in specified victim contexts, with reference to policing priorities and data protection legislation.

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<sup>70</sup> *Police data sharing for immigration purposes: a super-complaint*, Liberty and Southall Black Sisters, 20 December 2018, para 54.

- The different considerations, in practice, arising for the police to enable a consistent and appropriate balancing of their power to share information on victims of crime with the Home Office and their duty to enforce the criminal law.
- The requirements on police forces arising from the Victims' Code of Practice.

Only one of the six forces we spoke to recognised that officers needed further guidance on the legal basis for sharing information in particular circumstances. We address this point in our recommendations.

## Data limitations

The limitations in available data on the outcomes of police responses to migrant victims of crime are a concern for police, the public and immigration enforcement services. The available data on people referred to Immigration Enforcement by the police does not record a distinction between victims/witnesses and offenders, or the ethnicity of people referred.

There is currently no data available, from either the Home Office or the police, which links the crime in which an individual was victim or witness with individual referrals to the Home Office for immigration purposes. Therefore, it is not possible to use these sources to assess whether referrals by the police to Immigration Enforcement affect criminal justice outcomes. This means that neither the police nor the Home Office are able to assure the communities they serve that: (i) all people with whom they have contact will be treated fairly and safely and (ii) allegations of discriminatory behaviour are unfounded.

Data from the victim case examples we've seen suggests that referrals to the Home Office do affect criminal justice outcomes. If police forces are not adequately informed about the effect and outcomes of their actions on victims, they will be impeded in their ability to make informed policing decisions that comply with requirements arising from the Victims' Code of Practice and wider duties to the public.

This conclusion echoes findings of previous HMICFRS inspections, for example the inspection of the police response to hate crime,<sup>71</sup> and our rolling programmes of [crime data integrity](#) and [custody inspections](#). [HMICFRS's 2017 inspection of the policing response to modern slavery](#) included the recommendation that "forces should review their leadership and governance arrangements for modern slavery and human trafficking, to ensure that ... performance and quality assurance measures are in place to allow senior leaders to assess the nature and quality of the service provided to victims".

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<sup>71</sup> [Understanding the difference: the initial police response to hate crime](#), HMICFRS, 19 July 2018, p15.

## Features of policing

### **The passing, by police, of victim and witness data to the Home Office for immigration enforcement purposes**

We found that sharing information with the Home Office on victims and witnesses of crime with insecure immigration status is a feature of policing. It is not clear that the purpose of this practice is immigration enforcement. But it does appear, in some cases, that this information may be used for immigration enforcement purposes.

Information sharing between police and the Home Office can be important for people's safety, and in certain instances is required by law (for example, under the National Referral Mechanism for victims of modern slavery and human trafficking). As one police officer said to us, the police have been criticised for years for not sharing information to support multi-agency working. The difficult judgment required of police officers in responding to migrant victims of crime is how to balance the interests of criminal justice and victims' safety against the interests of the state in upholding immigration law. And how to understand the circumstances in which one should be prioritised over the other.

Existing guidance to the police does not help here because it does not adequately reflect the realities of some victims' circumstances, particularly those arising from domestic abuse. These difficulties are made worse by the lack of shared knowledge between the police service and the Home Office on the outcomes for migrant victims when information has been shared.

Overall, there was a lack of awareness in forces about the implications of sharing information with Immigration Enforcement and potential enforcement activity which might be taken as a result. During the interviews for this investigation, there was an emerging recognition of issues raised in the super-complaint among interviewees.

### **The operation of a culture, within the police, of prioritising immigration enforcement over public safety and fair treatment of victims**

Our investigation found no evidence of intent within the police to operate a culture that prioritises immigration enforcement over the investigation of crime and safeguarding. However, there is a perception of such a culture by some victims and the specialist organisations that seek to support them. And there is clear evidence in some of the victim case examples we've seen that police do sometimes prioritise immigration enforcement.

The investigation has found evidence that police officers are not always clear of their priorities on safeguarding victims and immigration enforcement. Consequently, and in the absence of national policy guidance, the police approach to safeguarding migrant victims of crime is inconsistent.

The appropriate police response to migrant victims of crime will be determined by the type of crime and the individual circumstances of each victim. These considerations are currently more clearly documented in respect of victims of modern slavery and human trafficking than they are for migrant victims of domestic abuse.

We found no evidence that sharing personal victim data with the Home Office supports the safeguarding of victims of domestic abuse. There may be reasons to share intelligence in certain circumstances for the protection of individuals or the public interest.<sup>72</sup> But the parameters and expectations in these circumstances are currently not clear.

In the absence of reportable data on police referrals to the Home Office, by ethnicity or in total, it is not possible to test the super-complaint's assertion of a discriminatory approach. This possibility cannot be ruled out.

## **Harm caused to the interests of the public**

### **The risks of harm to victims and witnesses arising from information sharing about people at high risk of domestic abuse, who have an insecure immigration status, within formal and informal multi-agency discussions, for example at multi-agency risk assessment conferences (MARACs)**

We found that immigration enforcement and data sharing with the Home Office may be indirectly influencing the operation and priorities of some MARACs. This gives rise to a risk of harm because some victims and witnesses are deterred from reporting these crimes to the police.

### **The risks of harm to the public arising from the police passing victim and witness data to the Home Office for immigration enforcement purposes**

The investigation has found evidence that significant harm is being caused to the public interest. This is 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 cause of this fear is difficult to establish definitively. However, there are clear contributing factors. These include the perception of a police culture that prioritises immigration enforcement over safeguarding and crime investigation, the experiences of victims that this sometimes happens in practice and demonstrable inconsistencies in police practice. This is supported by the evidence that we have obtained that different police forces have different guidance and practice, so it is unclear to victims of crime how they are going to be treated.

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<sup>72</sup> The public interest may be served, for example, if the police believe an individual victim or witness may be linked to an organised crime group such as a group organising human trafficking.

Police culture and practice on these matters sits within the wider context of government policy and prevailing political priorities. The Home Office told us it expects that when a police officer has information that a person may have committed an immigration offence, but no arrest has been made, that officer will always refer the information to the Home Office.

Without clarity on how the Home Office will act on such information, this seems a relevant barrier to the police's ability to prioritise protection to victims. The investigation has heard from the specialist agencies which support migrant victims of crime that the Government's 'hostile environment' policies on immigration are a contributing factor to migrant victims' reluctance to report crimes to the police.

