

## Super-complaint prepared by Liberty and Southall Black Sisters

### Introduction

1. This super-complaint is submitted jointly by Liberty and Southall Black Sisters.
2. The purpose of this super-complaint is to raise our serious concerns regarding the policies and practices of all police forces in England and Wales with respect to the treatment of victims of crime who have insecure immigration status, with particular focus on the passing on of their data to the Home Office, for the purpose of immigration enforcement and an entrenched culture of prioritising immigration control over public safety and fair treatment of victims. We ask that this issue be investigated as we consider this to be a) arguably unlawful and/or b) causing significant harm to the interests of the public.
3. We set out below a brief description of our organisations and why we are well placed to make this super-complaint.

### *Liberty*

4. The National Council for Civil Liberties (“Liberty”) is an independent membership organisation founded in 1934 which is at the heart of the movement for fundamental rights and freedoms in England and Wales. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly and the powerful are held to account. Our legal team regularly acts for individual clients and intervenes in significant cases before the domestic courts and in the European Court of Human Rights (“ECtHR”).
5. Liberty has a longstanding interest and considerable expertise in the law pertaining to police accountability and victims' rights. Our expertise in this area is such that we are regularly granted permission to intervene in matters before the higher courts, for example: *DSD and NBV -v- The Commissioner of the Police of the Metropolis* [2018] UKSC 11, *R (Roberts) -v- Commissioner of Police of the Metropolis* [2016] 1 WLR 210, *Michael -v- Chief Constable of South Wales* [2015] AC 1732, *R (Catt) -v- Association of Chief Police Officers* [2015] AC 1095, *R (T) -v- Chief Constable of Greater Manchester* [2015] AC 49, *R (GC) -v- Commissioner of Police of the Metropolis* [2011] 1 WLR 1230 and *Van Colle -v- Chief Constable of Hertfordshire Police* [2009] 1 AC 225. We have also contributed to numerous consultations on the issue of police accountability.

### *Southall Black Sisters*

6. Southall Black Sisters (“SBS”) is a specialist women’s organisation founded in 1979 for black and minority ethnic (“BME”) women. We operate a resource centre providing information, advice, advocacy, counselling and support to BME women and children who remain some of the most marginalised groups in society. Most women approach us seeking advice and assistance in relation to domestic and other forms of gender-based violence and inter-related issues of homelessness, immigration/asylum problems, debt and poverty, civil, family and criminal matters and mental health. As a specialist organisation we are also regularly called upon to assist and advise statutory and non-statutory organisations and professionals regarding the needs of BME women.
7. Our advice and advocacy casework team consists of experienced domestic violence advocates who are able to converse in several Asian languages and who have an awareness of domestic violence and other forms of abuse and its impact on BME women and children. Members of our team participate in local Multi-Agency Risk

Assessment Conferences (“MARACs”), where information about high risk domestic abuse victims is shared between local agencies. We also participate as experts in domestic homicide and serious case reviews.

8. We also undertake policy and campaigns work at a local and national level. We have been at the forefront of raising awareness and creating significant legal and policy changes in respect of domestic abuse, forced marriage, honour based violence, immigration and gender inequality using a variety of means including strategic litigation and intervening in legal cases that raise issues of wider public importance. Most recently this has included; *R (on the application of Quila and another) v Secretary of State for the Home Department* (2011) UKSC 45; *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11 and *HM Chief Inspector of Education, Children’s Services and Skills v The Interim Executive Board of Al-Hijrah School* [2017] EWCA Civ 1426.

### The complaint

9. As outlined above, the purpose of this super-complaint is to raise our serious concerns regarding the policies and practises of all police forces in England and Wales with respect to passing on the data of victims and witnesses of crimes to the Home Office, for the purpose of immigration enforcement.
10. Reports from as far back as 2006, indicate that there is “*evidence [to] suggest that, in many cases, victims who are in the UK illegally are concerned that if they come forward, they will simply be returned to their source state, and potentially also charged and punished for a migration offence.*”<sup>1</sup> Numerous government documents also expressly accept that those with insecure migrant status may face specific difficulties in reporting crimes to the police. For example, immigration status can be used as a tool for control or abuse in domestic relationships<sup>2</sup> and in human trafficking cases, traffickers can leverage the victim’s fear of being reported to the authorities as an undocumented migrant to perpetrate abuse, prevent them from seeking help or going to the police.<sup>3</sup> The ‘Safe Reporting of Crime for Migrants with Insecure Immigration Status’ by Step Up Migrant Women UK highlights various examples of women being deterred from reporting crime as a result of their immigration status and the possibility of immigration enforcement steps being taken against them.<sup>4</sup>
11. In our view, victims must be able to report crimes to the police and witnesses must feel able to come forward if they have potentially important information, regardless of their immigration status. This is of course significant for their own safety and ability to access justice. However, there is also a wider public interest in ensuring that criminals are prosecuted and punished, and less able to commit further crimes. It is our submission that the practice of police officers sharing the data of people reporting crimes or coming forward as witnesses with the Home Office, is preventing crimes being reported, investigated, and prosecuted. This is clearly contrary to the public interest.
12. As outlined in our cover letter, this super-complaint was first conceived of and drafted when there was no overall guidance to police officers, either centrally or locally. The NPCC, on hearing of this super-complaint published guidance on 7 December 2018, purportedly to clarify the position (Appendix 1). However, our analysis is that the new guidance does not stop, or even meaningfully restrain, the sharing of data of victims

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<sup>1</sup> The Joint Committee on Human Rights report into Human Trafficking from 9 October 2006 at §140

<sup>2</sup> The Home Office’s Statutory Guidance on ‘*Controlling or Coercive Behaviours in an Intimate or Family Relationship*’, December 2015 at p.7, §23

<sup>3</sup> The UNODC ‘*Global Report on Trafficking in Persons*’, 2016 at p.60

<sup>4</sup> See the ‘*Safe Reporting of Crime for Migrants with Insecure Immigration Status: Roundtable report*’, May 2018 by Step Up Migrant Women UK, at pp.8-11.

and witnesses of crime with the Home Office. It is also unclear what status this guidance has or whether it has, in fact, been adopted by all forces raising issues about. In all the circumstances our view is that the improper, and arguably unlawful, practice remains, such that this matter requires investigation and recommendation for amendment are still needed.

