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HOSTILE ENVIRONMENT DATA-SHARING: WHY WE NEED A FIREWALL BETWEEN ESSENTIAL PUBLIC SERVICES AND IMMIGRATION ENFORCEMENT

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INTRODUCTION

INTRODUCTION

DATA AND THE HOSTILE ENVIRONMENT

“By asking doctors, teachers and the police, whose principal duty is not to investigate and suppress migrants, to pass data on to the Home Office for immigration enforcement, the government are turning public servants into undercover informants. We have seen migrants deterred from getting the support they need. We have seen Grenfell survivors unable to come forward because of potential Home office reprisals. It feels as if we are descending towards a police state.” – Kasonga, Freed Voices

“Let the Home Office do its job, but don’t tell us we have a universal right to access these services, and then use whatever data those services have to persecute me or deport me.” – Myriam Bell, Violence Against Women Support & Prevention Coordinator, LAWRS

The Government’s use of data in the context of its “hostile environment”¹ for migrants tells us a cautionary tale. The hostile environment is a sprawling web of immigration controls operating far from ports and border controls and in the heart of our public services and communities. Its effects

¹ James Kirkup and Robert Winnett, Theresa May interview: ‘We’re going to give illegal migrants a really hostile reception’ May 2012 <http://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>

reverberate well beyond the Government’s stated target group to affect migrants with regular status, and black and minority ethnic (BAME) communities. Requirements on public servants and private citizens to check people’s entitlements to goods and services, as well as the racially discriminatory impacts routinely felt by people who are subjected to the checks, damages the very fabric of the society we live in. Public servants and landlords, employers and bank clerks have come to view people they should support with suspicion, and especially BAME people of all immigration statuses, as measures such as skin colour and ‘foreign-sounding names’ become a crude proxy for immigration status. In turn, trust in essential public services is undermined, undocumented people are made destitute and vulnerable to exploitation, and each of us is conditioned to show ID and have our interactions with the State logged in the course of mundane interactions.

In the context of a hostile environment, many aspects of the lives of undocumented migrants, such as working or driving, or simply being present in the UK without the requisite permission, are criminalised, primarily by sections 24 and 24A of the Immigration Act 1971, as amended by more recent measures such as the Immigration Act 2016. These offences include knowingly entering the UK without leave; overstaying leave; failure to observe reporting conditions; obtaining leave to enter or remain by deception, and avoiding immigration enforcement by deception.

The Government relies heavily on the existence of these criminal offences coupled with the crime exemption set out at Schedule 2, paragraph 2 of the Data Protection Act 2018

(formerly Section 29 of the Data Protection Act 1998) in conjunction with a mix of statutory and common law powers to share data, to operate a series of bulk data-sharing agreements. These agreements see confidential personal information collected by essential public services shared with Home Office immigration enforcement teams, all too often **without a person having the right to know about this sharing, or to consent or object to it.**

Known bulk data-sharing schemes currently operate, or have until recently operated, between:

- the Home Office, the Department for Health and Social Care (DHSC) and NHS Digital with respect to patient medical records;² (withdrawn November 2018);
- the Home Office and the Department for Education (DfE) with respect to children's school records;³
- the Home Office and Cifas (an anti-fraud agency) with respect to bank accounts;⁴
- the Home Office and the DVLA with respect to driving licences;⁵

2 Memorandum of Understanding Between Health and Social Care Information Centre and the Home Office and the Department of Health 27 September 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf

3 Memorandum of Understanding Between The Home Office And Department for Education In Respect of the Exchange Of Information Assets 7 October 2016 http://defenddigitalme.com/wp-content/uploads/2016/12/20161016_DfE-HO-MoU-redacted-copy.pdf

4 Cifas is a third sector organisation that holds the UK's largest anti-fraud database. A data-sharing agreement between it and the Home Office is referenced at paragraph 2.6 in Independent Chief Inspector of Borders and Immigration (ICIBI), *An inspection of the 'hostile environment' measures relating to driving licences and bank accounts* October 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567652/ICIBI-hostile-environment-driving-licences-and-bank-accounts-January-to-July-2016.pdf

5 ICIBI *An inspection of the 'hostile environment' measures relating to driving licences and bank accounts* October 2016. *ibid.*

- the Home Office, the Department for Work and Pensions (DWP) and HMRC⁶ with respect to employment records and welfare benefits, including child maintenance.

Bulk data-sharing agreements between the Home Office and other Government departments are not the only issue. It was revealed in 2017 that the Greater London Authority (GLA) also shared aggregated, sensitive personal data collected by homelessness outreach services with the Home Office in the form of a map showing the location of non-UK rough sleepers, to facilitate immigration enforcement against them.⁷ The homelessness charity St Mungo's is also likely to have passed data on individual rough sleepers to the Home Office for immigration enforcement.⁸

Local authorities employ embedded immigration officers who sit in on interviews with children and families when they apply for support from the local authority under Section 17 of the Children's Act; reportedly to "conduct real-time immigration status checks" on applicants.⁹ And over half of police forces have reported sharing data on victims of crime with the Home Office.¹⁰

6 Agreements obtained by Liberty and journalists through FOI request, and referenced in Vice Magazine: Simon Childs, *Theresa May's 'Anti-Slavery' Agenda Is About Deporting Migrants* 21 September 2017 https://www.vice.com/en_uk/article/8x8qbw/theresa-mays-anti-slavery-agenda-is-about-deporting-migrants

7 Agreement obtained through FOIA by Liberty and reported on by The Observer: Mark Townsend, *Home Office used charity data map to deport rough sleepers* 19 August 2017 <https://www.theguardian.com/uk-news/2017/aug/19/home-office-secret-emails-data-homeless-eu-nationals>

8 Diane Taylor, *Charity may have shared rough sleepers' data without consent, watchdog finds* <https://www.theguardian.com/society/2018/sep/21/st-mungos-is-likely-to-have-given-home-office-data-on-rough-sleepers-information-commissioner>

9 Edward Siddons and Niamh McIntyre, *Home Office staff sit in on council interviews with migrant families* 28 October 2018. <https://www.theguardian.com/uk-news/2018/oct/28/home-office-staff-sit-in-on-council-interviews-with-migrant-families>

10 Catrin Nye, Natalie Bloomer and Samir Jeraj, *Victims of serious crime face arrest over immigration status* 14 May 2018 <https://www.bbc.co.uk/news/uk-44074572>

These agreements and practices have shared features. They operate to facilitate Home Office demands for personal data from specific agencies, namely up-to-date contact details – most often addresses – for people who are suspected of committing an offence under immigration laws which criminalise mundane daily activities (NHS Digital/DHSC, DfE, Cifas, DWP/HMRC).

They may also make provision for an agency to check a person's immigration status with the Home Office when they attempt to access a good or a service, and provide up-to-date contact details to the Home Office when informed that a person is not entitled, or owes a debt to the service (Cifas, DVLA, DWP/HMRC, DHSC).

Some of these practices have been curtailed or suspended. In May 2018 the health data-sharing agreement relating to addresses was suspended in the face of a parliamentary rebellion and ongoing legal action, following a concerted campaign from civil society and the Chair of the Health Committee to end it.¹¹ NHS Digital subsequently withdrew from it entirely in November 2018 in response to a legal challenge brought by the Migrants' Rights Network, represented by Liberty. In July 2018 the Home Secretary Sajid Javid further confirmed that he would pause some of the data-sharing agreements in the wake of the Windrush scandal – but only for three months and, even then, only in relation to people aged over 30.¹²

11 Margot James, *Data Protection Bill Report Stage debate* Hansard col.756 [https://hansard.parliament.uk/commons/2018-05-09/debates/CE43B0ED-87D3-4F63-B8A4-2A66964790C2/DataProtectionBill\(Lords\)](https://hansard.parliament.uk/commons/2018-05-09/debates/CE43B0ED-87D3-4F63-B8A4-2A66964790C2/DataProtectionBill(Lords))

12 *Correspondence between the Home Secretary and chair of the Home Affairs Select Committee* 10 July 2018 <https://www.parliament.uk/documents/commons-committees/home-affairs/Correspondence-17-19-Windrush-Home-Office-update-10-July-2018.pdf>

However, the majority of these practices continue. In most circumstances, people are not informed when they interact with frontline services that their data may be used for immigration enforcement purposes, not least because many (but not all) frontline workers are unaware of the existence of these data-sharing agreements. Their existence has been brought to light primarily through Freedom of Information Act (FOI) requests. Public awareness of them remains low, and parliamentary scrutiny of them has been negligible.

The Government clearly intended to reduce access to services as a result of its data sharing policies.¹³ At the same time, the impact of these data-sharing practices on undocumented migrants, BAME people, policy objectives distinct from immigration enforcement, and our public services, has been largely unexplored and unacknowledged by Government and policy-makers.

BEYOND THE HOSTILE ENVIRONMENT

However, a close look at hostile environment data-sharing does more than reveal how it facilitates human rights abuses in the context of immigration enforcement – it shows that it is a wider part of a concerning trend in State use of data. Despite ever more frequent reference to “the rise of data-driven [insert buzzword here]”, governments have always

13 In the NHS Digital/Home Office MOU, the government explicitly said that one of the purposes of the data sharing is to deny illegal immigrants “access to benefits and services to which they are not entitled (para 4.1). Likewise in the DfE/Home Office MOU one of the strategic aims is “to reduce the harm resulting from abuse of immigration control” and to “create a hostile environment for those who seek to benefit from the abuse of immigration control.”(para 15.2)

processed data. However, developments in technology make the collection, retention and linkage of large datasets much easier, and increase the scale and speed at which data can be analysed and shared between different processors. Data-sharing, matching and mining within and across Government departments, in conjunction with automated processing, is increasingly touted as an integral part of the solution to long-standing problems in a range of policy areas.