We note the findings of Wendy Williams' report on her review of the treatment of the Windrush generation. Some of these findings have been echoed in the evidence of victims' experiences provided to this investigation, in particular;

- “[under hostile environment policies] immigration control was extended beyond the Home Office and its agencies to include other government departments and wider public services. The same applied to private businesses and individuals as banks, employers and landlords all became part of the apparatus of immigration status checks.”<sup>73</sup>
- “The [Home Office] has failed to grasp that decisions in the arena of immigration policy and operations are more likely to impact on individuals and the families of individuals who are BAME, who were not born in the UK, or who do not have British national origins or white British ethnic origins ... the department must be alive to the need to take positive steps to ensure that individuals do not experience worse outcomes for reasons connected with their race, or which would be indirectly discriminatory.”<sup>74</sup>
- A discussion on the use of language quotes the following from evidence to the review: “[We] object to the use of the term ‘illegal immigrants’ which is both inaccurate and inflammatory. Only an act can be illegal. It is inaccurate to use the term ‘illegal’ to describe those who have crossed borders through unofficial routes, as it violates their right to due process before the law. To refer to a person as illegal suggests that their very existence is against the law.”<sup>75</sup>

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<sup>73</sup> [Windrush Lessons Learned Review](#), Wendy Williams, 31 March 2020, p61.

<sup>74</sup> As above, p117.

<sup>75</sup> [BiD's submission to the government's Windrush 'lessons learned' review](#), Bail for Immigration Detainees, 19 October 2018.

## Solutions

In the super-complaint Liberty and Southall Black Sisters offer solutions to the problems they establish. The investigation has considered these solutions below.

### 1. Consistent policy

Clarity on policy and accompanying guidance is crucial. It is very hard to ensure that victims are treated consistently without guidance that reflects the realities of victims' experiences and so the realities of situations to which the police must respond. To achieve this, policy and protocols must be developed in consultation with the specialist agencies who understand the barriers to reporting faced by migrant victims of crime.

We support this solution and address this point in our recommendations.

### 2. Identify and share good practice

Good criminal justice outcomes are achieved when victims of crime are safeguarded, and the crime is investigated in the full knowledge of the victim's immigration status. We have heard that positive outcomes are possible where the police recognise immigration status as a risk factor for victims, and work in partnership with specialist agencies, with a focus on safeguarding.

We support this solution. The importance of identifying and sharing good practice cannot be overstated in an area of such complexity. We've heard some local examples of victim-focused good practice that might be considered more widely. These are listed at Annex G.

### 3. Develop robust advocacy and partnerships

The super-complaint proposes establishing clear referral pathways to specialist black and minority ethnic support agencies and to immigration advisers so that victims have access to sound legal advice and emotional support on their immigration matters. In the absence of specialist services, Liberty and Southall Black Sisters suggest that victims should have access to independent advocacy services or other independent advice and support. We've consistently heard that, where forces have access to such services,<sup>76</sup> the partnership is highly valued by the police as a means of achieving positive outcomes.

We support this solution.

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<sup>76</sup> For example, North Wales Police referred to partnership work with [Bawso](#), an all-Wales organisation providing services for black and Asian women affected by or at risk of domestic abuse and other violence.

#### 4. A complete firewall between the police and immigration authorities

In the context of evidence that migrant victims of crime are deterred from reporting to the police because of their fears of a referral to Immigration Enforcement, Liberty and Southall Black Sisters propose the establishment of a 'firewall'. They say this mechanism would prevent the police from sharing data on victims and witnesses of crime with the Home Office. The specialist victim support agencies which contributed evidence to the investigation unanimously supported this idea as a means of separating vital victim support services from Immigration Enforcement.

Police interviewees in our investigation unanimously expressed a high level of unease about this idea, citing several reasons:

- Exchange of information between police and Immigration Enforcement is crucial for the police and the Home Office in managing risks<sup>77</sup> and could be relevant to investigating crimes.
- For the above reason, a complete firewall would be impractical. Instead, to strengthen safeguarding, the police should build more local partnerships with specialist victim support organisations.
- Creating a firewall would address the symptom rather than the cause – a firewall would not take account of all the good work that happens where Immigration Enforcement have supported police officers. The root cause of the problem is the lack of clarity about what Immigration Enforcement does with the victim data, not the check itself.
- Police must be totally open. They cannot choose which offences to investigate and ignore others (such as immigration offences).
- Any block on the flow of communication raises the risk of abuse of the system by criminals seeking to take advantage of perceived loopholes in the law enforcement network.

Almost all of the police interviewees reflected that the current situation is unsatisfactory. There is considerable discretion for officers in decision-making about when to share information, which may be biased towards individual values.

Many of them observed that the problem is not so much sharing information. It is the lack of understanding or agreement about how the Home Office might act on that information. The police cannot tell Immigration Enforcement what to do with the information shared. Better safeguards around information sharing would help prevent information being shared in circumstances which don't take account of the potential consequences of sharing. Or they would encourage police officers to give more consideration to the proportionality

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<sup>77</sup> Examples given included risks to victims, such as additional intelligence about an individual's vulnerability, and risks to the victims and/or the public, such as known association with a human trafficking gang master.

and necessity of sharing. Partnership working between the police and Immigration Enforcement is relatively immature in its development compared with some other police partnerships and there is scope for improvements in practice.

During the latter stages of our investigation, further evidence on this issue became available. In June 2020, several further sources presented the parliamentary debates on the Domestic Abuse Bill with proposals for establishing a firewall for migrant victims of domestic abuse.<sup>78</sup> These sources added weight to the voices of victims already expressed through campaigning organisations such as Step Up Migrant Women. The Government rejected proposed amendments to create such a firewall. This is made clear in its recently published Support for Migrant Victims Scheme.<sup>79</sup>

In September 2020, the Institute for Public Policy Research (IPPR) produced a relevant briefing.<sup>80</sup> It considered the options open to public authorities to ensure that the safety of victims and witnesses with insecure immigration status is not undermined by co-operation between police and immigration enforcement services. This briefing highlights examples of innovative international practice promoting safe reporting pathways for victims and witnesses of crime with insecure immigration status, including firewalls.