13. Both the background paper setting out the policy and the position now adopted states, in terms, that it is “wholly appropriate” that an officer investigating a crime “should” contact immigration enforcement if the victim is suspected of being an illegal immigrant.<sup>5</sup> The only concession appears to be that this would not be done immediately or automatically, instead suggesting their data will be shared at the “appropriate juncture”.<sup>6</sup> In our view, this increases the likelihood that victims and witnesses of crime will have their data shared with the Home Office. Their fear of the consequences of this practice, such that they are unlikely to report crimes, remains justified. Similar conduct as illustrated in the case studies gathered in evidence (outlined below) remains highly likely.
14. The policy does state that the police will not take any enforcement action themselves. But of course by sharing the information with the Home Office, which is likely to include contact data for the victim of crime, the Home Office is facilitated in taking enforcement action. It is clear, therefore, that the guidance does not improve the position for victims or witnesses of crimes; at best it merely changes which State body will act on the information gathered as a result of a victim reporting a crime, and may delay enforcement action for a brief period. Indeed, it still implicates the police in immigration enforcement practices against victims and witnesses of crimes.
15. Our general concerns are as follows:
  - The guidance is not evidence based. There is nothing in the background paper that suggests that detailed investigation into the practice nor its impact has been undertaken. The NPCC has yet to see the extensive evidence gathered in the course of preparing the super-complaint.
  - The guidance was prepared without any consultation. It should be noted that the NPCC Domestic Abuse stakeholders group (of which SBS is a member) meets quarterly, and met most recently in July and September this year. Neither SBS nor, to our knowledge, were other partners consulted on this guidance despite having raised concerns about these specific issues at both meetings).
  - The NPCC failed to have regard to its predecessor organisation ACPO’s guidance,<sup>7</sup> which clearly acknowledged that lack of immigration status is a high-risk indicator when assessing victims of domestic violence, for instance. The new guidance not only fails to take account of this recognition but actually exacerbates the high risk that victims continue to face.
  - The presumption in paragraphs 2.7-2.9 that immigration enforcement has a role to play in safeguarding is not explained and is in our view, extremely problematic. The guidance fails to explain what possible role immigration enforcement can play in safeguarding. The suggestion that immigration enforcement officers can ‘advise victims on options’ is particularly concerning. Immigration officers are neither independent nor have the expertise to give advice on immigration or any other

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<sup>5</sup> Paragraphs 2.8 and 4.4 of the Chief Constables’ Council paper entitled “Information Exchange regarding victims of crime with no leave to remain”, 3 October 2018

<sup>6</sup> Ibid paragraph 4.4

<sup>7</sup> *Guidance on Investigating Domestic Abuse*. (2008) ACPO/NPIA, [http://library.college.police.uk/docs/npia/Domestic\\_Abuse\\_2008.pdf](http://library.college.police.uk/docs/npia/Domestic_Abuse_2008.pdf)

support and any attempt to create such a function is bound to create a conflict of interest.

- The assumption at paragraph 2.10 of the Chief Constable's Council paper that immigration officers will not detain a victim when they come into contact with them flies in the face of the extensive evidence that we have gathered. This raises questions about the credibility of the new guidance overall.
  - Paragraph 4.4 of the paper illustrates the central flaw in the guidance which both asserts that the police will treat victims as victims but also share information with the Home Office. This strongly suggests that information sharing will be inevitable. It is not explained why it 'wholly appropriate' to involve immigration enforcement in what are essentially safeguarding matters.
16. In all the circumstances the new guidance undermines the concept of safe reporting for victims and witnesses of crime who have insecure immigration status. At best it simply delays the point at which immigration officers may be contacted. At worst, it makes a mockery of the concept of safe reporting and of equality of access to protection, thereby undermining victims' confidence in policing and the criminal justice system. As such, despite the new guidance, we consider that there remains a systemic and concerning problem that requires investigation by the super-complaint team, and attendant recommendations based on the evidence gathered.
17. On a more general point, please note that our position is that victims and witnesses of any sex and in relation to all crimes, who have insecure or irregular immigration status, may be unacceptably deterred from reporting to the police due to fears that their details will be passed to the Home Office. However this is a potentially large group and so for the good order of the super-complaint and its investigation, we have largely focused on female victims of domestic and sexual abuse and violence. This group of women appears to have the most well-collated information put together by various groups that are working on this issue, including our own. From that evidence it is plain, however, that similar issues no doubt affect all victims of, and witnesses to, other crimes. We hope the investigative team will feel able to extrapolate the issues to consider the impact on others such that any recommendations arising will apply to all victims and witnesses of crime with insecure immigration status. The issues relating to the potentially unlawful nature of this practice can be similarly applied to any victims and witnesses to serious crimes for example other forms of violence (including knife crimes), trafficking, and labour exploitation.
18. Further it is also worth drawing the investigative team's attention to the issue of whether some victims may also be suspected of non-immigration related offences. These individuals are, we say improperly, sometimes not considered "pure victims" as they might be involved in unlawful activity. This attitude may prevail even though their crime could be a result of their insecure immigration status – prostitution as a way to earn funds to live for example, or those who have been forced into unlawful work as a result of being trafficked. It is our assertion that these people should still be considered victims nonetheless, and that it is still in the public's interest that they are able to report the crimes they have suffered without fear of their data being given to the Home Office. The process of separating out "good" victims and "bad" victims of crime is meaningless. Indeed, we note that this is something that police forces have begun to understand in their investigations of victims of sexual grooming and "county lines" issues. If it is accepted that there is a significant public interest in all crimes being reported, not only to punish offenders, but also to protect others who may become future victims if those criminals are not brought to justice, then it must be accepted that a system is required which would allow victims who may also be involved in unlawful activity to be able to report without fear of being apprehended themselves. As such,

any recommendation to assist that reporting, should apply equally to those victims and witnesses too.

## Legal background

19. In order to consider this issue in full, we believe it may be helpful for the investigative team to consider the core legal background.

