

JOINT BRIEFING FOR HOUSE OF COMMONS AHEAD OF REPORT STAGE OF THE POLICE, CRIME, SENTENCING AND COURTS BILL

PART 2 (SERIOUS VIOLENCE DUTY) AND PART 10 (SERIOUS VIOLENCE REDUCTION ORDERS)

July 2021

Ahead of the Bill's Report Stage in the House of Commons, our organisations from across the human rights, privacy and technology, criminal justice, public health, and racial justice sectors highlight the following concerns with Part 2, Chapter 1 and Part 10, Chapter 1 of the Police, Crime, Sentencing and Courts (PCSC) Bill as it stands:

PART 2: SERIOUS VIOLENCE DUTY

1. While purporting to be a public health, multi-agency approach to tackling serious violence, the proposed duty to prevent and reduce serious violence would risk further criminalising communities over addressing root causes by being police-led and enforcement-driven.
2. The provisions under Part 2 that mandate data-sharing between different agencies with minimal safeguards have the potential to breach individuals' data rights and their right to a private life and entrench racially disproportionate policing and structural inequality.
3. The creation of carve-outs for professional duties of confidentiality and other restrictions on disclosure of information will erode relationships of trust between frontline professionals and the individuals they work with, and hinder the provision of vital services such as health and social care and education.

We urge MPs to support amendments 97-112 which would remove provisions that establish the Serious Violence Duty from the PCSC Bill.

NOT A PUBLIC HEALTH APPROACH

4. Although the serious violence duty has been touted as a public health, multi-agency approach to serious violence, it is fundamentally a police-led, enforcement-driven strategy. For example, local policing bodies will be given the authority to monitor specified authorities – which includes education and healthcare providers – compliance with their duties to collaborate to prevent and reduce serious violence (clause 13 (2)). As outlined below, the various bodies subject to the duty are not equal partners: police are given the power to demand information from other bodies (like education authorities, healthcare providers or social workers) and they must acquiesce, regardless of whether they determine sharing the information is in the public interest or breaches any of their other legal duties or professional obligations.
5. A police-led approach is problematic because police and welfare-based agencies and organisations have fundamentally differing institutional missions and professional obligations. A police-led approach is likely to result in the prioritisation of policing objectives (including surveillance, enforcement, and punishment), at the expense of protecting people's rights and improving their well-being and economic conditions and protecting wider public interests that safeguarding and data protection promote.

BREACH INDIVIDUALS' DATA RIGHTS IN RACIALLY DISPROPORTIONATE WAYS

6. Clauses 9 and 15 establish powers on the part of a wide range of agencies to disclose information to the police (and to one another) under the duty to prevent and reduce serious violence. While the Explanatory Notes state that clauses 9 and 15 are designed to create a “permissive gateway” for the sharing of information, when understood in the context of the duty and powers of the Secretary of State under clauses 16 and 17 respectively, it becomes clear that the police, who are at the apex of this duty, can strongarm information from such agencies essentially whenever it so chooses.
7. Under clause 16 (1), a wide range of agencies will be required to hand over any and all information upon request by a local policing body, for the purposes of enabling it to exercise its functions under the serious violence duty. Clause 16 (4) makes clear that this is a legal obligation, that is further backed up by the Secretary of State’s power to make orders mandating compliance under clause 17. While a Government Minister stated at Committee Stage that she hoped that the powers under clause 17 would be “used infrequently”¹, this is no guarantee, and the power remains highly worrying, especially when considered in light of clauses 9 (5), 15 (4), 16 (6). These provisions, ostensibly an attempt to re-instate data protection legislation, are confusingly drafted, with the effect that existing data protection legislation is to be read in line with the duties under the PCSC Bill, rather than the other way around.² Most worryingly, clauses 9 (4), 15 (3), and 16 (5) provide that disclosures of information under these provisions will not breach professional duties of confidentiality and other restrictions on disclosure.
8. There already exist well-established information sharing mechanisms to enable multi-agency working on issues such as domestic abuse,³ including Multi-Agency Risk Assessment Conference (MARAC) and Multi-Agency Safeguarding Hub (MASH) processes. There are also a wide range of existing statutory powers/duties to share information for specified purposes. For example, s.17 of the Crime and Disorder Act 1998 requires certain authorities, including local authorities, to have due regard to the need to prevent crime and disorder in their area. The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007/1830 made under the CDA 1998 set out the framework under which a strategy group shall arrange to share information between responsible authorities. Importantly, these powers do not override established data protection obligations, the Human Rights Act, or the common law duty of confidentiality.⁴

¹ Column 259, Police, Crime, Sentencing and Courts Bill (Sixth sitting), 25 May 2021.