We consulted the Domestic Abuse Commissioner, the Victims' Commissioner for England and Wales and the London Victims' Commissioner for their views on the proposal for a firewall. They all supported the idea, given the strength of evidence on harm being caused to the public interest.

We conclude that the current situation is not serving the interests of victims of crime. We recognise that a complete firewall preventing all communication between the police service and the Home Office on migrant victims of crime could undermine the public interest, and the interests of bringing people breaking the law to justice.

A firewall might also have implications for other forms of information sharing between the service and the Home Office, which we haven't considered as part of this investigation. There is a clear public interest in joined-up government.

Information sharing between designated organisations (including police forces) and the Home Office is required in law for victims of modern slavery through the National Referral Mechanism. There are different mechanisms for referral depending on whether the victim consents to such referral.

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<sup>78</sup> For example: [Written evidence submitted by the Mayor of London \(DAB48\)](#) and [Written evidence submitted by the Lloyds Bank Foundation for England & Wales \(DAB46\)](#).

<sup>79</sup> [Support for Migrant Victims \(SMV\) Pilot Scheme: Support for Migrant Victims of Domestic Abuse with No Recourse to Public Funds: Draft Bid Prospectus](#), Home Office, 19 October 2020.

<sup>80</sup> [Sanctuary Cities? How Regional Mayors Can Protect Victims of Crime with Insecure Immigration Status](#), Marley Morris, Institute of Public Policy Research, 29 September 2020.

However, there are no such legal requirements in relation to victims of domestic abuse. There is nothing to stop the police service defining their relationship with Immigration Enforcement in a way that ensures the safety of domestic abuse victims is not undermined by co-operation between the two agencies. There are international examples to which the police service could look.

What is essential is that victims believe they will be treated as victims and that their worries about immigration status do not stop them reporting crimes to the police. This depends on giving them confidence that enforcement action will not follow while they are being safeguarded by police.

Our research has highlighted the fact that there is no widely-agreed definition of 'firewall' in terms of what it means in detail and practice. It is clear that firewalls can and are being implemented in different ways around the world to create a separation between public services and immigration enforcement. Any policy decision to adopt a firewall would have to be informed by evaluation to minimise the risk of unintended consequences.

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. We expect that associated reporting pathways would include access to specialist support and legal advice to address a victim's immigration status, as necessary.

In practice, this would mean that for victims and witnesses of domestic abuse who have insecure immigration status, police would follow their established guidance on responding to domestic abuse, as for any other victim. Where there are concerns or doubts about the person's immigration status, in place of contacting Immigration Enforcement, police would connect the person with a specialist organisation or other third party that can provide the necessary advice and assistance.

The specialist organisation would act as an expert intermediary between the victim and Immigration Enforcement services, as required. This would allow police to clearly prioritise safeguarding and investigation. This should also help address concerns about race discrimination. All victims with insecure immigration status would simply be recognised as such, and offered help through referral to the specialist organisation, to tackle any problems the status raises.

The overall effect should be to give victims confidence that they will be treated as a victim first and foremost and safeguarded, and to clarify policing priorities in an unambiguous way.

We have heard that in some areas of the country MARACs are already acting effectively as a firewall, supported by an appropriate specialist victim support agency. The approach

taken by these groups to information sharing, in the interests of building a safety plan for those victims at highest risk, could be applied more widely by the relevant agencies to all migrant victims of crime, through appropriate national protocols and local policies.

We address these points in our recommendations.

## Our recommendations and actions

There are many circumstances in which information needs to be shared. Where officers are assisting a victim of domestic abuse<sup>81</sup> and there is no evidence of an immigration offence, the potential impact on the victim is so harmful that no information should be shared with Immigration Enforcement. A clear and immediate change in practice for victims of domestic abuse is required. We are solely proposing these changes to police practice regarding victims of domestic abuse because most of the evidence available to this investigation focused on them.<sup>82</sup> We also recommend an urgent review of the current legal and policy framework relevant to the issues raised in this super-complaint for all migrant victims, including further consideration of the legislative options for implementing a firewall.

Current inconsistencies in practice should be addressed through the development of a safeguarding protocol between the Home Office and the police service to guide responses to all migrant victims of crime by the police service, the immigration authorities and other law enforcement agencies as relevant.

Some elements of this protocol (as set out in recommendation 3) will be reliant on the conclusion of the legal and policy framework review (recommendation 2). However, others are not, such as engaging with specialist organisations to better understand the lived experiences of victims and ensuring data sharing is compliant with data protection legislation. Recommendations 2 and 3 are therefore linked, but not strictly sequential. We encourage urgent parallel action to ensure improvements are brought about swiftly.

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<sup>81</sup> For the purposes of our recommendations, the definition of domestic abuse should be understood to include honour-based abuse and female genital mutilation.

<sup>82</sup> As set out in our conclusions to this report, there is no legal requirement on police to share information with Immigration Enforcement on the immigration status of victims and witnesses of domestic abuse and some other crimes. Information sharing between designated organisations (including police forces) and the Home Office is required in law for victims of modern slavery through the National Referral Mechanism, although note that there are different mechanisms for referral depending on whether the victim consents to such referral.

### **Recommendation 1. To chief constables**

As an interim measure, pending the outcome of recommendation 2, where officers only have concerns or doubts about a victim's immigration status, we recommend that they immediately stop sharing information on domestic abuse victims with Immigration Enforcement. Instead, police officers should link the victim to a third party that can provide advice and assistance, as set out in recommendation 4 (on the creation of safe reporting pathways).

This applies where police officers have doubts about a victim's immigration status, not where they have evidence that an offence has been committed. The College of Policing will immediately develop guidance for the police service to clarify this aspect of practice.

#### **Notes to recommendation 1**

- This recommendation to stop information sharing only applies to victims of domestic abuse.
- The College of Policing guidance will also clarify the difference between insecure and uncertain status and immigration offending.
- Any sharing of information should be done in compliance with Information Commissioner's Office (ICO) guidance.
- 'Third party' could include a local or national specialist victim support organisation or another individual/organisation that can act as an intermediary and advocate on the victim's behalf in communications with Immigration Enforcement – as required.

### **Recommendation 2. To the Home Office**

Review the legal framework and policy underpinning the matters raised in this super-complaint with the aim of providing clarification to the police service, other public services and immigration authorities on priorities regarding all migrant victims and witnesses of crime with insecure immigration status.