### *Police powers to share a victim's or witness's data*

20. The purported reason to provide a complainant's or witness's data to the Home Office is usually that it is suspected that they may have committed an offence under s24 or s24A of the Immigration Act 1971 ("IA 1971"), and the police contact the Home Office to check their status.
21. We welcome the position taken in the new guidance that a PNC check must not be carried out solely to establish if a victim has breached immigration legislation.<sup>8</sup> However given that the preceding paragraph of the guidance states that a PNC check can be carried out for various other reasons, it is clear that, in reality, it will be impossible for a victim or witness to prove that it was done to check their status, even if in reality that is the reason behind the check. As such, there is a concern that this practice may be routinely being carried out where victims reporting crimes or witnesses contributing to the investigation of crimes are ethnic minorities or have an accent.
22. S24 and s24A IA 1971 broadly relate to entering or remaining in the UK without leave, and deceptively obtaining or seeking to obtain leave to enter or remain in the UK and/or avoiding enforcement action regarding removal. S24 is a summary only offence and s24A can be dealt with by way of a summary matter, and only in exceptional cases as an indictable matter. The fact that they are largely dealt with as summary offences and result in relatively low level sentences, demonstrate that they are not particularly "serious" offences. This is significant because, as we discovered in our investigations, it appears that these relatively minor offences by the victims are being given priority over the much more serious offences they report, such as violence and rape.
23. As far as is publicly known, there is no specific memorandum of understanding between police forces and the Home Office regarding the sharing of data for immigration enforcement purposes. Thus, there is no known formalised or documented practice. However, the investigative team may wish to note that the document in place between the Department of Health and the Home Office has recently been withdrawn after its legality was challenged by the Migrant Rights Network, for whom Liberty acted as lawyers.<sup>9</sup> As such, should such an unpublished memorandum be in place, it may not be lawful.
24. We believe that instead there appear to be two main bases on which data sharing is undertaken: 1) exemptions under the Data Protection Act 1998 and 2018, and 2) by using s20 of the Immigration and Asylum Act 1999.
  - 1) *The Data Protection Acts*
25. The basic principles in the Data Protection Act 1998 (DPA 1998) and the Data Protection Act 2018 (DPA 2018), the latter of which gives force to the General Data Protection Regulations, are that personal information and data must not be shared by a public authority without consent. The police are subject to the principle not to share

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<sup>8</sup> Paragraph 4.3 of the Chief Constables' Council paper entitled "Information Exchange regarding victims of crime with no leave to remain" 3 October 2018.

<sup>9</sup> <https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/legal-victory-against-government%E2%80%99s-hostile-environment>

personal data by virtue of s1 DPA 1998 and s32 DPA 2018. Which Act applies is based on the date of the data sharing; anything before 23 May 2018 is governed by the DPA 1998, anything on or after 23 May 2018, is governed by the DPA 2018.

26. For the purpose of analysing the conduct of police forces for this super-complaint, the relevant provisions are largely similar. Names, dates of birth, and addresses constitute personal data (S1 DPA 1998 and s3 DPA 2018) and must not be shared unless there is an exemption. It is not known if the police are also providing information which would be classed as personal sensitive data, for example, nationality or race or any allegation of the commission of an offence (s2 DPA 1998 and s10 DPA 2018). Data relating to an individual's immigration status constitutes sensitive personal data and is subject to stricter controls than personal data.
  27. For matters governed by DPA 1998, s29 provides an exemption to the general rule not to share personal data without consent of the subject, for the purposes of crime prevention. On the basis that immigration offences are offences, they would likely fall within that exemption.
  28. For matters governed by DPA 2018, paragraph 4 of Schedule 2 provides an exemption to the general principle that data should not be shared if it is being processed for the maintenance of effective immigration control, or the investigation or detection of activities that would undermine the maintenance of effective immigration control. As such, the provision of personal data to the Home Office to establish a victim's or witness's immigration status, would likely fall within this exemption.
  29. However, what is notable is that despite arguably providing a legal exemption for sharing this data, nothing in either Data Protection Act creates a specific power to do so, in any way mandates the data be shared, or creates an imperative to pro-actively do so. Nor do the provisions of either Act address the human rights implications of sharing data in this context.
- 2) *The Immigration and Asylum Act*
30. S20 of the Immigration and Asylum Act 1991, as amended by s55 Immigration Act 2016 ("IAA 1991"), is likely to be offered as a further, arguably lawful basis for the data sharing in question. It creates a power to supply information to the Secretary of State by a public authority for use for immigration purposes. S20A IAA 1999, creates a new duty to supply documents and information sought for immigration purposes but, notably, only arises if the Home Office seeks the information. Indeed, the Public Bill Committee specifically outlined that this did not require a public body to gather the information in order to be passed on.
  31. As with the exemptions in the Data Protection Acts, it is significant that again nothing in s20 or s20A IAA 1991 mandates the passing on of that information. Nor do these provisions address countervailing human rights considerations. This is key for any recommendations made arising from the investigation of this super-complaint.

*Despite the arguable powers to share data, such sharing may be unlawful*

*Articles 8 and 14 ECHR, and Articles 7, 8 and 21 EU Charter of Fundamental Rights*

32. Provision of an individual's data to a third party engages an individual's right to respect for an individual's private and family life under Article 8 of the European Convention of Human Rights ("ECHR") and Article 7 EU Charter of Fundamental Rights ("EU Charter"). In addition, Article 8 of the Charter confers a specific "right to the protection of personal data" which must be "processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down

by law". These are, however, qualified rights and interference with them can, in some circumstances, be lawful.

33. It is worth further noting that for many victims and witnesses in this position, Article 14 ECHR and Article 21 EU Charter, which prohibit discrimination, may also be engaged. This is likely to be the case where the data sharing is being done as a result of the individual's race or national origin.
34. It is clear that Article 8 ECHR and Article 7 of the EU Charter are engaged by the practice of data sharing by the police, and that this is an interference with these rights. Therefore, the question arises as to whether such interference is justifiable. On our analysis it appears that it is not.
35. In Article 8 ECHR cases, the ECtHR has repeatedly held that whether a derogation is in accordance with the law requires more than there simply being a power to engage in the conduct in question. There need to be appropriate safeguards, clarity, and the interference must be proportionate in achieving the State's aims. Notably, the authority to share information by way of the exemptions in the Data Protection Acts and as outlined in s20 IAA 1991 is unlikely to be sufficient to render an interference lawful if those standards are not met.
36. In our view, such an interference with a victim's or witness's Article 8 ECHR and 7 and 8 EU Charter rights is not proportionate given the aims of the data sharing for immigration enforcement purposes. This is in part because of the nature of how an individual's data is now in the police's control, the police have the data because an individual has sought assistance following being a victim of crime. A victim is seeking a public service for justice and protection. In our view seeking protection and justice should not give rise to a violation of their privacy.