² Clause 15 (4) provides that “this section does not authorise a disclosure of information that—(a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account)”. The effect of the qualifying language is that, in determining whether a disclosure of information would contravene the data protection legislation, the power conferred by clause 15 is to be taken into account. This drafting is evidently circular, and it is unclear from the Explanatory Notes whether any attention has been paid as to how the powers conferred by clause 15 (and clause 9 and 16, which use similar qualifying language) will actually influence assessments of whether there is a legal basis for the processing of data, not to mention issues of necessity and proportionality, under the General Data Protection Regulation and Data Protection Act 2018.

³ For example, see: <https://www.bournemouth.gov.uk/communityliving/CrimeDisorder/DomesticAbuse/marac/marac-docs/personal-information-sharing-agreement.pdf>; <https://www.walthamforest.gov.uk/sites/default/files/marac%20information%20sharing%20agreement.pdf>.

⁴ Other statutory duties include Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 (Regulation 5) made under the Act; Section 82 of the National Health Service Act 2006; Sections 13Z3 and 14Z23 NHS Act 2006 Restrictions; s.27 and s.47 of the Children Act 1989; s.10 and s.11 of the Children Act 2004; s.175 of the Education Act 2002.

9. By contrast, Clauses 9, 15, 16, and 17 of the PCSC Bill have been drafted to override the professional and legal safeguards around personal data that exist in order to safeguard people's human rights. Further, the broad drafting of the duty under clause 7 means that any information disclosure - whether that is about individuals' health status, religious beliefs or political opinions and affiliations - could ostensibly be justified under the banner of 'preventing and reducing serious violence'.⁵ Altogether, these provisions are likely to give rise to significant and severe breaches of individuals' data rights under the General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018 and their right to a private life (protected under Article 8 ECHR).
10. Not only are these provisions likely to threaten people's data rights, they are also likely to exacerbate racial disproportionality in policing. The failings of the Gangs Matrix are instructive in this regard. It is well-established that the policing of serious violence is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the 'gang'.⁶ The stark statistics on the Metropolitan Police Service's (MPS) Gangs Matrix, revealed in a report published in 2018 by Amnesty International, lay bare the over-identification of people of colour as gang affiliated – at the time of publication 72 per cent of individuals on the MPS's Gangs Matrix were black, yet the MPS's own figures show that just 27 per cent of those responsible for serious youth violence are black.^{7,8}
11. The persistence of stereotypical assumptions as regards to people who may be involved in serious violence practically ensures that data collected, processed, and deployed in pursuit of this duty will be imbued with prejudice, contrary to the right to non-discrimination⁹ and the public sector equality duty.¹⁰

ERODE PROFESSIONAL DUTIES AND HINDER THE PROVISION OF VITAL SERVICES

12. At Committee Stage, a Government Minister noted that one of the key reasons for clause 15 is that "information sharing between agencies is not always as full and as timely as we would like, because of concerns that they are not allowed to share information."¹¹ This comment seemingly ignores the importance of legal duties and professional obligations – such as confidentiality and safeguarding duties – that are essential to protect people's dignity and

⁵ These are subject to a higher degree of protection under both the Data Protection Act 2018 (DPA) and the ECHR.

⁶ Patrick Williams, 'Being Matrixed: The (over)policing of gang suspects in London', August 2018, https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

⁷ Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database', May 2018, <https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>.

⁸ The West Midlands Police Ethics Committee has raised concerns that active proposals using crime data to identify young 'violent offenders' in school catchment areas would create "risks of stigmatising and labelling children, areas, schools or neighbourhoods)." (published February 2021) <https://www.westmidlands-pcc.gov.uk/archive/ethics-committee-february-2020/> See also: Documents ref 14122020 - EC - Agenda Item 3c - Analysis of school catchment areas and violence – proposal and 14122020 - EC - Minutes Advice For background see article <https://www.birminghammail.co.uk/news/midlands-news/fears-over-police-plan-identify-20193614>

⁹ Article 14, European Convention on Human Rights.

¹⁰ Section 149, Equality Act 2010.