The review should address the wider matters of public policy raised in this super-complaint as well as those relating to policing and domestic abuse. It should include consideration of the interim measure outlined in recommendation 1, associated guidance and further consideration of a mechanism for establishing a firewall between police and immigration enforcement services for all migrant victims of crime with insecure immigration status. It should determine a working definition of a firewall in this context with reference to the conclusions of this report, international examples of such practice and any relevant academic research. The review should identify the correct basis on which any proposed firewall should be implemented.

The effect of the review should be to establish safe reporting mechanisms for all migrant victims and witnesses, including those with insecure immigration status, in accessing the police service. The review should be conducted in consultation with victim and survivor representative groups, practitioners and other interested parties. The Home Office should publish a report that sets out its considerations and conclusions, and includes an equality impact assessment, within six months of the date of publication of this super-complaint report.

### **Recommendation 3. To the Home Office and the National Police Chiefs' Council**

With the objective of preventing harm to the public interest, develop a safeguarding protocol between the Home Office and the police service to guide responses to all migrant victims and witnesses of crime by the police service, the Home Office and other law enforcement agencies as relevant. The protocol should reflect the realities of victims' and witnesses' experiences, drawing on the expertise of the relevant specialist organisations for supporting victims with insecure immigration status. The protocol would need to have some inbuilt flexibility and also:

- address the respective roles and responsibilities of the police and the Home Office in safeguarding migrant victims of crime, with explicit attention to differences in approach that may arise for victims in different circumstances;

- for victims of domestic abuse or other gender-based violence, clarify that it is the responsibility of the police service, working with suitable specialist partner agencies, to provide safeguarding functions, and that sharing information on victims of domestic abuse with Immigration Enforcement does not constitute safeguarding;
- address the purposes of sharing information, as well as who does what with the information, how it will be acted on by the Home Office, and in what circumstances, with agreement about the terms of assurances that can be provided to victims and witnesses;
- specify the circumstances in which information may be shared by police with the Home Office and ensure that victims and witnesses are told what information is to be shared and why, with reference to their clear basis in law to share;
- be supported by appropriate governance processes to ensure that:
  - personal data is processed in accordance with data protection law;
  - due consideration is given to security (both in sharing and storage), retention and deletion of personal data; and
  - all organisations can demonstrate accountability.
- reflect consultation with data protection officers and reference to relevant Information Commissioner's Office guidance to ensure that data sharing is compliant with data protection law and clearly documented;
- address the implications for data sharing within multi-agency risk assessment conferences (MARACs) and other multi-agency safeguarding groups;
- set out a nationally equitable position on access to specialist victim support services that can assist victims in resolving uncertainties associated with immigration status;
- enable the victim or witness to contribute to any potential prosecution so that perpetrators are held to account and that the victim or witness is supported to contribute to any potential prosecution, in the public interest; and
- be publicised through the appropriate channels to promote migrant victims' and witnesses' confidence in the existence of safe reporting pathways to receive support from the police and other statutory agencies without fear that their immigration status will be prioritised over their complaint to the police.

This protocol should be adopted by the police service across England and Wales. When the protocol has been agreed, the National Police Chiefs' Council should consider how to operationalise it in consultation with the College of Policing so that the contents inform police responses.

#### **Recommendation 4. To chief constables**

With reference to recommendation 1, and in consultation/collaboration with local or national specialist organisations, chief constables should take steps to ensure that all migrant victims and witnesses of crime are effectively supported through safe reporting pathways to the police and other statutory agencies. They should:

- ensure there is a proper policy and practice framework in place for officers to work within;
- develop victim and witness support policies that reflect the characteristics of the safeguarding protocol set out in recommendation 3, and:
  - draw on all relevant national guidance with particular reference to the Code of Practice for Victims of Crime and data protection legislation;
  - are developed in partnership with and include pathways to the relevant specialist organisations for supporting victims and witnesses with insecure immigration status;
  - are clear about the circumstances in which information will be shared by police with immigration enforcement;
  - provide clarity about the purpose of sharing information at different points of the pathway; and
  - explicitly recognise the importance of telling victims, witnesses and supporting agencies whether information will be shared with Immigration Enforcement, and if so, when and in what circumstances.
- promote understanding among police officers and staff to differentiate between responses to victims of modern slavery/human trafficking and victims of domestic abuse;
- promote awareness within their forces of any existing pathways to specialist organisations for supporting victims with insecure immigration status;
- ensure the policy and practice framework is adopted by all officers and staff who come into contact with victims of crime who have insecure immigration status; and
- promote police engagement in regular outreach community work, as highlighted as good practice in this report.

**Recommendation 5. To chief constables and police and crime commissioners (or equivalents)**

With reference to recommendation 1, pending the developments outlined in other recommendations, and in consultation/collaboration with local or national specialist organisations, chief constables and police and crime commissioners should take steps, through the appropriate channels, to promote migrant victims' and witnesses' confidence in reporting crimes to the police through safe reporting pathways, without fear of prioritised immigration control.

**Recommendation 6. To police and crime commissioners (or equivalents)**

Conduct an assessment of local access to specialist victim support organisations or networks and take any necessary steps to build up such networks.

**Recommendation 7. To the Home Office**

Improve the recording and assurance processes related to sharing information with the police. In particular, record the status, ethnicity and nationality of people referred, or enquired about, to the National Command and Control Unit within Immigration Enforcement in order to understand and record whether the caller believes the individual to be a victim, offender or both. Collect and monitor data on the use of the Police National Computer for immigration purposes, including the number of live markers in operation. This is broader than addressing the lack of data. The investigation considers it is essential to understanding and differentiating the appropriate range of actions in individual cases, including compliance with the Code of Practice for Victims of Crime. Such data will aid transparency with the particular objective of assuring the public that all victims and witnesses are treated fairly and equitably regardless of their protected characteristics.

**Recommendation 8. To all recipients of recommendations from this investigation**

Provide an update to Her Majesty's Chief Inspector of Constabulary on progress in implementing these recommendations within six months of the date of publication of this report.

**Action 1. To the College of Policing**

Work with interested parties to consider how domestic abuse risk assessment tools used by the police and partner organisations can include immigration status as a risk factor.