#### *Public law*

37. The absence of certainty or consistency in the sharing of data when a victim reports a crime is, we consider, contrary to established principles of public law. It has been recognised in numerous cases that it is a requirement of good administration that public bodies deal straightforwardly and consistently with the public. A key mechanism by which this is achieved is the creation and publication of policies. Indeed, the courts have seen such policies as a legal requirement where the powers in question engage important interests. Although there now exists guidance, this position is, we consider, largely unchanged. While it is true that there is no longer a total absence of guidance in this area, the guidance remains unclear, and will likely result in inconsistent approaches by forces and individual officers. The new guidance is far too widely drafted to ensure certainty or consistency in practice. It also remains unclear whether it has in fact been adopted by all forces. If it has not, then those forces are in further breach of public law principles by failing to have policies at all.

#### *Duties to victims*

38. In relation to very serious crimes the police, as an emanation of the State, have specific duties towards victims and witnesses. Article 2 ECHR guarantees the right to life. It imposes both a substantive obligation to protect the right to life and a procedural duty to investigate the taking of life on the State. Article 3 ECHR is the prohibition on torture and inhuman and degrading treatment. In common with Article 2, it places a positive duty on the State to ensure where possible that these forms of suffering are not endured and a procedural obligation to conduct an effective investigation if such conduct is reported. Article 4 ECHR prohibits slavery, servitude and forced labour.

Again, the State has a positive obligation to prevent trafficking of human beings, which includes penalising and prosecuting traffickers.

39. The police play a central role in ensuring that the UK discharges the burden of its positive obligations under Articles 2, 3 and 4 ECHR. Part of the role of the police is to receive and investigate reports of serious crimes which would fall within the ambit of those Articles. If that is not done effectively, the UK will be in breach of its positive obligations under Articles 2, 3 and 4 ECHR.
40. The previous, albeit erratic, practice of sharing data on victims and witnesses with the Home Office for immigration enforcement purposes undermines the confidence of victims and witnesses with insecure immigration status in the police. The new NPCC guidance arguably increases the likelihood of the data being shared. A direct result of the data sharing is therefore that such victims and witnesses are less likely to report serious crimes to the police. For that reason, the data sharing practices as between the police and the Home Office arguably breach Articles 2, 3 and 4 ECHR and rob other efforts made by the UK to comply with its positive obligations to meaningful effect.
41. Accordingly, if there is a power for the police to transfer information to the Home Office, there must be significant and meaningful safeguards to prevent it from being used in a way that results in a breach of the rights of victims seeking to, or reporting, the types of crimes which engage the police's Articles 2, 3 and 4 ECHR duties. In our view, no such safeguards exist. Even the interim NPCC guidance drafted in December 2017 (which is not in the public domain) only gave guidance with respect to immediate arrest. Similarly, the current guidance only changes when the data will be shared, not whether it will be shared. For victims and witnesses to feel able to report crimes, this is clearly not sufficient if they believe that after the crime has been investigated, they may later be arrested for immigration offences or that the Home Office may start removal/deportation proceedings as a result of the victim having come to their attention following the victim's having reported a crime. As such, we believe that if the police were to share data of victims or witnesses with the Home Office, it could give rise to a claim for breaches of Articles 2, 3 and 4 ECHR, by preventing the report of such crimes or, in the case of witnesses, preventing the full and proper investigation of serious crimes since witnesses feel unable to come forward.
42. It is also important to note that treating victims differently based on their immigration status cannot be justified purely on the basis of immigration control. If there is no other reason given for differential treatment, such treatment is discriminatory (*Carson v United Kingdom* (2010) 51 EHRR 13, *Bah v United Kingdom*, para 46). It is clear from the case studies below, that victims are indeed being treated differently from non-immigrants on the basis of their immigration status.
43. It should also be noted that a failure to make an exemption for a group or category of persons who are disproportionately affected by a general policy or practice (i.e. the sharing of data with the Home Office) is also a breach of Article 14 ECHR unless it is justified. The disclosure of immigration status or data for establishing immigration status in the context where a victim reports a crime is unlikely to be justified.
44. To consider this issue as a whole, it must be recognised that there are competing rights and duties of the police and victims. To some extent, it must also be recognised that there are competing crimes in terms of which are the more serious and deserves prioritisation, say a reported rape versus the rape victim having committed an immigration offence. Ultimately, our view is that the duties on the police arising under Articles 2, 3, and 4 ECHR must supersede any authority to provide data for the purposes of immigration control. However this does not only affect the individual's fundamental rights; there is a clear duty to act to protect, as far as possible, other



members of the public, who may become future victims if such crimes are not reported and investigated.

*Directive 2012/29/EU (the "Victims' Directive")*

45. The Victims' Directive establishes binding minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect. Victims of crime should be treated in a sensitive, tailored manner, without discrimination of any kind.
46. Recital 9 of the Victims' Directive states that:  
*"Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as...residence status"*
47. Recital 10 of the Victims' Directive states that:  
*"Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality."*
48. Article 1(1) of the Victims' Directive states that:  
*"Member States shall ensure that victims are recognised and treated in a...non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status."*
49. While the Victims' Directive relates to the rights of victims who have reported crimes, it is plain that if this issue were to be before the European Courts, a purposive reading would apply such that the creation of a barrier to reporting would be a breach. Indeed, the Victims' Directive has a wide definition of 'victim' – Recital 19:  
*"A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them."*
50. It is therefore our contention that the sharing of a victim's data with the Home Office for immigration enforcement purposes is a breach of the Victims' Directive.

*Conclusions on the law*

51. Ultimately, our assessment of the law leads us to conclude that even if the police have the power to provide data to the Home Office, there is no duty to do so. Moreover, those powers may themselves be unlawful and are susceptible to challenge. As such, any future policy should take that into account, when deciding the best way forward and considering what other obligations the police may have, for example to victims of crime under Articles 2, 3, and 4 ECHR.
52. Given the importance of protecting current victims and witnesses and therefore potential future victims of the same perpetrators, i.e. the public at large, it is clear that there is a powerful argument to be made that those duties should be paramount in considering what the policy and guidance should state. If they are paramount, and victims are to be treated as victims first and foremost, then all data sharing with the Home Office must stop.