¹¹ Column 254, Police, Crime, Sentencing and Courts Bill (Sixth sitting)

privacy, fostering relationships of trust, and delivering high quality care, and which are also grounded in domestic¹² and international law¹³ and the Department for Education's policy.¹⁴

13. Fundamentally, the imposition of a legal requirement on schools, health and social care providers, and youth services to share confidential information – including individuals' personal schooling and healthcare data - to the police is likely to have a corrosive impact on hard-fought and longstanding relationships of trust, and severely damage service delivery. We have already seen the damaging consequences of such data-sharing in the context of Prevent¹⁵ and the Hostile Environment.¹⁶

PART 10: SERIOUS VIOLENCE REDUCTION ORDERS

14. The Bill hands the police a highly oppressive tool, unlike anything on the statute books.
15. The Bill seriously compounds the discrimination faced by marginalised communities – particularly Black men – and exacerbates the disparities that already exist throughout the criminal justice system.
16. SVROs are not supported by evidence, and have the potential to exacerbate the precise problem it is seeking to solve – serious violence - by fomenting injustice, alienation and exclusion.

We urge MPs to support amendments 113-114 which would remove provisions that establish the Serious Violence Reduction Orders in the PCSC Bill.

OPPRESSIVE BY DESIGN

17. Existing stop and search powers are already problematic and yet, in recognition of their ability for harm, have certain safeguards applied to them. SVROs fundamentally undermine these safeguards in substantial ways, by: creating an individualised stop and search power, allowing police to stop someone whenever they are in a public place, removing the need to form reasonable suspicion and basing the imposition of an SVRO on a person's previous convictions.
18. As it stands, previous convictions cannot be used alone, or in conjunction with other factors, as grounds to conduct a stop and search. The Code of Practice for statutory powers of stop and search, PACE Code A, states that police cannot use "the fact that the person is known to have a previous conviction" as a basis for a stop and search. Such a constraint seeks to tie reasonable suspicion to factors which are relevant to the likelihood that a person has committed a specific offence, rather than attempts to reduce people to their past behaviour. SVROs on the other hand, are tied precisely to a person's previous conviction, which the

¹² Section 1, Children's Act 1989

¹³ Article 3, Convention on the Rights of the Child.

¹⁴ Department for Education, 'Working Together to Safeguard Children', 2018, <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

¹⁵ Open Society Justice Initiative, 'Eroding Trust: The UK's Prevent Counter-Extremism Strategy in Health and Education', October 2016, <https://www.justiceinitiative.org/publications/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>

¹⁶ See for example Jamie Grierson, 'Police told not to share immigration data of domestic abuse victims', 17 December 2020, <https://www.theguardian.com/uk-news/2020/dec/17/police-told-not-to-share-immigration-data-of-domesticabuse-victims> and Zoe Gardner, 'Migrants deterred from healthcare during the COVID-19 pandemic', February 2021, <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=fa346f70-cb08-46c1-b366-9a1f192ff4f3>

court can impose via a low standard of evidence. The Bill makes clear that “it does not matter” whether the evidence considered in deciding to make an SVRO “would have been admissible in the proceedings in which the offender was convicted.” Nonetheless, a person subject to an SVRO may face criminal penalties should they breach it.

19. People subject to, or who police believe are subject to, an SVRO are likely to face intrusive monitoring of their daily lives. Similar tactics to those used to police people on the Gangs Violence Matrix may be used – continually patrolling and surveilling the same postcodes and thereby subjecting people to chronic over-policing. This kind of monitoring not only interferes with people’s right to private and family life, but may alter where they associate (for example, not leaving home or attending events because they know they will attract police attention) or who they associate with (for example, not meeting with particular friends or family) and impact their ability to work or access education.
20. At Committee Stage, the Government sought to reassure the Opposition that the establishment of SVROs by way of a pilot across 4 police forces, would enable them to collect robust data on their use.¹⁷ We are concerned that pilots and other exercises such as these, do not achieve their purported aims of safeguarding and establishing agreed standards to base further roll out of policy from, but are instead a mere buffer zone between introduction of a policy and its wider roll out.¹⁸ The only safeguard available to counter the harms that SVROs are likely to cause, is for them not to be created at all.