**Action 2. To the College of Policing**

When updating knowledge and training products, ensure that the messaging across all relevant guidance is consistent about the need for policing to balance the needs for safeguarding a victim or witness against the national interest in investigating crime.

**Action 3. To HMICFRS**

Subject to available funding from the Home Office, HMICFRS will consider whether future inspection activity and/or monitoring could review how the issues raised by this super-complaint are being addressed by forces, once they have had an opportunity to make changes in the light of this investigation.

# Annexes

## Annex A: Liberty and Southall Black Sisters

The organisations describe themselves as follows:

### **Liberty**

The National Council for Civil Liberties (Liberty) is an independent membership organisation founded in 1934 which is at the heart of the movement for fundamental rights and freedoms in England and Wales. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly and the powerful are held to account. Our legal team regularly acts for individual clients and intervenes in significant cases before the domestic courts and in the European Court of Human Rights.

### **Southall Black Sisters**

Southall Black Sisters is a specialist women's organisation founded in 1979 for black and minority ethnic ('BME') women. We operate a resource centre providing information, advice, advocacy, counselling and support to BME women and children who remain some of the most marginalised groups in society. Most women approach us seeking advice and assistance in relation to domestic and other forms of gender-based violence and inter-related issues of homelessness, immigration/asylum problems, debt and poverty, civil, family and criminal matters and mental health. As a specialist organisation we are also regularly called upon to assist and advise statutory and non-statutory organisations and professionals regarding the needs of BME women.

## Annex B: The police super-complaint system

### Background

The police super-complaints system began on 1 November 2018. It enables certain organisations designated by the Home Office (known as 'designated bodies') to raise concerns on behalf of the public about a feature of policing in England and Wales that is, or appears to be, significantly harming the interests of the public. [The full list of designated bodies is available.](#)

The system is designed to examine systemic problems of local, regional or national significance that may not be addressed by existing complaints systems. Super-complaints will not typically be about individual forces.

A super-complaint is a complaint that "a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public".<sup>83</sup>

Super-complaints can be made about:

- any one or more of the 43 police forces in England and Wales;
- British Transport Police;
- Civil Nuclear Constabulary;
- Ministry of Defence Police; and
- National Crime Agency.

The process for making and considering super-complaints is set out in the Police Super-complaints (Designation and Procedure) Regulations 2018 ('the Regulations').

The three bodies responsible for assessing, investigating and reporting on police super-complaints are HMICFRS, the Independent Office for Police Conduct (IOPC) and the College of Policing. [More information about their individual roles is available online.](#) [Guidance on making a super-complaint about policing is available online.](#)

### Investigating and assessing a police super-complaint

A new super-complaint from a designated body first is assessed by HMICFRS, the College of Policing and the IOPC to see if it is eligible for consideration. If the three bodies agree that it meets the eligibility test in the legislation, they plan what activity needs to happen.

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<sup>83</sup> [Guidance on submitting a super-complaint about policing: What is a super-complaint?](#), IOPC, College of Policing and HMICFRS, updated 18 April 2019.

The aim of a super-complaint investigation is to identify if there is (or may be) a problem with policing that could harm the public, and to propose a remedy if this is the case. A super-complaint investigation isn't a comprehensive inquiry into police practices in all forces.

The scope and elements vary by case, but lines of enquiry may include:

- assessing relevant information already held by the investigating authorities;
- doing or commissioning further research (including data);
- approaching other public bodies or government departments for information;
- seeking information from other important parties (for example those with experience relevant to the topic of the super-complaint);
- asking for information from police forces;
- talking to people directly affected by the issues set out in a super-complaint (for example in focus groups); and
- interviewing staff and officers in a small number of police forces.

The information gathered in all individual lines of enquiry (such as those indicated above) is considered as a whole. The information is used by HMICFRS, the College of Policing and the IOPC to decide whether a feature (or features) of policing is or appears to be leading to significant harm to the public interest.

'Significant harm' isn't defined in the legislation governing the super-complaints process and we consider it should be given its ordinary meaning.

## **Investigation outcomes**

If the decision-making bodies decide there is or could be significant harm to the public interest, they may consider action is needed to further investigate or put the situation right.

An investigation may also result in a conclusion that the super-complaint is unfounded or that no action is required.

The outcomes of an investigation include:

- an inspection by HMICFRS;
- an investigation by the IOPC;
- changes to existing policing standards or support materials from the College of Policing;
- a recommendation that another public body is better placed to deal with the problem;

- a recommendation to one or more police forces to change practices or local policies;  
or
- a recommendation to another public body or government department to consider responding to the super-complaint or a related matter.

Where recommendations are made, we expect the organisations named in the recommendations to act on them and consider whether they need to involve others to bring about change.

HMICFRS, the College of Policing and the IOPC may individually, or as a group, monitor the implementation of recommendations made after each super-complaint investigation. They may take further action if they consider a feature of policing continues to cause harm.

## Annex C: Victim support groups focus group

### Groups in attendance

- The Angelou Centre
- Apna Haq
- Iranian and Kurdish Women's Rights Organisation (IKWRO)
- Joint Council for the Welfare of Immigrants
- Latin American Women's Rights Service
- Liberty
- London Black Women's Project
- NIA
- Safety4Sisters
- Southall Black Sisters

## Annex D: Organisations consulted

- Association of Police and Crime Commissioners (APCC)
- Crown Prosecution Service
- Domestic Abuse Commissioner's office
- Ealing MARAC
- Home Office
- The Independent Anti-Slavery Commissioner's office
- Information Commissioner's Office (ICO)
- Justice and Care
- London Victims' Commissioner
- Missing People
- National Police Chiefs' Council (NPCC)
- SafeLives
- Victims' Commissioner for England and Wales
- Victims support group organisations (See Annex C)
- Fieldwork forces: North Yorkshire Police, Humberside Police, Essex Police, Kent Police, North Wales Police, Metropolitan Police Service
- Information request: All forces in England and Wales

## Annex E: The National Police Chiefs' Council response to our investigation

The National Police Chiefs' Council (NPCC) is a co-ordinating body for the police service in England and Wales. It isn't a legal entity and has no statutory powers. Police forces are subject to several national policies as well as guidance issued by government and the College of Policing.