53. Even if the police must retain a legal power in some circumstances to convey information on immigration matters to the Home Office, they plainly do not have a right to do so in all situations, without any regard to the individual's circumstances and the impact on that individual. As such, even the purported lawful basis for such sharing, may not, in fact, be lawful in every case and consideration needs to be given to this issue when determining whether the current guidance is appropriate and, if not, what policy and guidance should instead contain.
54. Finally, it must be considered that the competing interests of the two issues – investigating the crimes being reported and immigration control are not of equal importance. We submit that investigation of the crimes being reported and ensuring witnesses come forward is a more vital issue than enforcing immigration compliance, especially since police officers are police officers, not immigration officials. This is of particular importance given the government's stated intention to protect and support particularly vulnerable victims such as those subject to domestic and sexual violence. It is also important when considering that the public at large may be at risk from perpetrators being free to commit further crimes. It is clear that there is significant harm to the public interest at least in that regard. In all the circumstances, we consider that the current position is unlawful, and unsustainable.

## **Evidence**

### *Policy and guidance*

55. When this super-complaint was first considered by Liberty, it was in part a result of evidence gathered under the Freedom of Information Act 2000 which demonstrated that police forces did not appear to have adequate, if any, policies or guidance in place regarding data sharing with the Home Office when a victim of crime reported to the police. As outlined in the section on the law above, a failure to have any policy or guidance on an issue such as this is arguably a breach of public law principles.
56. In light of the NPCC's new guidance of 7 December 2018, which we have been informed will be adopted by all police forces, the evidence gathered is no longer of material use and as such is not appended in full. However we do consider it is of contextual interest and use to the super-complaint investigative team, and, as such, we have created a table, below, containing the relevant details.
57. On 26 July 2018, in relation to a client's proposed case (details of which cannot be disclosed within this complaint due to confidentiality obligations), Liberty applied to all 43 forces in England and Wales under the Freedom of Information Act 2000 asking for the following information:
 

*"Please confirm whether your force has a formal policy in place in relation to when victims of or witnesses to crimes (who are not suspected of a criminal offence themselves) who come into contact with the police are referred to the Home Office for immigration purposes.*

*If the answer to question (1) is yes, please disclose the name of this policy and state how long it has been in force;*

*Please provide us with a copy of this policy."*
58. Please note that the British Transport Police were contacted separately with the same request on 30 October 2018. They have since replied.
59. As can be seen from the table below, no police force had a formal policy in place governing the sharing of data of victims and witnesses to crimes with the Home Office.

60. It is notable that despite no police forces having a policy in place, in response to questions about this practice by journalists, they were informed that 27 police forces stated that they had referred victims and witnesses of crime to the Home Office for immigration enforcement.<sup>10</sup>

| Force                        | Response date | Result   |
|------------------------------|---------------|--|
| Avon and Somerset            | 29/08/2018    | No policy in place.  |
| Bedfordshire                 | 21/08/2018    | No information held - no formal policy in place.   |
| Cambridgeshire               | 21/08/2018    | No information held - no formal policy in place.   |
| Cheshire Constabulary        | 28/08/2018    | No formal policy in place.   |
| City of London Police        | 29/08/2018    | No policy in place   |
| Cleveland Police             | 29/08/2018    | No policy in place.  |
| Cumbria Constabulary         | -             | Pending (overdue).   |
| Derbyshire Constabulary      | 17/08/2018    | No information held - no formal policy in place.   |
| Devon & Cornwall Police      | 21/08/2018    | No policy in place.  |
| Dorset Police                | 23/08/2018    | No policy in place.  |
| Durham Constabulary          | 22/08/2018    | Durham police do not “routinely” report victims/witnesses to the Home Office for immigration enforcement. No mention of a formal policy. |
| Essex Police                 | 21/09/2018    | No policy held   |
| Gloucestershire Constabulary | 23/08/2018    | No policy in place (but follows the NPCC interim guidance issued 20 December 2017).  |
| Greater Manchester Police    | 23/08/2018    | No information held - no formal policy in place.   |
| Hampshire Constabulary       | 28/08/2018    | Policy in place but the policy is exempt from disclosure.  |
| Hertfordshire Constabulary   | 22/08/2018    | Not “routine” practice but no formal policy.   |
| Humberside Police            | 12/09/2018    | No policy in place.  |
| Kent Police                  | 24/08/2018    | No policy in place. Work with IE on a case by case basis.  |
| Lancashire Constabulary      | 23/08/2018    | No policy in place.  |
| Leicestershire Police        | 28/08/2018    | No policy in place.  |
| Lincolnshire Police          | 29/08/2018    | No policy in place.  |
| Merseyside Police            | 07/08/2018    | No policy in place.  |
| Metropolitan Police Service  | 14/08/2018    | No information held.   |
| Norfolk Constabulary         | 22/08/2018    | Joint response from Norfolk/Suffolk. No formal policy in place.  |