This trend can be starkly observed across Government policy in counter-terror, policing, and immigration enforcement. In its Serious Violence Strategy we see the Government call for even more data-sharing between emergency health departments, police, and Community Safety Partnerships (which may include health, educational, social and youth services).¹⁴ At the same time, the Metropolitan Police's 'Gangs Matrix'; a database which lists information about 'gang nominals' and is used to share information among a range of services including schools, job centres and housing associations, has been criticised on the grounds that it disproportionately affects young black men.¹⁵ The Matrix was very recently found to have breached data protection laws.¹⁶

14 Home Office *Serious Violence Strategy* April 2018 – pg. 73 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf

15 Amnesty International *Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database*. May 2018 https://www.amnesty.org.uk/files/2018-05/Inside%20the%20matrix.pdf?x_Q7G4ar5uHbWLAklmQ9NSuLFMzrwSq=

16 The Independent *Metropolitan police 'gangs matrix' breached data protection laws, investigation reveals*. 17 November 2018 <https://www.independent.co.uk/news/uk/crime/metropolitan-police-gang-matrix-data-protection-laws-ico-investigation-a8637871.html> and Information Commissioner's Office, *ICO finds Metropolitan Police Service's Gangs Matrix breached data protection laws*, 16 November 2018 <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/>

In the latest iteration of its counter-terror strategy, CONTEST, Government contends that “developments in artificial intelligence will allow us to filter and identify crucial information faster than ever.”¹⁷ It also states that “MI5 and Counter-Terrorism Policing will share information with a broader range of partners, including government departments, Devolved Administrations, and local authorities.”¹⁸

And in relation to immigration enforcement, civil servants have asserted that...

“Immigration enforcement is another area where we have more data available to us, and we are making more use of that data, and have plans to make more use of that.”¹⁹

“We are using more data wherever we can. One key element that that data enables us to do is to automate contact.”²⁰

Innovations in data processing are ostensibly deployed to support legitimate and important policy objectives such as keeping the public safe from serious violence and the prevention or detection of crime. Indeed, the Government

17 Home Office *CONTEST: The United Kingdom's Strategy for Countering Terrorism* June 2018 – para. 79 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf

18 Home Office *CONTEST: The United Kingdom's Strategy for Countering Terrorism* June 2018 – para. 89. *ibid.*

19 Patsy Wilkinson, Second Permanent Secretary to the Home Office, response to Question 64. Public Accounts Committee, Oral evidence: Brexit and the Borders, HC 558 20/11/2017 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/brexit-and-the-borders/oral/74070.html>

20 Patsy Wilkinson, Second Permanent Secretary to the Home Office, response to Question 68. Public Accounts Committee, Oral evidence: Brexit and the Borders, HC 558 20/11/2017. *ibid.*

frequently makes reference to “safeguarding” in its rationale for sharing data from essential public services with immigration enforcement²¹ (although corresponding evidence that any safeguarding ever takes place is very difficult to come by).

When such practices proliferate without due regard for fundamental rights or their effect on other policy objectives, they run the risk of being counter-productive and potentially even harmful to individual people or groups, and especially when they are deployed in support of policy frameworks that already interfere with human rights and risk discrimination. This is especially the case when increased data sharing and matching across Government departments helps to co-opt protective services such as health and education into ‘harder’ Government functions like policing and immigration enforcement. In such scenarios, important policy objectives such as the protection of public health, the prevention of trafficking and domestic violence, and promoting children’s education, as well as the fundamental rights they underpin, risk being severely undermined.

This report explores these themes by combining secondary research with interviews from frontline practitioners and

policy workers with expertise across a range of settings. It provides a sorely-needed outline of the broad impact of these data-sharing schemes on fundamental human rights and public policy objectives distinct from immigration enforcement. And as Government innovations in cross-departmental data processing grow, it sets out why a firewall – a commitment that personal data held by essential public services will not be shared with the Home Office for immigration enforcement purposes – is vital for ensuring that the core functions of our essential public services, and the fundamental rights that they underpin, are not sacrificed at the altar of immigration control – or any other policing and crime agenda.

21 *Memorandum of Understanding Between Health and Social Care Information Centre and the Home Office and the Department of Health* 27 September 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf and *Memorandum of Understanding Between The Home Office And Department for Education In Respect of the Exchange Of Information Assets* 7 October 2016 http://defenddigitalme.com/wp-content/uploads/2016/12/20161016_DfE-HO-MoU-redacted-copy.pdf



SUMMARY OF POLICY RECOMMENDATIONS

SUMMARY OF POLICY RECOMMENDATIONS

EDUCATION

1. The DfE should commit to a firewall between its data and Home Office immigration enforcement. It should withdraw from the tracing Memorandum of Understanding (MOU) and make a public commitment not to re-enter any similar agreement in the future.
2. The DfE should delete nationality and country of birth data collected 2016 – 2018, which was collected from children and families effectively under false pretences and not for an educational purpose.
3. The Government should make provision for children with No Recourse to Public Funds (NRPF) who are living in poverty or destitution to access free school meals.

POLICING

4. Police forces should prioritise the investigation and prevention of more serious crimes over immigration offences.
5. Individual police forces should commit to, and rapidly implement, a firewall between their interactions with victims and witnesses of crime and the data they hold on them, and Home Office immigration enforcement. They should not refer victims or witnesses of crime to the Home Office for immigration enforcement purposes.
6. The National Police Chiefs Council (NPCC) should issue standard guidance to all forces setting out what they should do when they encounter an undocumented victim or witness of crime, stipulating that they should not refer them to immigration enforcement.
7. The Home Office and police should significantly reduce their collaboration for immigration enforcement purposes. Infrastructure in police stations that undermines safe reporting of crime by undocumented victims and witnesses, including immigration officers in custody suites, should be dismantled.
8. The Government should approach undocumented immigration as a civil, rather than a criminal matter. The low-level immigration offences set out at Appendix A should be repealed.

HEALTH

9. The Home Office and the DHSC should end the practice of charging migrants for healthcare, and associated data-sharing practices.
10. The Home Office should destroy and not use for any purpose the information obtained from the Secretary of State for Health or NHS Digital under the terms of the now defunct MOU.
11. NHS Digital and the DHSC should commit to a firewall between personal data that they hold on patients and Home Office immigration enforcement.

DATA PROTECTION

12. The Government should amend the Data Protection Act 2018 to remove the 'immigration control' exemption set out at Schedule 2, Part 1, paragraph 4.
13. The Government should amend the Data Protection Act 2018 to stipulate that decisions by public authorities based on automated processing that engage human rights should not be permitted without meaningful human oversight and appeal mechanisms for such decisions.
14. The Government should make public its current use of decisions based on automated processing in the immigration context, and consult publicly on any further plans to introduce decisions based on automated processing into the immigration system.
15. The Government should reinstate immigration legal aid and appeal rights, as well as introducing internal quality assurance mechanisms into the Home Office to improve the quality of initial decisions on immigration claims.

EDUCATION



EDUCATION

CURRENT PRACTICE

Tracing

In December 2016 it emerged²² that for over a year the DfE had been party to a secret agreement²³ to share data from the National Pupil Database, collected through the School Census, with the Home Office for immigration enforcement purposes – which is still in force. The agreement envisages that the personal information of up to 1500 children will be shared each month in cases where the Home Office has lost contact with them or a family member, suspects that an immigration offence has been committed, and believes the child and/or family member is still in the UK.

The DfE in December 2017 for the first time ever published statistics on external data shares, including with the Home Office.²⁴ That document shows that between July 2015 and September 2017, the Home Office requested the records of 4296 people from the DfE for purposes of trying to trace the

locations of people suspected of being undocumented. For the same time period, 1051 records were transferred by the DfE to the Home Office. In 24.5% of cases in which a tracing request was made information was transferred by the DfE to the Home Office. It is not set out in the spreadsheet in how many of those 1051 cases, the data transferred by the DfE was data that the Home Office did not already hold, i.e. in how many cases the MOU actually resulted in the Home Office obtaining an address that it did not already have. The DfE is not under any obligation to share children's data with the Home Office for immigration enforcement purposes.