The College of Policing is the statutory body responsible for setting standards for policing, which it does through issuing Authorised Professional Practice. Where it is considered that it would support the NPCC's co-ordinating function, the NPCC might seek agreement among chief officers on a common approach to a policing issue, in the form of a Council paper. The decision to develop a Council paper is taken by the relevant national policing lead.

The approach taken to developing a Council paper, including establishing the evidence base and intended outcomes, consultation and assessing the impact of a paper, is a matter for the lead officer (usually a chief officer). Police forces don't have to comply with a paper that has been developed and adopted by the NPCC. Each force's chief officer has the discretion to decide. The NPCC doesn't keep a central record of the local policies each force uses.

In December 2017, in response to media reports of victims being arrested as they sought care, a letter was sent to all chief constables by the national policing leads for serious and organised crime, vulnerability, modern slavery, human trafficking and organised immigration crime. This letter advised police forces to treat all victims of crime as victims first and foremost:

“Only where there is intelligence or information, either from police databases or Immigration Enforcement, that the person poses an immediate risk of harm ... should an immediate arrest be made.”<sup>84</sup>

In the light of these press reports, the national policing lead for modern slavery and human trafficking ('the relevant portfolio') wished to seek a clear and consistent approach nationally among police forces. The proposed approach of the NPCC's Information Exchange paper was to build on victim-centred principles in existing guidance.<sup>85</sup> The approach also recognised that the sharing of information between law enforcement

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<sup>84</sup> Letter to all Chief Constables, 20 December 2017, provided as evidence to the investigation by the NPCC.

<sup>85</sup> [Code of Practice for Victims of Crime](#), Ministry of Justice, October 2015; [Counting rules for recorded crime: Crime recording general rules](#), Home Office; [Authorised Professional Practice: Prosecution and Case Management: Victim and Witness Care](#), College of Policing.

and immigration enforcement is appropriate in ensuring the law is upheld, victims of serious crime (such as organised immigration crime) are identified and that a person's potential vulnerability to exploitation or wider harm is identified so that they can be safeguarded.

The paper was developed through informal inquiries and consultation with selected forces and other national policing leads. The paper wasn't discussed with the national policing lead for domestic abuse because the incidents that were the catalyst for the paper weren't understood to be related to domestic abuse. The voluntary sector wasn't consulted. The paper was of general application and not limited to any specific crime type.

The NPCC envisages that the potential for sharing information might arise in two sets of circumstances:

1. when Immigration Enforcement circulates information about a wanted immigration offender; this information would be revealed to police by a search on police national databases; and
2. during their contact with a victim or witness, police officers may suspect a person of committing an immigration offence.

The shared information is likely to vary by case. The NPCC anticipated that the police will provide Immigration Enforcement with basic information to enable Immigration Enforcement to review its own databases. The police's purpose for sharing information with Immigration Enforcement may be to safeguard the victim, and/or to support the police's duty to investigate and detect crime, or to assist the Home Office in upholding immigration law.

The NPCC envisaged that what the Home Office does with information will be case specific, in accordance with its own obligations and the legal framework within which it discharges its functions.

The NPCC does not consider the act of sharing information with Immigration Enforcement to be enforcement action in its own right.<sup>86</sup> While a police referral to Immigration Enforcement could have the consequence of giving rise to enforcement action by Immigration Enforcement, the referral itself is not considered by the NPCC to be enforcement action.

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<sup>86</sup> Enforcement action in this context is intended to refer to the investigation and prosecution of immigration offences or to steps connected with removal or deportation.

## Annex F: Data sources

### Summary of data sources explored

The information presented in the report comes from a range of sources, including published data and data provided directly by the Home Office.

This table details the data we sought as part of the investigation. We weren't able to obtain all this information but the table details our findings.

Data	Comments
Number of referrals made by police officers, regarding people who may have committed an immigration offence, in each of the past three years	The Home Office provided force-level data on the number of telephone enquiries in which the individual being referred was identified as an immigration offender or where their immigration status couldn't be confirmed, and there was further investigation work to be undertaken. Therefore, the number provided doesn't include telephone enquiries where the individual in question was immediately found to have a secure immigration status or where no offender was identified.
Number of markers the Home Office has placed on the Police National Computer in each of the past three years, in connection with immigration offences/matters	The Home Office was unable to provide this information.
Outcomes for individuals referred to the Home Office for a status check by the police	The Home Office provided force-level data on the number of referrals where the person was served enforcement papers within 2 days of the referral. No reportable linked data exists on the criminal justice outcomes for individuals referred to the Home Office by the police for an immigration status check.
Outcomes for individuals referred to the Home Office for a status check by the police, who have also been arrested	The Home Office doesn't hold this data in a reportable format. It advised that "Immigration databases do not record any arrest by the police for an immigration offence in a searchable format. This would only be held on the police database. Any subsequent service of immigration papers would not be recorded on the police database."

Data	Comments
Defendants proceeded against for offences under Immigration Acts 1971 to 2009 in England and Wales	This information is available as published statistics. (Source: <a href="#">Table pr 01, 9. Detention data tables</a> )
National data on the operation of MARACs	This data was provided by SafeLives and included information about the number of MARACs held, cases discussed, characteristics of the individuals discussed and the sources of cases. The immigration status of individuals discussed wasn't recorded in this data.
Number of on-site immigration officials embedded in local authorities	The Home Office provided this data.

As part of the investigation, we also reviewed the data held by HMICFRS. This review covered the data captured for both HMICFRS's PEEL inspections and for other thematic policing inspections. We did not identify any directly relevant information.

## Data provided by the Home Office

### The number of telephone enquiries by the police in the last three financial years

Year	Number of telephone enquiries
2016–2017	20,015
2017–2018	19,444
2018–2019	18,065
<b>Total</b>	<b>57,524</b>

Notes provided by the Home Office:

- These statistics have been taken from a live operational database. As such, numbers may change as information on that system is updated.
- The data shows the number of phone calls received and not people as a single call can relate to multiple people.
- Enquiries are only recorded when the referral has identified an immigration offender who has been referred for enforcement action or further investigation. Therefore, this data does not show the number of police referrals where no enforcement action was taken or where no offender was identified.