<sup>10</sup> <https://www.bbc.co.uk/news/uk-44074572>

| Force                    | Response date | Result   |
|--------------------------|---------------|--|
| North Yorkshire Police   | 29/08/2018    | No policy in place.  |
| Northamptonshire Police  | -             | Pending (overdue)  |
| Northumbria Police       | 07/08/2018    | No information held.   |
| Nottinghamshire Police   | 12/09/2018    | No policy in place.  |
| South Yorkshire Police   | 30/07/2018    | No formal policy in place:<br><br><i>"Witnesses and victims are not routinely referred to Immigration Services, this will be assessed on a case by case basis. Operation Nexus principles are managed locally by the Immigration Service and South Yorkshire Police's joint working. If the case is complex this will then be referred to Operation Nexus. The joint working is managed through an Information Sharing Agreement which both Immigration and South Yorkshire Police have committed to."</i> |
| Staffordshire Police     | 02/08/2018    | No formal policy in place.   |
| Suffolk Constabulary     | 22/08/2018    | No formal policy in place.   |
| Surrey Police            | 12/11/2018    | No formal policy in place  |
| Sussex Police            | -             | Pending (overdue)  |
| Thames Valley Police     | 14/08/2018    | No formal policy in place.   |
| Warwickshire Police      | 08/10/2018    | No policy in place.  |
| West Mercia Police       | 08/10/2018    | No policy in place.  |
| West Midlands Police     | 02/08/2018    | No information held.   |
| West Yorkshire Police    | 16/08/2018    | Policy in place - asylum and immigration policy  |
| Wiltshire Police         | 23/10/2018    | No formal policy in place  |
| Dyfed-Powys Police       | 03/08/2018    | No formal policy in place. Dyfed Powys Police do not report victims or witnesses of crime to the Home Office for immigration purposes as at the date of the FOI request.   |
| Gwent Police             | 23/08/2018    | No formal policy in place but Gwent police has entered into a national agreement with the HO.  |
| North Wales Police       | 02/08/2018    | No information held.   |
| South Wales Police       | 09/08/2018    | No policy in place.  |
| NPCC                     | 08/08/2018    | Provided an excerpt of the copy of the interim guidance issued on 20 December 2017 and a press release from January 2018.  |
| British Transport Police | 27/11/2018    | No policy held   |

61. We refer you to paragraph 45 above. In our view, prior to 7 December 2018, the failure to have any policy in place was unlawful and the position susceptible to a challenge on public law grounds.

62. It is still a possibility that this remains the case. While the NPCC have publicly stated that all forces will adopt their guidance, it is not clear whether this has happened, or indeed whether it will. Leaving aside for a moment the issue of whether the guidance is adequate, we would ask that as part of your investigation of the super-complaint, the investigative team establish whether the forces have, in fact, faithfully adopted the guidance. It is then necessary to consider the status of the guidance. It is unclear whether it is mandatory, or in what sanction a breach of the guidance would result. Unenforceable and opaque guidance is, we submit, as problematic as no guidance at all.

#### *Evidence to Select Committee*

63. In preparing this super-complaint, we searched for publicly available data on this issue, given the obvious difficulties in gathering evidence from individuals who might be fearful of repercussions from those perpetrating crimes against them, and/or coming to the attention of immigration enforcement.
64. In June 2018, the Home Affairs Committee launched an inquiry into domestic abuse and sought written evidence from interested parties. The inquiry was conceived primarily to inform Government strategy in advance of the tabling of the Domestic Violence Bill, but also to look more broadly at other policies that should be pursued in order to maximise the effectiveness of the Government's approach in this area.
65. The issue of information sharing between police forces and the Home Office in relation to victims of crime with insecure immigration status was a recurring theme. To assist the investigative panel, we compiled relevant excerpts of evidence submitted by 17 of the parties to the inquiry and have appended it to this complaint (Appendix 2). A hyperlink to all the evidence can be found here: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/domestic-abuse-inquiry-17-19/publications/>
66. To further assist, we summarise below two interlinked and profoundly concerning trends that are plain from the evidence submitted: (i) the prioritisation of immigration enforcement over victim protection such that the assailants are not pursued even after being reported; and (ii) the 'weaponisation' of immigration status by perpetrators of such crimes. These issues demonstrate that the police's conduct in sharing the data of victims is significantly harming the interests of the public and creating a culture of impunity for perpetrators of crime.
67. Please note again that, while this focuses on victims of domestic violence and abuse, given the scope and purpose of the inquiry, we submit that the issues are no less relevant to victims, and witnesses, of other crimes.
- (i) *The prioritisation of immigration enforcement over victim protection*
68. A common concern raised was the perceived prioritisation of immigration enforcement, ahead of the wellbeing of victims. This view is held by the communities most affected by this issue (who are therefore less likely to report being victims of crimes or to offer to be witnesses) and the organisations who work with them. SBS noted that "*immigration enforcement appears to be the overriding priority rather than providing protection or pursuing criminal charges*", a worry echoed by Clinks and Rape Crisis England & Wales, who both commented on the tendency for migrant women to be viewed as "*offenders rather than victims*".
69. This is further supported by research from the University of Bristol's Justice Project, as referred to in evidence provided by the End Violence Against Women Coalition. The

study found that the police were less than half as likely to conduct a criminal investigation where the report was made by a migrant woman. The study also found a similar disparity in the number of cases culminating in prosecution, with 39% of reports from UK/EU nationals leading to a criminal charge as opposed to just 19% in cases reported by migrant women. While the wider deterrent effect of this failure to prioritise the protection of victims may be difficult to quantify, its existence is undeniable; importantly, it was even alluded to by the Crown Prosecution Service, who stated in their evidence that “[v]ictims face many difficulties in reporting [...] abuse, such as [...] having an insecure immigration status”.

70. While for self-evident reasons the submissions were unable to provide data on how many cases are not reported as a result of the perception that immigration enforcement is prioritised over victim protection, we submit that it can be inferred that there must be cases where this has been in issue, given the widespread knowledge among migrant communities that reporting crimes is resulting in their details being passed to the Home Office for immigration enforcement purposes.
- (ii) *The weaponisation of immigration status by criminals*
71. Many parties also expressed concerns that perpetrators of crime are exploiting the fear created by the ‘hostile environment’, of which we submit this is part, to exert control over victims. This was also asserted by the Office of the Police and Crime Commissioner for Northumbria: *“perpetrators of domestic abuse are given an extra weapon – stay with me or be deported”*.
72. This ‘weaponisation’ of immigration status was also noted by Amnesty International UK, who described it as a *“tool to control victims and continue the abuse”*, reflective of how *“immigration law and policy has exacerbated the risk for migrant women to experience violence and abuse and a climate of impunity for perpetrators”*. Similarly, a joint submission by the Black Women’s Rape Action Project and Women Against Rape highlighted the experiences of women subjected to *“intimidation including terrifying threats to report them as ‘illegal overstayers’ to the Home Office if they dare report the violence”*.
73. The pervasiveness of the problem was underscored by the Latin American Women’s Rights Service, who cited in their evidence a study of 183 women with insecure immigration status. The study found that 92% had received threats of deportation from perpetrators.
74. It is therefore apparent that the provision of data by the police to the Home Office not only creates impunity for offenders whom victims are too fearful to report in case they are passed on to the Home Office, but it actually creates and provides an additional source of control for abusers. In our view this is not only unsustainable, but may also be unlawful. For the purposes of this complaint, the panel will no doubt note that such a situation obviously creates significant harm to the public interest.