COMPOUNDING DISCRIMINATION

21. In the initial consultation document, the Government recognised that whilst “most people who are sentenced for knife or offensive weapon offences are White [...] adults from some ethnic minority backgrounds are disproportionately more likely to be sentenced for a knife or offensive weapon offence. It is therefore likely that most people who are made subject to SVROs will be White, adult males, although it may be that a disproportionate number of Black people are impacted, Black males in particular.”¹⁹ Further, the Government conceded that “people from an ethnic minority who are subject to an SVRO are more likely to be searched in practice.”²⁰ As is apparent from official data, there already exist extreme racial disparities in the rates of stop and search in this country. Communities of colour are already searched at significantly higher rates, with black people 8.9 times more likely to be subject to a stop and search than white people.²¹ Both in terms of who they are applied to and who bears the brunt of their enforcement, SVROs will reflect, deepen and compound the discrimination marginalised communities face at every juncture of the criminal justice system.
22. The Bill also allows for an SVRO to be made on any person aged over 18, regardless of whether the person themselves used a weapon. This introduces a *de facto* joint enterprise or guilt by association measure – such that people may have orders imposed on them (and therefore be subject to constant stop and search). As the Lammy Review established

¹⁷ HC Public Bill Committee 17 June 2021

¹⁸ For example, the Home Office collects annual data on stop and search. This data has repeatedly shown the disproportionality inherent in these police powers, but the Government is yet to make substantial efforts to rectify these problems. Similarly, the Home Office has delayed their pilot of Knife Crime Prevention Orders – the findings from which may have substantially aided the decision to implement SVROs in the first place.

¹⁹ Home Office, ‘Serious Violence Reduction Orders: A new court order to target known knife carriers’, 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15

²⁰ *Ibid.*

²¹ House of Commons Library. 2020. Police powers: stop and search.

“thousands of people are estimated to have been prosecuted under Joint Enterprise over the last decade” and “up to half of those convicted under Joint Enterprise identify as BAME.”²² In the case of *R v Jogee*, the Supreme Court strengthened the burden of proof required for Joint Enterprise to limit the police use of this discriminatory doctrine, such that it was required beyond reasonable doubt that a secondary party intended to encourage or assist a principal in, for example, carrying out a knife attack.²³ Despite this, the government is proposing that this strengthened burden of proof be disregarded in relation to SVROS, effectively reviving the expansive joint enterprise doctrine, even in circumstances where people may have been acquitted in joint enterprise proceedings of the main offence, as long as they have been convicted of some other offence.

23. Given the proposed new measures pose significant human rights impacts, it is crucial that they are supported by unequivocal evidence that they will meet their stated aim of breaking the “cycle of offending and [protecting] our communities from harm”.²⁴ We support this aim, so we are concerned that no evidence has been provided to justify claims of effectiveness. The Home Office’s own research found that in a previous surge in stop and search during Operation Blunt 2 there were “no discernible crime reducing effects”.²⁵ Similarly, an independent, peer-reviewed study drawing on ten years of London-wide data found stop and search has “only a very weak and inconsistent association with crime” and drew no statistically significant links between stop and search and levels of violence.²⁶
24. In addition, the use of SVROs would risk breaching Article 8 ECHR – the right to respect for private and family life, home and correspondence. In *Gillan and Quinton v United Kingdom*²⁷, the ECtHR found that the stopping and searching of a person in a public place without reasonable suspicion of wrongdoing could violate Article 8 ECHR, where such powers are not sufficiently circumscribed and contain inadequate legal safeguards to be in accordance with the law. In particular, the ECtHR determined that the lack of reasonable suspicion rendered an individual “extremely vulnerable to an arbitrary exercise of power” and represented a lack “of any practical and effective safeguards”. We consider that the proposed framework could therefore risk violating Article 8 ECHR and be open to challenge in the courts.
25. In our view, the proposals are not only likely to be ineffective, but may also be directly counter-productive. The custodial experience often exacerbates and compounds the early life disadvantage many of the people who come into contact with the criminal justice face. Against this backdrop, these measures may reinforce negative stereotypes and trap people in a cycle of criminalisation and harm, rather than diverting them from the criminal justice system. SVROs also severely risk undermining the potential for rehabilitation and people’s chances of being re-integrated into society.

²² The Lammy Review, ‘An Independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System,’ September 2017 p.19 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

²³ *R v Jogee* [2016] UKSC 8

²⁴ Home Office, ‘Serious Violence Reduction Orders: A new court order to target known knife carriers’, 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15

²⁵ McCandless, R., Feist, A., Allan, J., Morgan, N. Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2 (2016) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stopsearch-operation-blunt-2.pdf, p. 3.

²⁶ Matteo Tiratelli, Paul Quinton, Ben Bradford, Does Stop and Search Deter Crime? Evidence From Ten Years of Londonwide Data, *The British Journal of Criminology*, 58 (5) pp. 1212–1231.

²⁷ *Gillan and Quinton v United Kingdom* (App. No. 4158/03) (Judgment of 12 January 2010) ECtHR.

26. By fomenting injustice, alienation and social exclusion – conditions which have been found to correlate to levels of serious violence – they may deepen the very problem they seek to address.

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