FOI requests show that this agreement is still in force, and has not been updated to take account of the new Data Protection Act 2018.²⁵

The use of children's school records for immigration enforcement purposes is likely to continue, if not intensify, facilitated by a new immigration control exemption to data protection rights in the Data Protection Act 2018. During the Committee Stage debate in the House of Commons, Government minister Victoria Atkins stated when asked how the Government planned to use the exemption:

“There may be occasions when there is a person we have lost track of whose status is irregular. If we know they have a child, we will seek from the Department for Education assistance to find the whereabouts of the

22 Damien Gayle, *Pupil data shared with Home Office to 'create hostile environment' for illegal migrants*, 15 December 2016 <https://www.theguardian.com/uk-news/2016/dec/15/pupil-data-shared-with-home-office-to-identify-illegal-migrants>

23 *Memorandum of Understanding Between The Home Office And Department for Education In Respect of the Exchange of Information Assets*, published December 2016 https://www.whatdotheyknow.com/request/377285/response/941438/attach/5/20161016%20DfE%20HO%20MoU%20redacted.pdf?cookie_passthrough=1

24 Department for Education, *External organisation data shares*, December 2017 <https://www.gov.uk/government/publications/dfe-external-data-shares>

25 Amelia Gentleman, *Home Office urged to go further with suspension of hostile environment* 12 July 2018 <https://www.theguardian.com/uk-news/2018/jul/12/home-office-urged-to-go-further-with-hostile-environment-suspension>

child. That child has not committed a criminal offence, so I would be very concerned to ensure that the Home Office, Border Force or whoever else acted lawfully when seeking that data in order to enable them to find the parent or whoever is the responsible adult, as part of the immigration system.”²⁶

Nationality and country of birth data

In September 2016, the DfE began requiring schools to request children’s nationalities and countries of birth through the termly school census. This data was initially going to be shared with the Home Office as part of the wider data-sharing scheme described above. The proposals to share nationality and country of birth data were dropped only in response to public outcry.²⁷ It later emerged that this data collection had been introduced as a compromise on harsher proposals which ultimately were not included in the 2015 Immigration Bill, which would have required schools to check a child’s immigration status prior to admission, and ‘deprioritise’ the children of undocumented migrants for school places.²⁸ While the nationality and country of birth data collection was ultimately scrapped in response to a public campaign and litigation by Against Borders for Children, the DfE is refusing to delete the nationality data that it collected between 2016

26 Victoria Atkins MP in *Data Protection Bill Committee Stage debate*, Hansard col. 72 https://publications.parliament.uk/pa/cm201719/cmpublic/DataProtection/PBC153_Combined_1-6_20_03_2018.pdf

27 Freddie Whittaker, *DfE had agreement to share pupil nationality data with Home Office* 15 December 2016 <https://schoolsweek.co.uk/dfe-had-agreement-to-share-pupil-nationality-data-with-home-office/>

28 John Dickens, *Nationality data was ‘compromise’ on Theresa May’s school immigration check plan* 1 December 2016 <https://schoolsweek.co.uk/nationality-data-was-compromise-on-theresa-mays-school-immigration-check-plan/>

and 2018, and retains the power to require schools to request this data in future.²⁹

Free school meals

NRPF is a condition applied to a range of people who are subject to immigration control – from undocumented migrants, to people who are waiting for the outcome of an appeal.³⁰ This means that they can’t access mainstream forms of state support, such as Universal Credit and social housing. A child’s ability to access free school meals is tied to their parents’, or their own eligibility for mainstream state support. Children in families with NRPF are therefore excluded from receiving free school meals, even though they are often living in poverty or destitution and in need of support. A local authority may use an ‘eligibility checking service’ to verify a child’s eligibility for free school meals using Home Office, HMRC and DWP data.³¹

THE IMPACT OF EDUCATION-RELATED HOSTILE ENVIRONMENT MEASURES

Impact on migrants

One of the starkest impacts that interviewees ascribed to tracing is its deterrent effect on children and families accessing education.

29 Freddie Whittaker, *DfE ends divisive pupil nationality data collection* 9 April 2018 <https://schoolsweek.co.uk/dfe-ends-divisive-pupil-nationality-data-collection/>

30 Liberty *Guide to the Hostile Environment* April 2018 – pg.37 [https://www.libertyhumanrights.org.uk/sitesdefault/files/HE%20web.pdf](https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf)

31 Department for Education *School census 2017 to 2018 Guidance v1.8* – para. 5.3.6.4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708550/2017_to_2018_School_Census_Guide_V1_8.pdf

“A client of mine whose visa had expired had a child in school. And the teacher said to her *“You’re actually not allowed to stay in this country, so why are you asking for free school meals for the child? You aren’t entitled because you’re an overstayer and you shouldn’t actually be here.”* The treatment that people with NRPF get compared to British citizens or other nationals is marked. And that again ingrains this idea that there is a two-tier set of support structures that exist, and legalises direct discrimination. And obviously some attitudes are just horrible. It has a big impact on the children and families’ mental health to be viewed as outsiders by schools and other public services. They feel ostracised in an environment that is supposed to be welcoming and is supposed to support them in any way it can.” – Praxis

“The system is designed in such a way that teachers are complicit in this, and they might not be aware, but they are. They end up aiding a system that destroys families, but will also push families underground, because as soon as the parents become aware of the data-sharing they’ll start distrusting the teachers and staff of the school and probably remove the children from the school and move somewhere else, or just remove them from school.”
– Myriam Bell, Violence Against Women Support & Prevention Coordinator, LAWRS

Interviewees were keen to make clear that the impact of a child not being in school could not be expressed purely in terms of educational attainment, but also in terms of their ability to participate in the wider life of the community.

“We work with trafficked children and a lot of the young people that we support very likely did not have access to education for a long period of time, so as they become adults they see all their possibilities limited in life, so they’ll have a really hard time accessing higher education, accessing most job opportunities. Their career path is very limited because of all those years that they never had the opportunity and education was denied to them. Children risk being siphoned off into other irregular structures and networks because of fear of immigration enforcement in an educational setting.” – Laura, Senior Policy, Research and Practice Officer, ECPAT UK

“For all children, it’s right that they are in school if possible, because that’s where they socialise and get to know other kids that they wouldn’t otherwise from outside the family group. We believe in children’s right to an education not just because of strict educational qualifications, but also their participation in the social and wider life of the school and the community. It’s really important. If they are deterred from accessing education, they’ll inevitably be held back significantly and that’s going to have a lasting impact on their life.” – Amanda Brown, Deputy General Secretary, National Education Union

“It’s disastrous. Education is the foundation of children’s futures. Their chances of good employment, a stable life, developing their potential is non-existent if they don’t receive the education that they need. So these measures are perpetuating a situation of destitution, invisibility, and poverty. In later life these people who don’t go to school

would probably end up doing jobs with poverty salaries, no qualifications, no profession. It's devastating, the impact it will have." – Myriam, Violence Against Women Support & Prevention Coordinator, LAWRS

Some interviewees also expressed the view that the deterrent effect of the data-sharing may not be limited to undocumented children and families.

"As a migrant, the fear and distrust is such that even if you're legally here, you never feel safe or secure." – Myriam, Violence Against Women Support & Prevention Coordinator, LAWRS

Impact on frontline workers

The National Education Union, which campaigned vigorously against the nationality and country of birth data collection, is also deeply concerned about the impact of ongoing sharing of children's addresses with the Home Office on teachers and the teaching profession, and especially the lack of transparency and consent surrounding ongoing data-sharing.

"Our members don't want to be part of the machinery of immigration control. We don't think it's positive for education for schools to be seen as part of the system that's monitoring and checking up on people's immigration status. It's not good for the relationship between teachers and pupils and communities, and it's not good for the teachers themselves. They don't see it as part of their job. They educate children and try and help them develop for the future, and to live as critical thinking and participating

members of society." Amanda Brown, Deputy General Secretary, National Education Union

Other interviewees are concerned that as with health charges, eligibility checks in education, specifically in relation to free school meals, would create some kind of liability for staff who do not comply, punishing the most basic acts of human kindness.

"It creates a problem for the teacher when someone uses their discretion, for example in giving free school meals to a child who isn't entitled to them. People have to worry that any small moment of basic human compassion or kindness will potentially breach immigration law. It's really scary." – Praxis

Impact on wider society and human rights

The encroachment of immigration controls into schools represents a breach of trust that affects the whole community, not just undocumented children and families. For any Government concerned with fostering social integration and cohesion, this is deeply concerning.

"Schools try to develop a relationship of trust, both with pupils, but also the wider school community, and that would include with parents and carers. We feel it's really important that schools are very much based within the community. That ideally kids go to their local school. Schools are part of their communities; often schools are used in the evening for other events, for community events. And it's really important that there is a good

relationship of trust between individuals and the school that they or their family member goes to, but also the wider community. If you're talking about vulnerable pupils or disadvantaged communities, what we really want to do is build the trust in a really active way, and so to undermine that almost without choice, because the school doesn't know when data is being shared by the DfE with the Home Office, is really worrying."

– Amanda Brown, Deputy General Secretary,
National Education Union

Subtly teaching children that people deserve to be treated differently based on where they are from also undermines the values of mutual respect and equality that are integral to a society in which human rights are protected.

"Children generally respond to the environment they are in, and there is a very clear divide being created. If you grow up being treated in a slightly different way, you intrinsically start to adopt the same kind of approach. The idea that some of your classmates don't get the same kinds of benefit or privilege as you do is really quite dangerous. You see they don't get the kind of support structures you do. If teachers are reinforcing that divide, it exports this really racialised approach to belonging and to rights more broadly. That has a really damaging effect." – Praxis

The legal and policy implications of the MOU are, as might be expected given the frontline perspectives expressed, significant. Article 2, Protocol 1 of the European Convention

on Human Rights, given force in domestic law by the Human Rights Act 1998, sets out that every child has the right to education, including the right of access to existing educational institutions.³² The United Nations Convention on the Rights of the Child further sets out that signatory states (of which the UK is one) should respect and ensure the right to education without discrimination of any kind.³³ The data-sharing scheme is likely to breach these rights because it deters children and families from accessing education to which they are entitled.

Schools are a key part of the network of services that safeguards children from harm. When a child is at risk of abuse or exploitation, or is vulnerable to some other form of harm, this harm is often noticed or disclosed to a teacher or another member of school staff. By making migrant children and families scared to attend school, the Government is removing children from a protective environment in which longer-term support needs may be identified, and vulnerability to particular kinds of harm may be mitigated or prevented.