### **Case studies**

75. The matter being complained of is not theoretical. The investigators will no doubt have noted a number of recent publicised incidents in which people reporting crimes to the police were handed over for immigration enforcement, and in some cases we understand the crimes committed against them were not investigated. These include:
- i. A pregnant rape victim arrested on immigration charges after going to the police
- <https://www.theguardian.com/lifeandstyle/2017/nov/28/victim-arrested-on-immigration-charges-after-going-to-police>

<https://www.independent.co.uk/news/uk/crime/london-rape-woman-arrest-immigration-police-metropolitan-victim-home-office-germany-a8081016.html>;

- ii. A sex worker threatened with prosecution and deportation after telling the police how she was robbed at knifepoint

<https://www.independent.co.uk/news/uk/home-news/sex-worker-threatened-prosecution-deportation-reporting-police-robbery-crime-enfield-niki-adams-a7889601.html>; and

- iii. The Home Office threatening to deport a Polish man seeking help after attack (N.B. We have been able to gather further details on this matter and, with his kind consent, the details are outlined later in this document.)

<https://www.theguardian.com/uk-news/2017/dec/06/police-threaten-to-deport-polish-man-seeking-help-after-attack>.

- 76. We have also gathered information ourselves, from law firms, and other organisations such as the Latin American Women's Rights Service, who have been compiling case studies as part of the Step Up Migrant Women campaign, of which Liberty and SBS are a part. These case studies should not be considered the totality of the evidence available and we ask the investigators to consider that: 1) while they focus on victims of domestic and/or sexual violence, we submit that the same issue applies to all victims of all crimes, and 2) it is very difficult to gather information and numbers on people too fearful to report crimes but their existence can be easily inferred from the data that has been gathered.
- 77. While the basis of our super-complaint is that all migrant victims of crime must have the right to report crimes without fear of being reported to the Home Office, as outlined in our introduction, many of the cases that have come to our notice involve vulnerable migrant women who are victims of domestic abuse or gender-based violence more generally. This group of migrant women is particularly vulnerable due to a range of interrelated factors including the ongoing trauma and isolation that they face. As a result they encounter considerable barriers to reporting crimes of violence to the police and are much more likely to remain at heightened risk of serious harm, suicide and homicide.
- 78. Around 60% of SBS service users, for instance, have been subject to abuse and have insecure immigration status. For almost 40 years, SBS have observed how many migrant women with insecure status are too afraid to report their experiences of domestic abuse to the police for fear of retribution from perpetrators and from the state. When they do summon up the courage to report, they find that their accounts are dismissed, trivialised and discredited by the police. In some cases, they are subjected to an immigration investigation by the police or even arrested, cautioned and detained and even charged with immigration offences, rather than assisted as victims of domestic abuse. It would seem from many of the cases that we have encountered that the police's overwhelming concern is not the safety and well-being of the women or any children involved but whether or not they are lawfully in the UK. More often than not, no account is taken of the fact that many of these women have a right to make an application to regularise their stay as victims of domestic abuse, but have never had the opportunity to do so or obtained the support needed because they are trapped in abusive marriages or relationships due to fear of and intimidation by their perpetrators who use their immigration status to exert absolute control over them. Many do not know how to navigate their way through the criminal, civil or immigration systems and yet when supported by women's organisations such as SBS they gain access to



specialist immigration advice and representation. As a direct result, the overwhelming majority of such women go on to make successful applications to remain in the UK.

79. SBS drew HMIC's attention to this alarming response in its written submission to the consultation on police response to domestic abuse in 2014 (Appendix 3). Since 2014, far from seeing improvements we fear that this practice has actually increased, particularly in light of the provisions of the Immigration Bill 2016, with its emphasis on surveillance by statutory agencies, and the rhetoric around the 'hostile environment'. Our experience is that this has created a conducive context for the reporting of vulnerable and abused migrant women to the immigration authorities by a range of not only statutory but also even voluntary agencies. This state of affairs seriously undercuts the overriding duty of the police and other services to protect vulnerable adults and children and undermines the protection principle.
80. However, when such women engage the police in the absence of advocacy support, they find themselves questioned and investigated in respect of their immigration status instead of being assisted to access protection and justice or signposted to specialist advice agencies that can advise and assist them in respect of their immigration matters. This approach is highly discriminatory since these women are not afforded the same approach or response that is afforded to other women in society.
81. More recently, SBS and others have become concerned not only about the police's own response to abused migrant women but also about their highly influential role in shaping the response of other agencies to such women, through multi-agency forums tasked with protecting high risk victims, such as the MARACs. This is discussed in more detail below.
82. In the past the police have - at least theoretically - recognised that the lack of secure immigration status is a considerable risk factor in domestic abuse. Indeed, as a result of this recognition, the Association of Chief Police Officers (now the National Police Chiefs Council), issued guidance to all police officers in 2008,<sup>11</sup> regarding the need to recognise immigration insecurity as a risk factor in domestic abuse cases involving migrant women.
83. More recently, the College of Policing, in their guidance 'Major investigation and public protection - Understanding risk and vulnerability in the context of domestic abuse - Victims with insecure immigration status' stated:

*A victim with insecure immigration status might be married to a British citizen, in the UK on a visa, or in the country illegally. They may fear that contact with the authorities will result in them being returned to their country of origin, where they may be persecuted or ostracised for having a failed marriage. Under immigration rules current at the time of writing (Immigration Rules, Part 8, [paragraph 287](#)), if the victim came to the UK as the spouse or civil partner of someone who is already settled here, they cannot apply for indefinite leave to remain in the country in their own right (or consequently have access to benefits) until they have completed a two-year period as the spouse or civil partner of that person.*

*All of these concerns may keep a victim from reporting abuse to the police, a fact which the perpetrator may encourage as a way of maintaining control and further isolating the victim.*

*Immigration rules do, however, allow for a victim of domestic violence (the term used in the Rules) to apply independently of their spouse for indefinite leave to remain before*

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<sup>11</sup> Ibid



*the end of the minimum period if they can produce evidence that the relationship broke down as a result of domestic violence. Police officers and staff should be mindful of this when arranging referrals and developing safety plans for victims with insecure immigration status.*<sup>12</sup>

84. The Home Office's guidance on controlling and coercive behaviour,<sup>13</sup> also recognises immigration status as a vulnerability:

*Immigration status - Those subject to immigration control may face additional barriers when attempting to escape domestic abuse. These circumstances may make them more reluctant to come forward and report abuse. Such circumstances may also be exploited by perpetrators to exert control over victims, for example, by threatening to inform immigration authorities, or to no longer support their stay. In some circumstances victims may be allowed to stay in the UK if they can show they have experienced domestic abuse in a relationship with a British person or settled partner (see UK Visas and Immigration website).*<sup>14</sup>

[...]