**The number of 'police callouts' in the last three financial years, where the person has been served enforcement papers within 2 days of that police callout**

Year	Number of police callouts
2016–2017	11,941
2017–2018	9,505
2018–2019	5,029
<b>Total</b>	<b>26,475</b>

Notes provided by the Home Office:

- These statistics have been taken from a live operational database. As such, numbers may change as information on that system is updated.
- A person can appear more than once within the data where more than one call with subsequent papers served has occurred within the period.
- This data shows where a call has been received and the person has been served an enforcement paper within 2 days of the date of call only.
- Only includes cases where the police station was recorded on the Home Office system.

**Freedom of Information Request 55955: Number of times immigration or border crimes have been reported through the Immigration Enforcement Hotline and website**

Source	2016	2017	2018
MP	162	70	101
Crimestoppers	6,091	5,755	5,280
DWP	1,543	1,123	617
HMRC	259	151	188
Immigration Casework	526	824	642
Immigration Enforcement	1,481	2,358	2,121
Public	45,544	43,353	43,335
Other	1,339	2,907	4,447
Other Government department	5,209	5,274	4,103
Police	2,868	2,514	2,853
<b>Total</b>	<b>65,109</b>	<b>64,428</b>	<b>63,747</b>

Notes provided by the Home Office:

- This data is purely management information obtained from the IMS (Intelligence Management System).
- The figures quoted are not produced to Office for National Statistics (ONS) standards and are made up of information recorded in IMS records.

### Published immigration statistics on defendants proceeded against

Defendants proceeded against for offences under Immigration Acts 1971 to 2009 in England and Wales

Year	Magistrates' courts		The Crown Court	
	Proceeded against	Found guilty	For trial	Found guilty
2016	557	84	447	356
2017	491	57	389	300
2018	294	58	299	238

Source: [Table pr 01, 9. Detention data tables.](#)

## Annex G: Good practice examples

### Ask for Angela

'Ask for Angela' is a safety campaign that gives someone in a pub or club who feels unsafe or threatened a way to ask staff discreetly for help. Staff could then call for a taxi, take the person to a safe place or help them to leave discreetly. The campaign was designed to reduce sexual violence and vulnerability.

This initiative was mentioned a few times in interviews during the fieldwork and it was suggested that something similar would be useful for victims with insecure immigrant status. The need for a safe reporting mechanism was also highlighted by Step Up Migrant Women in their previously quoted research.<sup>87</sup>

### BAWSO

BAWSO is a Welsh organisation that provides specialist services for people who are affected by or are at risk of domestic abuse. This includes all forms of violence, such as female genital mutilation, forced marriage, honour-based violence, human trafficking and modern slavery.

We were told during interviews with North Wales Police that they rely heavily on BAWSO's expertise to support victims and witnesses of crime with insecure immigration status.

During the focus group of third sector specialist support agencies, we were told that victims and witnesses with insecure immigration status have the most positive outcomes when a specialist support agency is engaged at the beginning and can support the victim throughout the process, from first reporting.

### Domestic violence disclosure scheme

In 2013, Essex Police introduced a domestic violence disclosure policy which allows people to ask the police for information about a current or previous partner's violent past. This was introduced as part of a wider programme of work to prevent people becoming victims of crime and to improve the force's response to domestic abuse.

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<sup>87</sup> *The Right to be Believed: Migrant women facing Violence Against Women and Girls (VAWG) in the 'hostile immigration environment' in London*, McIlwaine, C., Granada, L., Valenzuela-Oblitas, I., King's College London and The Latin American Women's Rights Service, May 2019.

## **Saheli project**

The Saheli project supports Asian women to get away from violent domestic abuse situations. It provides an environment that is safe, culturally familiar and helps them decide about their next steps.

The super-complaint refers to the positive working relationship the Saheli project has with Greater Manchester Police and states the police regularly refer victims to Saheli for support.

We are aware there are other organisations offering similar support around England and Wales.

## **Victim navigators**

The victim navigator role is part of a two-year pilot programme testing the effectiveness of having Justice and Care Victim Navigators working in several police forces in England. Their role is to broker and manage contact with victims of human trafficking and to bridge the gap between victims and law enforcement. The programme is being piloted by Surrey, Essex, Kent and Greater Manchester police forces and by Border Force at Glasgow Airport.

## Annex H: Definitions and interpretations

Term	Definition
Authorised Professional Practice (APP)	official source of professional practice on policing, developed and approved by the College of Policing, to which police officers and staff are expected to have regard in the discharge of their duties
criminalisation	in relation to a person, the process by which it is established that he or she has committed an offence
domestic abuse	behaviour of a person ('A') towards another person ('B') if – (a) A and B are each aged 16 or over and are personally connected to each other, and (b) the behaviour is abusive; behaviour is 'abusive' if it consists of any of the following – (a) physical or sexual abuse; (b) violent or threatening behaviour; (c) controlling or coercive behaviour; (d) economic abuse; (e) psychological, emotional or other abuse; and it does not matter whether the behaviour consists of a single incident or a course of conduct; (Domestic Abuse Bill 2020 Part 1 clause 1)
female genital mutilation	procedure where the female genitals are deliberately cut, injured or changed, without medical reason; the practice is illegal in the UK and is an internationally recognised human rights violation; also known as 'female circumcision' or 'cutting', and by other terms
firewall	measures to separate immigration enforcement activities from public service provision, labour law enforcement and criminal justice processes to protect victims of crime; may be implemented by states and non-state actors to ensure that persons of irregular status are not denied their human rights; firewalls are designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools and other social service institutions; firewalls ensure that such institutions do not have an obligation to inquire or provide information about their clients' immigration status (UN

Term	Definition
	Office of the High Commissioner for Human Rights Committee on Economic, Social and Cultural Rights) <sup>88</sup>
forced marriage	marriage conducted without the valid consent of one or both parties
Home Office National Command and Control Unit	the Home Office's 24 hours a day, seven days a week point of contact for police
honour-based violence	collection of practices used predominantly to control the behaviour of women and girls within families or other social groups to protect supposed cultural and religious beliefs, values and social norms in the name of 'honour'; honour-based violence incidents and crimes include specific types of offence, such as forced marriage and female genital mutilation, and acts that have long been criminal, such as assault, rape and murder; we use the term to refer to the full range of incidents and crimes that perpetrators carry out under the guise of maintaining or protecting perceived 'honour'
hostile environment	series of policy interventions by the Home Office intended to make staying in the UK as difficult as possible for people without leave to remain; it is now known as the 'compliant environment'
human trafficking	unlawful act, contrary to section 2 of the Modern Slavery Act 2015, of arranging or facilitating the travel of another person ('V') with a view to V being exploited; it is irrelevant whether V consents to the travel; the travel may be within a single country or across one or more international borders; the offence includes recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V; for these purposes, exploitation includes (a) slavery, servitude and forced or compulsory labour; (b) sexual exploitation; (c) removal of organs; and (d) securing services, work or benefits by force, threats or deception

<sup>88</sup> [Principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#), UN Office of the High Commissioner for Human Rights, Global Migration Group, Draft February 2017.