Last, use of pupil data for immigration enforcement undermines trust in collection and use of data for legitimate educational purposes. The DfE is able to hold data in the National Pupil Database in perpetuity because it is classed as a research database for data protection purposes.³⁴ Allowing

32 *Belgian Linguistics* (No. 2) (1968) 1 EHRR 252 <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-223-Belgian-Linguistic-case-full-case.pdf>

33 United Nations *Convention on the Rights of the Child* – Arts. 1 & 28 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

34 *defenddigitalme FAQs* – question . defenddigitalme is a non-profit, non-partisan group led by parents and teachers with expertise in data privacy and data protection, freedom of information, biometrics, and child rights. <https://defenddigitalme.com/faqs/>

National Pupil Database data to be used for immigration enforcement aims is highly likely to jeopardise that exemption, and the ability of legitimate researchers to conduct education-related research for the benefit of children. Worse still, the perception among children and parents that School Census data and the National Pupil Database are unsafe is likely to lead to widespread refusal to participate in education-related data collection exercises at all.

POLICY RECOMMENDATIONS

1. The DfE should commit to a firewall between its data and Home Office immigration enforcement. It should withdraw from the tracing MOU and make a public commitment not to re-enter any similar agreement in the future.
2. The DfE should delete nationality and country of birth data collected 2016 – 2018, which was collected from children and families effectively under false pretences and not for an educational purpose.
3. The Government should make provision for children with NRPF who are living in poverty or destitution to access free school meals.



POLICING

POLICING

CURRENT PRACTICE

In 2017 it was reported that over half of UK police forces have referred undocumented victims of crime to the Home Office.³⁵ There is no standard policy or practice governing what police forces should do when they come into contact with a victim of crime whom they suspect may be undocumented. Police are not under any legal obligation or duty to share data on undocumented victims of crime, or witnesses to crime, with the Home Office. Despite this lack of compulsion, there have been many reports of harrowing incidents stemming from this practice.

In 2017, a woman who was five months pregnant reported to police that she had been repeatedly raped – but was subsequently arrested at a rape crisis centre on immigration grounds.³⁶ In another case, a man who reported an assault to police ended up in immigration detention himself.³⁷ We interviewed the Bail for Immigration Detainees caseworker who met that man in immigration detention.

35 Catrin Nye, Natalie Bloomer and Samir Jeraj, *Victims of serious crime face arrest over immigration status* 14 May 2018 <https://www.bbc.co.uk/news/uk-44074572>

36 Natalie Bloomer, *Woman reports rape to police – and is arrested on immigration charges* 28 November 2017 <http://www.politics.co.uk/news/2017/11/28/woman-reports-rape-to-police-and-is-arrested-on-immigration>; -and- Natalie Bloomer and Samir Jeraj, *Met police hands victims of crime over to the Home Office for immigration enforcement* 5 April 2017 <http://www.politics.co.uk/news/2017/04/05/met-police-hands-victims-of-crime-over-to-the-home-office>

37 <https://twitter.com/BIDdetention/status/1002115789158256640>

“I went to Harmondsworth [immigration detention centre] to run a bail workshop and a man came to me with open wounds, he had cuts all up his arms and legs. He had been assaulted in the street by a stranger and had known that he shouldn’t be involved with the police because he hadn’t renewed his visa. He knew he didn’t want to talk to the police, but they followed him and demanded that he give them his name in order for them to be able to investigate the assault. They put him through their computer, and rather than investigating the offence, detained him immediately, without even seeking any medical treatment for him.” – Legal Manager, BID

Doctors of the World UK reported a similar, worrying case:

“We saw a man six or eight weeks ago who had been stabbed in the arm in an apparently random attack. He went to A&E, but he refused to speak to the police about it” – Phil Murwill, UK Programme Manager (Services), DOTW

Guidance on how to deal with victims with outstanding immigration issues was issued by the NPCC in December 2017. However, it is not publicly available in full. That guidance reportedly states that a person should only be subject to immediate arrest for immigration crimes if there is “an immediate risk of harm to a specific individual or wider group of people”,³⁸ leaving open the possibility that they may be arrested on immigration grounds as a result of their contact with the police at a later date.

38 West Mercia Police *Response to FOI 9215 and 00028- Crimes to Home Office for Immigration Enforcement* January 2018 <https://www.westmercia.police.uk/disclosure-logs?foiid=43312>

The wider context of police-Home Office data sharing on victims and witnesses of crime cannot be ignored. Many aspects of the lives of undocumented migrants, such as working or driving, or simply entering the UK without the requisite permission, are criminalised. The majority of these offences carry a punishment on conviction of a custodial sentence of two years or fewer, a fine, or both.³⁹ The relatively low level of punishment for these offences, as opposed to, for example, assault or rape, suggests that the State recognises these as less serious crimes. What the examples above show, however, is that investigation and action of immigration offences is being prioritised over the investigation of more serious crimes.

Immigration and policing functions are intertwined beyond the existence of immigration offences under criminal law. For example, Operation Nexus, first piloted in 2012, aims “to improve the management of foreign nationals and foreign national offenders (FNOs) with a focus on strengthening cross-organisational working between the Home Office and police.”⁴⁰ It is in theory designed to deal with people who have been arrested on suspicion of having committed a criminal offence. However, from FOIA responses, Liberty has evidence to suggest that it is being used by some police forces to deal with people who are not suspected of criminal offending, such as victims and witnesses.⁴¹

39 Relevant offences are set out in Appendix A of this report.

40 Home Office *Operation Nexus – High Harm* – pg. 4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/599878/Operation-Nexus-High-Harm-v1.pdf

41 Liberty FOIA responses, internal

Operation Nexus provides for immigration officers to be embedded in custody suites to identify FNOs and refer them to the Home Office for removal if appropriate. It also facilitates police referral of “High Harm” cases to a team which then decides whether or not to refer a person for immigration enforcement action, even if they do not have any convictions.

According to Home Office guidance, data-matching schemes have been established to allow the police to check a person’s details against immigration databases (“Nexus data-wash report”), as well as the “Nexus High Harm referral matrix”, which, once a person has been matched via the data-wash report, allows police to input information such as known arrests or offending to receive an “immediate and provisional” assessment of the case. It is unclear from Home Office guidance precisely what output is generated by the matrix, and whether the assessment is automated or completed by Home Office staff.⁴²

Police forces also carry out joint raids with immigration enforcement officials and on occasion other public authority staff, especially business raids. They may further find themselves taking on immigration enforcement functions when using mobile fingerprinting devices, which can check a person’s fingerprint against the Immigration and Asylum Biometrics System database, as well as policing and crime databases.⁴³ It is likely to be difficult to implement

42 Home Office *Operation Nexus – High Harm* – pg. 11. Ibid.

43 Home Office *Press Release: Police trial new Home Office mobile fingerprint technology* 10 February 2018 <https://www.gov.uk/government/news/police-trial-new-home-office-mobile-fingerprint-technology>, see also Hannah Couchman *Papers Please: How Biometric ID Checks Put Our Rights At Risk* 19 October 2018 <https://www.libertyhumanrights.org.uk/news/blog/papers-please-how-biometric-id-checks-put-our-rights-risk>

or maintain a firewall for victims and witnesses of crime within a wider policing culture that views the enforcement of “low-level” immigration crimes as one of its overriding priorities.

THE IMPACT OF POLICE-HOME OFFICE DATA SHARING

Impact on migrants

Many of the frontline organisations we interviewed had broad and worrying experience of the impact of police data-sharing on migrants who are victims or witnesses of crime but feel unable to report these crimes to the police. They made repeated reference to domestic violence, trafficking, and labour exploitation.

“On some occasions I have had clients who were working illegally, and who have suffered abuse in the workplace. They haven’t come forward to the police because they know that if they were to come forward, immigration enforcement action would be taken against them.”
– Legal Manager, BID

“I used to work with young undocumented migrants who were initially granted leave to remain until they were 17 and a half years old. As their applications for further leave were refused, they remained in the UK undocumented. While they had leave to remain in the UK, they looked happy and were full of hope. Unfortunately, that was taken away by the Home Office.

As undocumented migrants they were forced to work illegally and some were paid about £2.50 per hour, were mistreated by employers, and occasionally they wouldn’t get paid at all. Also, I remember a young man was racially harassed and was hit with a brick, and his bike was stolen, but he did not report this incident to the police because of fear of being detained and removed from the UK. “– Praxis

Other interviewees made reference to the fact that for some people, migration status and another criminalised status intersect in a way that makes them even more fearful of the police than other people.

“Where sex workers are victims of crime there is a reluctance to speak to the police anyway, and that’s for sex workers who do have a regular immigration status. It’s then compounded if someone is a sex worker without regular immigration status because of the stigma that they experience as well as the police’s understanding of a person’s rights and the law. It absolutely does prevent people from reporting crimes. It’s very clear from what we see that people don’t report crimes that have been perpetrated against them.” – Phil Murwill, UK Programme Manager (Services), DOTW

Interviewees had frequently seen cases in which people’s abusers had made explicit reference to the victim’s precarious immigration status and used their fear of immigration enforcement as a means to trap them in the abusive situation. In this way, criminals are able to commit and continue committing serious crimes with near impunity.

