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Information Sharing Between Police Forces and Home Office

The briefing should not be relied upon as legal or professional advice (or as a substitute for these) and a suitably qualified professional should be consulted if specific advice or information is required.

1 Introduction

This Briefing Note has been prepared for the Committee for Justice in the context of its consideration of the Domestic Abuse and Family Proceedings Bill. In the evidence received by the Committee, the position of migrants who are victims of domestic abuse but who due to their insecure immigration status were fearful of reporting the crime was raised.

According to the Scottish Parliament's Equalities and Human Rights Committee/Comataidh Co-ionannachd agus Còraichean Daonna, people with 'insecure immigration status' can mean someone is waiting for a decision from the Home Office on permission to stay, where, for example:

- their status is dependent on a partner, spouse or other family member;

- their stay in the UK is limited;
- someone is undocumented; or
- they have no legal right to be in the UK, but might secure their legal status if supported to do so.¹

This briefing paper addresses the nature of the arrangements which govern the sharing of information between police forces, including the PSNI, and the Home Office, where a victim or witness of crime is a suspected immigration offender. The paper notes that a ‘super-complaint’ regarding this information sharing is currently under consideration.

In the remaining sections the paper highlights a number of suggested policy responses, which seek to create a ‘safe reporting’ environment and which have been identified from comparative research,. The paper also notes that any policy or legislative responses to create such an environment may cut across a complex mix of devolved and reserved matters.

2 National Police Chiefs’ Council Guidance

In April 2020, the National Police Chiefs’ Council (NPCC) approved revised guidance addressing ‘Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender’. This policy document sets out the approach that police officers and civilian staff should take with respect to sharing information with the Home Office where they suspect that a victim /witness of crime is also an immigration offender. The document states that:

Guidelines produced by the NPCC should be used by chief officers to shape police responses to ensure that the general public experience consistent levels of service. The implementation of all guidance will require operational choices to be made at local level in order to achieve the appropriate police response.²

The NPCC together with the College of Policing agreed to these revised guidelines being circulated to, and adopted by, police forces in England, Wales & Northern Ireland. The guidance highlights that sharing information on an individual may assist the police and Home Office in the discharge of their respective functions and that there is a clear public interest in a joined up approach to upholding the law.

The guidance does not appear to identify any specific statutory requirement for the sharing of information on a victim’s immigration status. It does, however, set out a

¹ Equalities and Human Rights Committee/Comataidh Co-ionannachd agus Còraichean Daonna Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiC_3rd_Report_2017.pdf [accessed 26/08/2020]

² The National Police Chiefs’ Council (April 2020) Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender. https://www.npcc.police.uk/Guidance%20on%20Info%20Sharing%20with%20Home%20Office_Website%202020.pdf [accessed 26/08/2020]

number of lawful bases for doing so. This includes by section 20 of the Immigration and Asylum Act 1999 and common law powers that enable sharing of information between the police and other public bodies, where it is in the public interest to do so in pursuit of the police's functions and functions of the body with whom the information is being shared. The guidance recognises that a victim's immigration status may make them more vulnerable to perpetrators of crime and notes that:

A person's cultural background or immigration status may make them more vulnerable to domestic abuse and create barriers to leaving an abusive partner. Possible issues a victim may face include the fact that: ...they may have an insecure immigration status and fear contact with the authorities.

A previous version of the guidance has been subject to a super-complaint, the consideration of which is ongoing.

3 Super-complaint prepared by Liberty and Southall Black Sisters

A super-complaint is a complaint made by a designated body 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).³ Details of a super complaint prepared by Liberty⁴ and Southall Black Sisters⁵ was published in December 2018. The complaint regards:

...the policies and practices of all police forces in England and Wales with respect to the treatment of victims of crime and witnesses who have insecure immigration status. In particular, the passing on of their data to the Home Office, for the purpose of immigration enforcement.⁶

The introduction to the super-complaint states that:

The purpose of this super-complaint is to raise our serious concerns regarding the policies and practices of all police forces in England and Wales with respect to the treatment of victims of crime who have insecure immigration status, with particular focus on the passing on of their data to the Home Office, for the purpose of immigration enforcement and an entrenched culture of prioritising immigration control over public safety and fair treatment of victims. We ask that

³ Guidance – Police Super-complaints <https://www.gov.uk/guidance/police-super-complaints#super-complaints> [accessed 26/08/2020]

⁴ The National Council for Civil Liberties ("Liberty"), founded in 1934, describes itself as an independent membership organisation which is at the heart of the movement for fundamental rights and freedoms in England and Wales.