Term	Definition
immigration status <sup>89</sup>	one of three types of status that may be held by an immigrant; immigrants to the UK may be granted leave to remain (legal status), be without leave to remain (illegal status) or be of uncertain/insecure immigration status
immigration status: insecure or uncertain	<p>classification given to someone whose immigration status has yet to be determined; a person may have insecure or uncertain immigration status if:</p> <ul style="list-style-type: none"> <li>• they have entered the country legitimately on a spouse or other family visa, as the spouse of a British citizen, and there is a change to the relationship upon which their immigration status is dependent;</li> <li>• they have entered the country illegally with facilitation by a human trafficker in the expectation of legitimate status but are then subject to labour exploitation and other abuse;</li> <li>• they have entered the country legally, as the dependant of a British or European Economic Area (EEA) citizen, but later separated for a variety of possible reasons; or</li> <li>• they are liable to be removed and remain in the country without leave, but it is not presently administratively possible to effect their removal</li> </ul>
immigration status: no leave to remain	<p>classification given to someone whose legal immigration status has lapsed or has always been illegal; a person can become an immigrant without leave to remain in the UK in several ways, including by:</p> <ul style="list-style-type: none"> <li>• entering the country in a clandestine way, such as being smuggled in on a lorry;</li> <li>• entering the country by evading immigration control or through use of deception;</li> <li>• entering the country in breach of a deportation order or exclusion order;</li> <li>• entering the country from the common travel area without being eligible;</li> <li>• being a crew member (deserter) who entered the country on a deemed condition that they leave with that ship but failed to do so;</li> </ul>

<sup>89</sup> For further information, see: [Liability to administrative removal \(non-EEA\): consideration and notification v3.0](#), Home Office, 6 April 2017.

Term	Definition
	<ul style="list-style-type: none"> <li>entering the country legally, either for a short visit or for work, study or family reasons, and then subsequently remaining after permission to remain has expired; and</li> <li>failing to leave the country after a claim, and often also an appeal, for asylum has been rejected</li> </ul>
Information Commissioner's Office	office of the Information Commissioner, a statutory position under section 114 of the Data Protection Act 2018, responsible for enforcing data protection and freedom of information legislation in the UK
judicial review	judicial process in which the High Court determines whether a legal standard applicable to the actions (or failures to act) of a body exercising public functions has been met; the tests applied are whether the body in question has acted lawfully, rationally and in a procedurally fair manner; if the court decides that the relevant standard has not been met, it will usually quash the decision in question and remit the matter back to the decision-maker who must remedy the defect, usually by starting again; judicial review is not a review of the merits of a decision
memorandum of understanding	document that records the details of an understanding between two persons (usually corporate persons); it is usually not a contract and not legally enforceable, unless the parties intend to make it so
modern slavery	slavery, servitude and forced or compulsory labour; a person commits an offence of modern slavery if – (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour; (Modern Slavery Act 2015, section 1)
multi-agency risk assessment conference (MARAC)	in relation to domestic abuse, a locally held meeting where statutory and voluntary agency representatives share information about people at high risk of domestic abuse; the aim of the meeting is to produce a co-ordinated action plan to increase an adult or child's safety, health and wellbeing; any agency can refer an adult or child they believe to be at high

Term	Definition
	risk of harm; agencies that attend vary, but are likely to include the police, probation, health and housing services
multi-agency safeguarding hub	unit bringing together the main local safeguarding agencies to better identify risks to children (and, in some areas, vulnerable adults) and improve decision-making, interventions and outcomes
National Police Chiefs' Council (NPCC)	co-ordinating body that enables independent chief constables and their forces to work together to improve policing for the public; it works closely with the College of Policing to develop joint national approaches on issues such as criminal justice, value for money, service transformation, information management, performance management and technology, as well as staff and human resource issues (including misconduct and discipline); it is not a legal entity and has no statutory powers; it replaced the Association of Chief Police Officers on 1 April 2015
National Referral Mechanism	framework for identifying and referring potential victims of modern slavery so that they get the right support; used by the police to notify the Home Office about any suspected victims of modern slavery they encounter in England and Wales
Police National Computer (PNC)	computer system used extensively by the police and other UK law enforcement organisations; it consists of several databases available 24 hours a day; it gives access to real-time information of national and local significance and links in with the European-wide IT system (Schengen Information System [SIS II]), which enables all participating member states to share real-time information via a series of alerts; information held on the PNC allows police forces to carry out checks – for example, on a person's criminal record or vehicle registration
safeguarding	protection of an individual's health, wellbeing and human rights, and enabling them to live free from harm, abuse and neglect
victim	in relation to an alleged or suspected criminal offence, the person who – (a) says they are the person against whom that offence was or may be committed; or (b) is said or considered

Term	Definition
	by another person to be the person against whom that offence was or may be committed <sup>90</sup>
weaponisation	act of making something into a weapon or making it more effective as a weapon; Amnesty International UK (referred to in paragraph 72 of the Liberty and Southall Black Sisters' super-complaint) describes weaponisation of immigration status as a "tool to control victims and continue the abuse"
Windrush generation	people who were invited to the UK between 1948 and 1971 from Caribbean countries; named after the ship on which the first migrants arrived, HMT <i>Empire Windrush</i> , at Tilbury in Essex on 22 June 1948

<sup>90</sup> In most cases where there is a potential immigration enforcement element, the relevant criminal investigation will not have been completed; it may even not yet have been started. An investigation may conclude that, in the particular circumstances of the case, no crime has been committed, or the suspect is not the true offender. In using this term, there is no suggestion that the fundamental criminal justice principle of the presumption of innocence of a suspect or accused person is being disregarded. The use of the term 'victim' in this report should be seen in that light.

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