“You see it all the time with domestic violence cases. Lots of people who suffer domestic violence won’t want to go to the police, even though that would help their immigration case. Even if they don’t trust the police at all, but have an immigration case, the Home Office will ask for evidence, effectively saying *“So you’re saying that this happened to you, but you didn’t go to the police.”* And ultimately that means that people can’t get the status they’re entitled to. But the reason they don’t go to the police is that they know that police share information on undocumented people with the Home Office, and that they’d risk being hit with the sharp end of the immigration system if they went to report abuse to the police. It’s a huge problem.” – Legal Manager, BID

“Sometimes you’ll have cases where the perpetrator is documented and has a visa, and the victim doesn’t, and the perpetrator has already threatened her saying *“You are undocumented, go and report to the police. They will deport you and I’ll stay here with the children.”* Is a woman going to risk it? She is not. And so her life is at risk, and so are the lives of her children.” – Myriam, Violence Against Women Support & Prevention Coordinator, LAWRS

“In the trafficking sector we see time and again that a person’s precarious immigration status is being used to keep them in exploitation, and to prevent them from coming forward to public authorities, even when a crime has been committed against them. We see it often in cases of domestic servitude and sexual exploitation.

Children are told *“You’re illegal in this country. If you run away or say anything about what happened to you, then they’re going to deport you back to your country.”* If a child is being exploited for cannabis cultivation or burglary, for drug transportation or distribution, or for any form of criminality, their immigration status is consistently used as a weapon to keep them in exploitation and to prevent them from coming forward to the police or other public authorities.” – Laura, Senior Policy, Research and Practice Officer, ECPAT UK

Impact on frontline workers

Interviewees also recognised that data sharing between the police and the Home Office is highly likely to undermine police efforts to achieve other important aims, such as the prevention and investigation of trafficking and other serious crimes.

“From the police perspective I think this puts them in a very difficult situation in which their duties are to investigate criminal offences that have been reported to them. If they then have to report victims of crime, or witnesses of crime, to immigration enforcement that could hinder their ability to contact the witness again, continue an investigation, or continue working with that victim of a crime – especially if they have been removed from the UK, which we have seen happen. That could completely hinder police abilities as a law enforcement agency to fulfil their duties in terms of investigating and prosecuting criminal offences.” – Laura, Senior Policy, Research and Practice Officer, ECPAT UK

“The current approach to trafficking is so criminal justice focused despite the rights-based approach that is supposed to ground it. Police officers who come into contact with victims of trafficking often end up then referring them to Home Office immigration enforcement. This is the impact of blurring the lines between policing and immigration enforcement, and the impact of the first instinct when there isn’t policy or procedure in place, or where it is in place but it’s poorly worded. The blurring of the lines pushes people to take a draconian approach to issues that need to be treated by people who actually have the expertise, sensitivity and care to understand the approach that needs to be developed. They don’t have a compassionate approach to these issues. They just end up reinforcing the idea that an immigration issue needs to be dealt with above all else, often quite harshly, and the recourse to detention can be a kneejerk one.” – Praxis

Impact on wider society and human rights

In its report on the Windrush Generation, the Home Affairs Select Committee stated that:

“We are particularly concerned that the Government has not addressed our concerns in relation to data-sharing between the police and immigration enforcement. Victims of crime should not fear reporting that crime to the police. The obligation on police to share data of victims of crime with immigration enforcement should be removed immediately.”⁴⁴

44 Home Affairs Select Committee *Windrush Generation Report* July 2018– para. 83 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaaff/990/99002.htm>

The Committee has further argued that:

“Insecure immigration status must not bar victims of abuse from protection and access to justice. The Government states that its 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. It must ensure that the police service conforms with this objective.”⁴⁵

While it should be noted that the police are under no obligation to share data on undocumented victims of crime with immigration enforcement, it happens frequently and as such the Committee is right that data sharing between the police and immigration enforcement on undocumented victims and witnesses of crime should end. The Government must prioritise preventing and investigating serious and violent crime over taking enforcement action against undocumented migrants. If undocumented migrants cannot report crimes to police without fear of deportation, people seeking to injure, exploit or otherwise harm them and others will be emboldened to do so with impunity – making all of us less safe.

As is illustrated above, police data-sharing practices have serious human rights implications, and may in some cases infringe the rights to life (Article 2 ECHR), freedom from torture, inhuman and degrading treatment (Article 3 ECHR), and freedom from slavery, servitude and forced labour (Article 4). Each of these rights includes, among other

45 Home Affairs Committee *Ninth Report of Session 2017-19: Domestic Abuse* October 2019 – para.103 <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaaff/1015/1015.pdf>

things, a positive obligation to prevent these rights from being violated, and a procedural obligation to investigate in circumstances where violations may have occurred.

Police forces are public authorities. They therefore have a duty to adhere to human rights obligations. Part of their role in doing so is receiving reports of serious crimes that would fall within the scope of these rights and to properly investigate them – crimes such as rape, murder, and assault. However, the current practice of sharing data on victims and witnesses to the Home Office for immigration enforcement purposes undermines the confidence of people with insecure immigration status in the police, and deters them from reporting these crimes. The data sharing practices between the police and the Home Office are therefore highly likely to breach Articles 2, 3 and 4 of the Convention, as well as undermining other efforts by the Government to comply with its obligations under these rights.

While police are under no obligation to refer undocumented victims and witnesses of crime to the Home Office when they encounter them, the existence of criminal offences associated with undocumented migration, especially absent clear guidance on what priority these crimes should be afforded in relation to others, creates a functional overlap between policing and immigration enforcement that undermines the ability of undocumented victims and witnesses of crime to report safely to the police. Absent a repeal of those offences, the State must make clear that its priority is the investigation of non-immigration crimes, so that people with insecure immigration status can report without fear.

The Government has ample civil mechanisms to respond to undocumented migration which lessen the necessity of criminal sanctions, although for certain activities that are necessary for a person to live, such as working or renting accommodation, Liberty would question the need for any sanctions whatsoever. In any event, the Government already prefers civil measures to criminal sanctions in the case of people attempting to enter the UK illegally or entering the UK without permission or in violation of the conditions of their stay. Analysis by the Migration Observatory at the University of Oxford shows that for the year 2015, alone, there were 29 335 enforced removals and refusal of entry – administrative measures – compared with 409 criminal convictions.⁴⁶ The Government itself reasoned along similar lines during the passage of what is now the Data Protection Act 2018, arguing that a law enforcement approach “is not always the correct and proportionate response to persons who are in the UK without lawful authority and may not be the correct remedy.”⁴⁷

In November 2018, Liberty and Southall Black Sisters notified the Criminal Justice Inspectorates (HMICFRS) of their intention to jointly submit a super-complaint on this issue, under new police oversight regulations.

46 The Migration Observatory, University of Oxford *Immigration Offences: Trends in Legislation and Criminal and Civil Enforcement* – Fig 4. <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-offences-trends-in-legislation-and-criminal-and-civil-enforcement/>

47 Baroness Williams of Trafford in *Data Protection Bill Committee Stage in the House of Lords*, 13th November 2017 – Hansard, vol. 785, col.1916 [https://hansard.parliament.uk/Lords/2017-11-13/debates/EC101CF2-FA1C-4397-9A29-7F07333B396B/DataProtectionBill\(HL\)](https://hansard.parliament.uk/Lords/2017-11-13/debates/EC101CF2-FA1C-4397-9A29-7F07333B396B/DataProtectionBill(HL))

POLICY RECOMMENDATIONS

4. Police forces should prioritise the investigation and prevention of more serious crimes over immigration offences.
5. Individual police forces should commit to, and rapidly implement, a firewall between their interactions with victims and witnesses of crime and the data they hold on them, and Home Office immigration enforcement. They should not refer victims or witnesses of crime to the Home Office for immigration enforcement purposes.
6. The National Police Chiefs Council (NPCC) should issue standard guidance to all forces setting out what they should do when they encounter an undocumented victim or witness of crime, stipulating that they should not refer them to immigration enforcement.
7. The Home Office and police should significantly reduce their collaboration for immigration enforcement purposes. Infrastructure in police stations that undermines safe reporting of crime by undocumented victims and witnesses, including immigration officers in custody suites, should be dismantled.
8. The Government should approach undocumented immigration as a civil, rather than a criminal matter. The low-level immigration offences set out at Appendix A should be repealed.





HEALTH

HEALTH

CURRENT PRACTICE

Tracing

One of the earliest public references to NHS–Home Office data sharing is in the 2014 ‘Partridge Review’, which revealed that between 2008 and 2013, 7766 tracing responses had been provided by the NHS Information Centre to the Home Office.⁴⁸ In January 2017, a response to an FOI request revealed that the Home Office, DHSC and NHS Digital had an agreement allowing the Home Office to use confidential patient records to obtain the addresses of patients suspected of being undocumented.⁴⁹ That agreement was in place from November 2016–November 2018, although it was suspended in May 2018.

The agreement facilitated the Home Office making ad hoc and monthly bulk requests to NHS Digital. The Home Office would send NHS Digital a range of personal details about a person, including their last known address, name, date of birth and nationality, and NHS Digital, where it was confident of a match, would send the Home Office their name, last

known address, NHS registration date, and primary care service area code.⁵⁰ As the data was shared between Government departments, until the data sharing agreement was released through FOI, frontline workers collecting the data were unaware that they were being made complicit in immigration enforcement against their patients, and despite news reports may have remained unaware of this even after the agreement was published. From January–November 2016, the Home Office asked for data on 8127 people, and received a response from NHS Digital in 5854 of those cases.⁵¹ Between March and August the following year, the Home Office asked for data on 3228 people, and received a reply in 2953 of those cases.⁵² It is not clear in what proportion of cases the Home Office received information that it did not already hold. The DHSC was under no legal obligation to share patient data with the Home Office for immigration enforcement purposes.