⁵ Southall Black Sisters ("SBS") is a specialist women's organisation founded in 1979 for black and minority ethnic ("BME") women.

⁶ Super-complaint made by Liberty and Southall Black Sisters about the police sharing immigration data. <https://www.gov.uk/government/publications/police-data-sharing-for-immigration-purposes-a-super-complaint> [accessed 26/08/2020]

this issue be investigated as we consider this to be a) arguably unlawful and/or b) causing significant harm to the interests of the public.

Whilst these observations relate to previous versions of guidance, it may be worth noting that the super-complaint highlights that it is unclear what status this guidance has or whether it has, in fact, been adopted by all police forces.

The evidence submitted as part of the super-complaint focused largely on female victims of domestic and sexual abuse and violence. The complaint highlights, however, that the issues raised in the complaint are no less relevant to victims, and witnesses, of other crimes. Summarising ‘two interlinked and profoundly concerning trends’ which the organisations argue are plain from the evidence submitted, the complaint highlights:

- (i) the prioritisation of immigration enforcement over victim protection such that the assailants are not pursued even after being reported; and
- (ii) the ‘weaponisation’ of immigration status by perpetrators of such crimes.

The complaint further puts forward that these issues demonstrate that the police's conduct in sharing the data of victims is significantly harming the interests of the public and creating a culture of impunity for perpetrators of crime. A complete firewall between the police and immigration authorities, the complaint notes, is the only satisfactory and complete solution to the problem.

Her Majesty's Chief Inspector of Constabulary and senior representatives from the Independent Office for Police Complaints and the College of Policing have assessed the super-complaint as being eligible for investigation and it is now being investigated.

3 Safe Reporting

The University of Oxford's Centre on Migration, Policy and Society (COMPAS) has recently led a transatlantic project focusing on ‘*safe reporting of crime for victims and witnesses with irregular migration status in the United States and Europe*’. The project provides evidence on the situation of irregular migrants who are victims and witnesses of crime, and their possibilities in law and practice to report crime ‘safely’, in the United States, Belgium, Italy, Spain and the Netherlands. The report highlights the role that ‘Victim Visas’ and ‘Firewalls’ can play in safe reporting and states that:

We found that the most common solution adopted in national laws is *relief from immigration enforcement for victims of certain crimes*, through the issuance of special visas or the suspension of immigration enforcement proceedings for victims (as in Spain where immigration proceedings are automatically suspended for victims reporting domestic violence). ‘Victim visas’ are, however often restricted to limited circumstances (as in Belgium, where visas are only offered to victims of trafficking or ‘smuggling with aggravating circumstances’). In most cases these visas are only used as law enforcement tools, so that

victims cannot autonomously apply, but instead depend on prosecutors' discretion to request a visa. In other cases, however, these visas can have a significantly wider scope, as in the United States where victims of a comprehensive list of qualifying crimes can apply for a 'U visa' – a measure that in the last decade has allowed at least 85,000 victims to find the confidence to cooperate with the police.