The Government suspended the data-sharing scheme in April 2018 following a campaign by civil society and politicians.⁵³ NHS Digital withdrew from the agreement entirely in November 2018, in response to legal action from the Migrants’ Rights Network. However, in both May and November, the Home Office reiterated its commitment to continuing to share

48 Heath and Social Care Information Centre *Data Release Review (The “Partridge Review”)* June 2014 – pg. 9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367791/HSCIC_Data_Release_Review_PwC_Final_Report.pdf

49 ‘Memorandum of Understanding between Health and Social Care Information Centre and the Home Office and the Department of Health’ 27 September 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf

50 *Memorandum of Understanding between Health and Social Care Information Centre and the Home Office and the Department of Health* 27 September 2016 – Annex A. *ibid.*

51 Alan Travis NHS *hands over patient records to Home Office for immigration crackdown* 24 January 2017 <https://www.theguardian.com/uk-news/2017/jan/24/nhs-hands-over-patient-records-to-home-office-for-immigration-crackdown>

52 NHS Digital Data Register *Approved Data Releases 2017* <https://digital.nhs.uk/services/data-access-request-service-dars/register-of-approved-data-releases/release-register-archive>

53 Martin Coulter *NHS will no longer have to share immigrants data with the Home Office in Government u-turn on ‘hostile environment’ policy* 9 May 2018 <https://www.standard.co.uk/news/uk/nhs-will-no-longer-have-to-share-immigrants-data-with-home-office-in-government-uturn-on-hostile-a3834921.html>

health data in relation “serious crime” – although it has yet to explain what exactly this will mean in practice.⁵⁴

Charging

Data is also shared by health services with the Home Office when a migrant accesses or attempts to access healthcare. People without permanent residency in the UK are either charged a levy to access the NHS, or charged for their NHS care at 150 per cent of the cost, although there are some exemptions to this.⁵⁵ When a person owes a debt of £500 or more to the NHS two months after being billed, this is likely to prejudice any future immigration applications that they make, and their failure to pay the debt and personal details are communicated to the Home Office.

The Home Office runs an Immigration Enforcement Checking and Advice Service that NHS Trusts can pay to access.⁵⁶ Individual NHS Trusts may conclude MOUs with the Home Office to use this scheme to facilitate NHS immigration checks. In order to find out a person’s immigration status from the Home Office and whether or not they should be charged for healthcare, the Trust calls the Home Office and provides the Home Office with the forename, surname, date of birth and address(es) of the prospective patient.⁵⁷

54 NHS Digital, *Memorandum of Understanding Revision Plan*, June 2018: <https://digital.nhs.uk/services/national-back-office-for-the-personal-demographics-service/memorandum-of-understanding-revision-plan>

55 Liberty *A Guide to the Hostile Environment* April 2018 – pg.17 <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>

56 *Memorandum of Understanding between Health and Social Care Information Centre and the Home Office and the Department of Health* 27 September 2016 – Schedule 2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf

57 *Memorandum of Understanding between Health and Social Care Information Centre and the Home Office and the Department of Health* 27 September 2016 – Schedule 1 pg. 8. *ibid.*

IMPACT

Impact on individual migrants

One member of the Room to Heal community who had had their medical data shared with the Home Office detailed the profound effect it had had on them and their ability to trust other people:

“I don’t think it is necessary to share information. Medical professionals should share between themselves to ensure the wellbeing of that person. It is not right to give information to the Home Office without their permission, they are not medically trained. Why do they do that without me knowing, why should people talk about me without including me? This experience changed me. My self-confidence has gone down. I never thought I would have to rely on somebody, I did everything for myself, but after this I couldn’t. I used to trust people, and I am trying to trust people again, but the trust is not there.”

Migrants avoid healthcare when they fear that accessing healthcare will expose them to deportation.

“The cases that stand out are the cases in which people have come to us with poor mental health, and we’ve struggled to persuade them to go to A&E. It takes a lot of a clinician’s time to sit with the person and talk through the balance between the benefits of making sure a person is safe and well and can be seen by someone who will look after them, versus the fact that yes, they probably

are going to get a bill and their information is going to be shared with the Home Office.” – Phil Murwill, UK Programme Manager (Services), DOTW

It was also clear from interviewees that suspension or withdrawal of the tracing MOU is highly unlikely to be sufficient to reassure migrants that health services are safe for them.

“The MOU being suspended [now withdrawn] is significant from our perspective, because we are people who want to ensure that the system is safe for people who need to access it. But for people accessing healthcare, they know they are going to be charged for care and reported to the Home Office for that anyway; and asylum seekers are still being forced to sign medical consent forms in their first Home Office interviews. That’s still data sharing. People don’t feel safe just because the MOU has been suspended.” – Phil Murwill, UK Programme Manager (Services), DOTW

Immigration measures embedded in health services do not only impact migrants’ health - they may also prevent them from regularising their immigration status.

“Sharing of addresses by health services with the Home Office can have a huge impact on people who are trying to regularise their immigration status. As a lawyer, you might need your client to register with the health services because you need particular medical evidence to support their claim. But if the Home Office is aware from that health service registration of where a person is living, they can then go to that address and detain them because they haven’t

submitted the application that you are trying to prepare; which you haven’t submitted because you are being careful and taking your time with it, and waiting for that evidence. That could be a huge problem in terms of people being able to actually get together the application that they are allowed and entitled to make.” – Legal Manager, BID

Impact on health workers

Interviewees also reported that immigration measures embedded in health contexts conflicted sharply with other professional obligations of health workers, and in some cases led them to view the Home Office as a means for resolving difficult cases.

“I had a client who had suffered a stroke and been in hospital. As part of his rehabilitation he needed to have somewhere to live. He didn’t have an address to go to, and he didn’t have regular immigration status. He had no recourse to public funds either. The doctor didn’t know what to do so he just told the Home Office, and let them know that the man was an overstayer. He became my client when I met him in immigration detention. The doctor didn’t know what to do with him. The NHS didn’t know what to do with someone without housing, so the easy way out was to refer his case to the Home Office, because it cleared that bed space. So that then becomes the easiest route for healthcare staff to deal with people who don’t have recourse to public funds, when for someone who had regular immigration status or recourse to public funds, they would contact the local authority. But

undocumented migrants just get reported straight to the Home Office.” – Legal Manager, BID

“I think it’s unfair on healthcare workers. It’s unfair to expect them to be up to date with what they are meant to do and what they are not meant to do as a profession. They put themselves at risk if they breach patient confidentiality, and it can also ruin the relationship health professionals have with their patients. It stops them from doing their job properly.” – Phil Murwill, UK Programme Manager (Services), DOTW

Other people we spoke to were concerned that wariness about data sharing for immigration enforcement would lead to a lack of trust or unwillingness to share data for legitimate or beneficial purposes.

“Information needs to be shared between specialist health services (e.g. migrant and homeless health services) for a variety of reasons in order to support and safeguard patients. When patients are asked about this all agree. It is important not to scare organisations away from legally sanctioned sharing for the benefit of patient care - this would be wrong’.” – Sam Dorney-Smith, Nursing Fellow, Pathway

Impact on wider society

NHS Digital has withdrawn entirely from its tracing MOU with the Home Office. However, the Home Office maintains that it “continues to work with NHS Digital on a new memorandum of understanding to enable us to make requests for non-medical

information about those facing deportation action because they have committed serious crimes, or where information necessary [sic] to protect someone’s welfare.”⁵⁸ The Home Office had previously stated its intention⁵⁹ to set the bar for serious crime low, to include crimes carrying a sentence of more than 12 months, and to allow for data sharing on people *suspected* of serious crimes as well as convicted of them. If a new MOU with a low bar for serious crime is concluded in future, it may attract similar or related policy concerns to the tracing MOU that was recently withdrawn.

Moreover, many of the policy arguments against the data sharing typified by the withdrawn MOU remain relevant because the charging regime and the data sharing practices that it involves have a similar deterrent effect on migrants attempting to access healthcare, as well as on health services and wider public health.

The tracing MOU failed to properly consider the fundamental right to privacy. NHS Digital has argued that the sharing of ‘non-clinical information’ passes the lower threshold for the public interest test. However, the significance of a data item to an individual is to some extent subjectively determined and dependent on the context of the disclosure. An undocumented migrant’s address may in certain cases, due to a person’s

58 Owen Bowcott *Home Office scraps scheme that used NHS data to track migrants* 12 November 2018 <https://www.theguardian.com/society/2018/nov/12/home-office-scraps-scheme-that-used-nhs-data-to-track-migrants>

59 Margot James MP in *Data Protection Bill Report Stage in the House of Commons*, 9th May 2018 – Hansard, vol. 640, col.757 [https://hansard.parliament.uk/commons/2018-05-09/debates/CE43B0ED-87D3-4F63-B8A4-2A66964790C2/DataProtectionBill\(Lords\)](https://hansard.parliament.uk/commons/2018-05-09/debates/CE43B0ED-87D3-4F63-B8A4-2A66964790C2/DataProtectionBill(Lords))

fear of immigration enforcement, be perceived by the data subject as a more sensitive piece of data than, for example, the fact that they have been treated for a minor injury, particularly when the information is disclosed to immigration enforcement officials for the purposes of immigration control.

Making the sharing of patient information with immigration enforcement officials a condition of receiving healthcare is a public health policy and a structural barrier that can have fatal consequences, raising concerns in the most extreme circumstances under Article 2 of the European Convention on Human Rights (ECHR), the right to life, or leading to pain and suffering which could breach the Article 3 prohibition on inhuman or degrading treatment.⁶⁰ Fear of an intervention by the immigration authorities if medical help is sought may further trap vulnerable people in situations of exploitation and abuse in the UK, implicating their right to be free from forced labour under Article 4.

⁶⁰ European Convention on Human Rights, Article 3, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." https://www.echr.coe.int/Documents/Convention_ENG.pdf (PDF)

POLICY RECOMMENDATIONS

9. The Home Office and the DHSC should end the practice of charging migrants for healthcare, and associated data-sharing practices.
10. The Home Office should destroy and not use for any purpose the information obtained from the Secretary of State for Health or NHS Digital under the terms of the now defunct MOU.
11. NHS Digital and the DHSC should commit to a firewall between personal data that they hold on patients and Home Office immigration enforcement.



FUTURE THREATS

FUTURE THREATS TO HUMAN RIGHTS IN IMMIGRATION ENFORCEMENT

THE DATA PROTECTION ACT 'IMMIGRATION CONTROL' EXEMPTION

In addition to refining its data-sharing practices, the Government has already begun laying the legislative groundwork for greater use of data, including automated decision-making, in immigration enforcement.

Yet the implications of this legislative groundwork are likely to reach far further than migrant groups, and well beyond Home Office decisions on immigration claims. We are all at risk of having our data protection rights eroded under the guise of immigration control.

Schedule 2, Part 1, paragraph 4 of the Data Protection Act allows data processors to set aside a person's data protection rights under the EU General Data Protection Regulation where fulfilling those rights would prejudice

“the maintenance of effective immigration control”⁶¹ or “the investigation or detection of activities that would undermine the maintenance of effective immigration control.”⁶²

The affected rights are as follows:

- right to information: the right to know why your data is being processed, how long it will be retained for, and who it will be shared with
- right to information where data is obtained from a third party: the right to know when a data processor has obtained your data from another processor
- right of subject access: the right to ask for the data a data processor holds about you
- right to erasure: the right to ask a data processor to delete the data it holds about you
- right to restriction of processing: the right to ask a data processor not to use your data in a particular way
- right to object: the right to ask a data processor to stop processing your data
- the data protection principles of lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, confidentiality and accountability, to the extent that they correspond to the rights mentioned above.⁶³

⁶¹ Data Protection Act 2018, Schedule 2, paragraph 4(1)(a) <http://www.legislation.gov.uk/ukpga/2018/12/schedule/2/paragraph/4/enacted>

⁶² Data Protection Act, Schedule 2, paragraph 4(1)(b)

⁶³ Data Protection Act, Schedule 2, paragraph 4(2)

Non-UK nationals are not the only people who may find themselves stripped of data protection rights under the exemption. The exemption does not attach itself to any particular class of person, such as non-UK nationals, but rather to any individual whose data is processed for immigration control purposes. Should the Government decide that checking every individual's immigration status as they interact with public services, employers, landlords, or banks is necessary for the maintenance of 'effective immigration control', and that stripping people of their data protection rights as this happens is desirable, people of all immigration statuses and nationalities will find themselves sorely disadvantaged by it. While the exemption does not in itself create new powers to share data, it will allow data-sharing agreements to operate in secret as controllers will no longer have to inform a person when they transfer their data to another controller. The exemption therefore has the potential to facilitate unscrutinised and unchallengeable bulk data-sharing on everyone in society, amounting in effect to the creation of a digital ID card in the name of immigration control.

If an individual feels the exemption has been unfairly applied, they should in theory be able to apply to the Information Commissioner's Office for redress. However, exercise of this remedy relies on an individual knowing that the exemption has been applied and on what basis, and as such will only be available when certain rights are exempted. Subject access requests are often made by individuals who need access to previous correspondence with the Home Office in order to progress their immigration cases. This includes undocumented people wishing to regularise their status. If a

subject access request is refused in circumstances like these, it is possible but far from certain that an individual will know that Home Office exercise of the exemption is the reason for this. But where a person's data is obtained from a third party by the Home Office and the exemption is applied to their right to be informed of this, they are even less likely to know that their data has been shared in this way and thus they will be unable to challenge either the application of the exemption or, more gravely, the ethics or lawfulness of the data transfer.

The exemption does not apply only to the Home Office or other public authorities, it applies to any entity from whom the Home Office obtains data for immigration control purposes, which could include profit-making data brokers, corporate entities, or third sector organisations, should the Home Office hold or conclude in future data-sharing or processing agreements with those entities. Moreover, to the extent that the Home Office outsources immigration control functions to third parties, including corporate entities such as G4S, those entities also benefit from the exemption. One need only look to the US, where Palantir and Amazon provide a huge amount of immigration enforcement infrastructure to the Department for Homeland Security, Immigration and Customs Enforcement (ICE) and other law enforcement agencies, supporting the growth of surveillance and data mining and matching capabilities targeting migrants, to understand the significance of this exemption in potentially facilitating further outsourcing and expansion of immigration enforcement in the UK.⁶⁴

64 For an idea of what this might look like, see this from the US context – Mijente Blog *Who's Behind ICE? The tech and data companies fueling deportations* 23 October 2018 <https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>

BEYOND DATA SHARING

The need for a firewall between the functions and data held by essential public services and immigration enforcement, and robust data protection rights for migrants and citizens alike becomes more urgent when we recognise that increasingly sophisticated data-sharing and matching are not the only developments in technology that raise threats to human rights in immigration enforcement.

Automated decision-making

In deciding whether or not to allocate claims to the now-defunct Detained Fast Track, the Home Office used to certify them according to their likely complexity, often taking into account a range of factors, including an individual's country of origin. It is entirely plausible that similar decisions in an immigration context could in future be automated: for example in deciding whether or not to grant bail to a person in immigration detention. Indeed, in Canada, where the Government has used automated decisions in an immigration context since 2014, researchers have warned that such decisions “threaten to violate domestic and international human rights law, with alarming implications for the fundamental human rights of those subjected to these technologies.”⁶⁵

65 Miles Kenyon *Bots at the Gate: A human rights analysis of automated decision making in Canada's immigration and refugee system* 26 September 2018 <https://citizenlab.ca/2018/09/bots-at-the-gate-human-rights-analysis-automated-decision-making-in-canadas-immigration-refugee-system/> – the full report can be accessed at The Citizen Lab *Bots at the Gate: A human rights analysis of automated decision making in Canada's immigration and refugee system* September 2018 <https://citizenlab.ca/wp-content/uploads/2018/09/IHRP-Automated-Systems-Report-Web-V2.pdf>

In 2003, the Home Office was criticised for employing experts in an opaque language analysis scheme to determine the origin of people claiming to be Iraqi refugees.⁶⁶ Germany now plans to cut out human involvement in language analysis entirely, to use automated voice recognition technology in determining whether or not asylum seekers are really from where they say they're from,⁶⁷ despite concerns that “the nuances of language couldn't possibly be covered accurately with the current software.”⁶⁸

Facial recognition

In Russia, 5000 cameras that use automated facial recognition have reportedly been installed in Moscow. People's faces are cross-referenced in real time against police and passport databases, as well as images uploaded to the Russian social network Vkontakte.⁶⁹ In the UK, there is no law governing the use of facial recognition technology, and no independent oversight.⁷⁰ Nevertheless the Met is trialling its use and has deployed facial recognition at events such as Notting Hill Carnival and Remembrance Sunday services.⁷¹ It is not

66 Institute of Race Relations *Language Testing of Asylum Claimants: A Flawed Approach* 7 August 2014 <http://www.irr.org.uk/news/language-testing-of-asylum-claimants-a-flawed-approach/>
 67 Deutsche Welle *Automatic speech analysis software used to verify refugees' dialects* 17 March 2017 <https://www.dw.com/en/automatic-speech-analysis-software-used-to-verify-refugees-dialects/a-37980819>
 68 Rhett Jones *Experts worry as Germany tests voice recognition software to screen refugees* 19 March 2017 <https://gizmodo.com/experts-worry-as-germany-tests-voice-recognition-software-1793424680>
 69 Cara McGroogan *Facial recognition fitted to 5,000 CCTV cameras in Moscow* 29 September 2017 <https://www.telegraph.co.uk/technology/2017/09/29/facial-recognition-fitted-5000-cctv-cameras-moscow/>
 70 For more information, see: Liberty *Resist Facial Recognition* <https://www.libertyhumanrights.org.uk/resist-facial-recognition>
 71 Vikram Dodd *Met Police to use facial recognition software at Notting Hill carnival* 5 August 2017 <https://www.theguardian.com/uk-news/2017/aug/05/met-police-facial-recognition-software-notting-hill-carnival> and Mark Townsend *Police to use facial-recognition cameras at Cenotaph service* 12 November 2017 <https://www.theguardian.com/technology/2017/nov/12/metropolitan-police-to-use-facial-recognition-technology-remembrance-sunday-cenotaph>

implausible that facial recognition cameras in public spaces could in future cross-reference faces against images of undocumented people, making it possible for the Home Office to apprehend, detain and remove them as a result of them coming into view of a camera in a public space, and deterring people from accessing vital support services or regularising their status. Again, the US provides a cautionary tale in this regard: Amazon has already reportedly pitched its facial recognition technology; Rekognition, to ICE.⁷²

⁷² Jake Laperruque and Andrea Peterson *Amazon pushes ICE to buy its face recognition surveillance tech* 23 October 2018 <https://www.thedailybeast.com/amazon-pushes-ice-to-buy-its-face-recognition-surveillance-tech>

POLICY RECOMMENDATIONS

12. The Government should amend the Data Protection Act 2018 to remove the 'immigration control' exemption set out at Schedule 2, Part 1, paragraph 4.
13. The Government should amend the Data Protection Act 2018 to stipulate that decisions by public authorities based on automated processing that engage human rights should not be permitted without meaningful human oversight and appeal mechanisms for such decisions.
14. The Government should make public its current use of decisions based on automated processing in the immigration context, and consult publicly on any further plans to introduce decisions based on automated processing into the immigration system.
15. The Government should reinstate immigration legal aid and appeal rights, as well as introducing internal quality assurance mechanisms into the Home Office to improve the quality of initial decisions on immigration claims.