In other cases, safe reporting is operated through '*firewalls*', i.e. measures preventing those responsible for receiving crime reports from communicating the details of victims to immigration enforcement authorities. The only country found to operate a national 'firewall policy' was the Netherlands with the '*free in, free out*' policy, which (in principle) prevents regular duty police officers from inquiring the migration status of people who report crime, and communicating the details of victims to the 'AVIM', the police division responsible for immigration enforcement.⁷

In July 2020, a post on the COMPAS blog noted that:

On 24 June this year, the European Commission presented the first-ever 'EU Strategy on the rights of victims of crime'⁸ with the aim of ensuring that all victims can fully rely on their rights in Europe. Following consultations with COMPAS researchers and building on COMPAS research, the strategy officially recognized the need to assess tools ensuring access to 'safe reporting of crime' for victims with irregular migration status at EU and national level.⁹

4 Concluding comments

It would appear that there is no specific legal requirement on police forces in the UK to share information with the Home Office where a victim or witness of crime is a suspected immigration offender. This sharing of information is, however, addressed in guidance, which appears to have been adopted by the PSNI. This guidance does not appear to identify any specific statutory requirement for the sharing of information on a victim's immigration status but it does identify a number of lawful bases for doing so.

An earlier version of this guidance is subject to a super-complaint which asserts, on the basis of evidence provided, that the police's conduct in sharing the data of victims is '...significantly harming the interests of the public and creating a culture of impunity for perpetrators of crime'. The complaint notes that a complete firewall between the police

⁷ <https://www.compas.ox.ac.uk/2019/when-a-crime-victim-is-an-irregular-migrantsafe-reporting-of-crime-or-leap-of-faith/> [accessed 26/08/2020]

⁸ European Commission (24 June 2020) 'EU Strategy on victims' rights (2020-2025)' COM(2020) 258 final https://ec.europa.eu/info/sites/info/files/law/2_en_act_part1_v10.pdf [accessed 26/08/2020]

⁹ Nicola Delvino (24 July 2020) New EU strategy acknowledges need for 'safe reporting' measures for all victims regardless of status <https://www.compas.ox.ac.uk/2020/new-eu-strategy-for-crime-victims-acknowledges-need-for-safe-reporting-measures-for-all-victims-regardless-of-status/> [accessed 26/08/2020]

and immigration authorities is the only satisfactory and complete solution to the problems it raises. The super-complaint, which relates only to police forces in England and Wales, is currently being considered by HMICFRS, the College of Policing and the IOPC, who will together decide what (if anything) needs to happen as a result of the super-complaint

Recently conducted comparative research highlights the role that ‘Victim Visas’ and ‘Firewalls’ can play in creating a safe reporting environment for those with an irregular immigration status. Responsibility for policies such as these and the legal bases underlying the sharing of information between police forces and the Home Office appear to extend across a number of categories of legislative power.

Under the Northern Ireland Act 1998, there such categories of legislative power exist: transferred, excepted and the intermediate category of reserved. Excepted matters are subjects reserved to Westminster which will not be transferred unless via primary legislation.¹⁰ Whilst policing and justice are transferred (devolved) matters, ‘Nationality; immigration, including asylum’ are excepted matters.¹¹

In this context, it is perhaps worth noting that, when addressing issues relating to immigration and asylum, the Scottish Parliament’s Equalities and Human Rights Committee has recognised the limitations on its powers to legislate in this sphere and that it would not be appropriate for it to make recommendations directly to the Home Office. However, the Committee has in the past asked the Scottish Government to intensify its negotiations with the Home Office on certain matters related to immigration and asylum.¹²

¹⁰ House of Commons Library Briefing Paper (April 2019) Reserved matters in the United Kingdom (Number CBP 8544) <https://researchbriefings.files.parliament.uk/documents/CBP-8544/CBP-8544.pdf> [accessed 26/08/2020]

¹¹ Northern Ireland Act 1998 – Schedule 2 – Excepted Matters paragraph 8. Nationality; immigration, including asylum and the status and capacity of persons in the United Kingdom who are not British citizens; free movement of persons within the European Economic Area; issue of travel documents. <https://www.legislation.gov.uk/ukpga/1998/47/schedule/2> [accessed 27/08/2020]

¹² Equalities and Human Rights Committee/Comataidh Co-ionannachd agus Còraichean Daonna Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiC_3rd_Report_2017.pdf [accessed 26/08/2020]