CONCLUSION



CONCLUSION

“This ‘hostile environment’ practice is detrimental, inherently discriminates against migrants, and has already devastated thousands of human lives.”
– Mishka, Freed Voices

Liberty is deeply concerned that the Government is deploying new technologies in the context of immigration enforcement, and especially data-sharing practices with other Government departments and essential services, with almost total disregard for their impact on other important policy objectives, and fundamental human rights. The negative impacts of its hostile environment data-sharing programme reach well beyond serious harm to undocumented migrants themselves, to affect migrants with regular status who live in a climate of uncertainty and fear and BAME people who end up viewed as objects of suspicion by workers meant to support them. Data-sharing and entitlement checks also clearly have an insidious effect on frontline workers in our public services and their professional values, and by undermining vital State functions such as the investigation and prevention of serious crime, the protection of public health, and the safeguarding and education of children, the society in which each of us lives.

The agreements that the Home Office has concluded in order to trace undocumented migrants using personal data collected by essential public services constitute a step

away from the independent, indiscriminate public services that underpin every person’s ability to enjoy their human rights and lead a dignified life. Creating an atmosphere of hostility and fear naturally undermines people’s trust in public services. This is particularly concerning for the NHS, the primary function of which is to provide high quality, safe and confidential care to all patients, regardless of their background, origin or residency status. It is also of particular concern in education, the primary function of which is to provide children with a high quality education in a safe environment, without discrimination on any basis. A firewall between immigration enforcement and policing, health and education should be implemented as a matter of urgency.

These concerns are magnified by the fact that the Government’s approach in embarking on its hostile environment data-sharing programme demonstrates vanishing respect for transparency, public consultation, or parliamentary scrutiny. Liberty is concerned that a similar approach has been and will be taken in other policy areas well beyond immigration enforcement.

Moreover, in the wake of the Windrush scandal and its devastating consequences, and repeated evidence of the harm that its hostile environment is causing, the Government has shown no commitment to reinstating fundamental safeguards that are integral to the protection of human rights and the rule of law in immigration processes, including appeal rights, legal aid, and adequate decision making.⁷³ If

⁷³ Free Movement Blog *Half of all immigration appeals now succeed* 8 March 2018
<https://www.freemovement.org.uk/half-of-all-immigration-appeals-now-succeed/>

new technologies continue to be deployed in immigration enforcement without deep structural reforms to the immigration system and the Home Office, people will continue to be wrongly targeted by immigration enforcement and will have their rights violated as a result. But crucially, and of equal importance, is the fact that if such technologies continue to be deployed without regard for other public policy objectives or fundamental rights, undocumented migrants will continue to face unconscionable violations of their fundamental rights too.

However, hostile environment data-sharing also makes for a useful prism for considering the State's attitude to data protection, and what it considers its obligations to the public and public servants to be when it contemplates acquiring and deploying new technologies. For example, the general stance that the Government attempted to adopt in relation to patient confidentiality in relation to its NHS tracing MOU is extremely alarming and resonates well beyond immigration enforcement. In a letter to Dr Sarah Wollaston, Chair of the Health and Social Care Committee, it argued:

“We do not consider that a person using the NHS can have a reasonable expectation when using this taxpayer-funded service that their non-medical data, which lies at the lower end of the privacy spectrum, will not be shared securely between other officers within government in exercise of their lawful powers in cases such as these.”⁷⁴

⁷⁴ Caroline Nokes and Lord Shaughnessy, Letter to Dr Sarah Wollaston regarding the Memorandum of Understanding between NHS Digital, Department of Health and Social Care and the Home Office, 23 February 2018. <https://www.parliament.uk/documents/commons-committees/Health/Correspondence/2017-19/Letter-to-Chair-of-Committee-from-Caroline-Nokes-MP-and-Lord-O'Shaughnessy-MoU-on-data-sharing-23-02-18.pdf>

What is encapsulated in the Government's approach to data-sharing is an insistence that the Government may repurpose data collected by any trusted service without a person's consent to meet another public policy aim – an insistence that flies in the face of key tenets of our data protection law, and which will, in time, erode trust in public services and Government for society at large, not only undocumented migrants.

Last, the hostile environment represents an attempt by the State to effectively exclude a person from every good or service that would allow them to live a dignified life. It is a technology of State exclusion. While this report has focused on health, policing and education in turn, what must be appreciated is the cumulative effect of excluding a person from all of these goods and services at the same time, including those that have not been explored in this report, such as welfare benefits, banking, work and rental accommodation. The material effect of hostile environment data-sharing and matching is that a person may be reduced to a state of almost total destitution and made vulnerable to exploitation, abuse, and ill-health as a result.

The hostile environment and the functional entanglement of immigration enforcement and the provision of essential public services therefore represents enormous potential power wielded by the State over an individual, and a means by which the State may quietly warp the mission of universal, protective services at a normative level. Furthermore, while the targets of the hostile environment are currently undocumented migrants, the hostile environment also acts

as a testing ground for the State to refine its capacity to exclude undesirable or suspect communities and people, and its ability to co-opt protective services in this task. As with so many punitive exercises of State power, its targets may not be so restricted in the future.



APPENDIX A: SUMMARY OF RELEVANT IMMIGRATION OFFENCES

Illegal entry, overstaying, absconding, and deception

Section 24 of the Immigration Act 1971 sets out several offences that a person who is not a British citizen commits if they:

- (a) knowingly enter the UK in breach of a deportation order or without leave;
- (b) have limited leave, and
 - (i) remain beyond the time limited by the leave or
 - (ii) fail to observe a condition of the leave;
- (c) have lawfully entered the UK without leave as a member of boat or air crew (under section 8(1) of the Act), remain beyond the time permitted under section 8(1);
- (d) fail to observe conditions of leave in relation to medical reporting;
- (e) embark in the UK in contravention of an Order in Council prohibiting them from doing so;
- (f) disembark from a ship or aircraft having been placed there for removal or deportation;
- (g) are on immigration bail and breach the bail condition.

An offence under section 24 of the 1971 Act carries a penalty of a fine, up to six months in prison, or both.

Section 24A of the Immigration Act 1971 sets out that a person who is not a British citizen commits an offence if they obtain leave to enter or remain by deception, or seek to secure the avoidance, postponement or revocation of immigration enforcement by deception.

On summary conviction, an offence under section 24A of the 1971 Act carries a penalty of a fine, up to six months in prison, or both. On indictment, those penalties increase to a fine, up to two years in prison, or both.

Working illegally

Section 24B of the Immigration Act 1971 sets out that a person who is subject to immigration control commits an offence if they work at a time when they are disqualified from working by reason of their immigration status and at the time know or have reasonable cause to believe that they are disqualified from working – for example if their leave is invalid, has ceased to have effect, or if they're subject to a condition prohibiting from that kind of work.

An offence under section 24B of the 1971 Act carries a penalty of a fine, up to 51 weeks in prison, or both, and may also lead to confiscation of earnings.

Driving while unlawfully in the UK (not yet in force)

Section 24C of the Immigration Act 1971 sets out that a person commits an offence if they drive a car when not lawfully resident in the UK, and they know or have reasonable cause to believe that they are not lawfully resident at the time of driving.

An offence under Section 24C of the 1971 Act carries the penalty of a fine, up to 51 weeks in prison, or both.

Employing a person who is disqualified from work

Section 21 of the Immigration, Asylum and Nationality Act 2006 sets out that a person commits an offence if they employ a person, knowing or having reasonable cause to believe that that person is disqualified from employment because of their immigration status.

On summary conviction, an offence under Section 21 of the 2006 Act carries a penalty of a fine, up to 12 months in prison, or both. On indictment, those penalties increase to a fine, up to five years in prison, or both.

Renting to a person who is disqualified from occupying premises

Sections 33A and 33B of the Immigration Act 2014 set out that a landlord or their agent commits an offence if premises are occupied by an adult disqualified from occupying premises under a residential tenancy agreement because of their immigration status, and the landlord or agent knows or has reasonable cause to believe that the premises are so occupied.

On summary conviction, an offence under section 33A or 33B of the 2014 Act carries a penalty of a fine, up to 12 months in prison, or both. On indictment, those penalties increase to a fine, up to five years in prison, or both.

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly.

We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account. We empower others to defend their own rights and the rights of their family, friends and communities.

Our principles are guided by evidence and expertise – not political agenda, profit or popular opinion. We're not afraid to speak uncomfortable truths or confront intolerance and abuse of power wherever we find it.

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