*Perpetrators can be particularly adept at manipulating professionals, agencies and systems, and may use a range of tactics in relation to this offence, including [...] using threats of manipulation against the victim. For example, by telling the victim that they will make a counter-allegation against them, that the victim will not be believed by the police or other agencies, that they will inform social services, or that they will inform immigration officials where the victim does not have a right to remain.*<sup>15</sup>

85. It is difficult to reconcile this apparent understanding and acknowledgement of immigration status as a risk factor with the evidence we have gathered, below, of how the police actually behave. In reality, there appears to be no, or a serious lack of, understanding of the impact of the overlap of immigration with domestic abuse. The guidance such as it is, is not applied or understood by officers on the ground. Their overriding objective appears to be to report those who are potential 'illegals' to the Home Office at the expense of all else. This is evidenced by the case studies that we highlight below.
86. Yet (as referred to above) there is no evidence to suggest that there is any legal duty on the police mandating them to share information on a victim's immigration status with the Home Office. Even if such a 'duty' could be identified, we would suggest that it may well conflict with the state's obligations under the Human Rights Act.
87. The section below highlights the range of cases in which abused migrant women have been negatively impacted by the police response. It outlines the range of ways in which perpetrators use women's insecurities about their immigration status as a means of exerting absolute control. This allows them to abuse and exploit women with impunity. More importantly, the cases highlight the ways in which the police have responded when migrant women report their experiences. This response can be broken down into three main categories: (i) women who are too afraid to report to the police due to their immigration status; (ii) women whose complaints are discredited due to their immigration status or dismissed altogether for that reason, or whose immigration status is checked or interrogated prior to being dismissed and (iii) women who are detained,

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<sup>12</sup> Paragraph 3.1.1, <https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/risk-and-vulnerability/>, accessed on 26.11.18

<sup>13</sup> *Controlling or Coercive Behaviour in an Intimate or Family Relationship* - Statutory Guidance Framework, Home Office, December 2015

<sup>14</sup> *Ibid*, paragraph 23

<sup>15</sup> *Ibid*, paragraph 33

questioned and even arrested on the basis of their immigration status. The common thread running through all the cases is that the focus is on immigration enforcement rather than on investigations into domestic violence with the result that it is women who are perceived to be the primary offenders rather than the perpetrators of violence. The treatment of women at the hands of the police serves only to terrify and re-traumatise some of the most vulnerable and marginalised women in society and signals the view that they are not entitled to equal treatment from the criminal justice system.

### ***Immigration status as a weapon of control***

88. In the hands of perpetrators, a woman's insecure immigration status becomes a weapon of abuse, control and coercion. Women are deliberately kept isolated, uninformed about their status and often have their essential documents taken away from them, so as to increase their financial, physical and emotional dependency on perpetrators. They are often imprisoned in the home and afforded only limited contact with the outside world. Perpetrators are usually safe in the knowledge that their wives and partners have nowhere to go and no means of survival. As the SBS advocacy manager, Shakila Maan explains:

*"Women are kept isolated from the outside world so they do not gain any knowledge about their rights. We routinely hear comments such as "he threatened to have me deported if I told anyone about the abuse" and "he told me no-one cared about me because I was illegal [...] that no-one would believe me anyway" or "if I didn't give them all my money from my job they'd have me deported". I would say that all of our users on spousal visas have experienced those kind of threats as a form of abuse and coercive control [...]. We have dealt with cases where perpetrators and their families have gone to great lengths to terrify migrant women into submission. In one case, an extended family member was asked to pose as an immigration official in order to frighten a woman into submission. She was told by the 'immigration officer' that if she did not obey her husband, she would be required to leave the country. In another case, an oral 'talaq' divorce was given by a perpetrator to his wife (who had very limited English) along with a document that purported to have come from the Home Office, informing her that she had been 'officially divorced' and had to leave the country on a particular date and time otherwise she would be arrested and forcibly removed. When women come to us, they have a general fear that if they complain to the police, their immigration status will be interrogated and they will be removed. This is what they have been told by perpetrators. We have to sit with them and reassure them that this will not happen to them if they report their experiences of abuse to the police. We have to reassure them that we will accompany them to make sure that any interview of them focusses on protection and not their immigration status. It takes a lot of additional work from us in order to provide such support and reassurance. Any negative/insensitive response from the police undoes all the hard work we do in order to help build their confidence. When women do come to us they bring with them a whole history of abuse - sometimes years. They may never have reported to the police and it is only at the point of reporting to us that we are able to reassure them that they will not be automatically deported, have their children removed and so on."*

89. The SBS helpline worker, Mili Acharya, who is often the first point of contact for vulnerable women, describes the presenting state of women who call the SBS helpline in the following way:

*"Women are generally frightened of making a complaint to the police because of their immigration status. Their husbands have told them that they will send them back to where they came from and they are terrified of that and don't realise they have any rights. They are also frightened of the police as their experiences in their countries of origin include corruption, indifference, discrimination, political interference and abuse."*

*They are worried that the perpetrator of violence will use links to harm their family back home and the police in those countries will be unable or unwilling to offer protection. I have to reassure them and explain that they can be supported in going to the police in the UK and also that they can access immigration advice and that they may be able to regularise their status. This can take some time. These women are really vulnerable. I worry so much for their mental health, especially if they don't get constructive responses from professionals like the police. Because then it's like, 'oh my husband said they wouldn't believe me and he was right. So maybe it [the abuse] is my fault like he said'".*

### **“Too afraid to report at all”**

90. Having been controlled, manipulated, threatened and abused by the perpetrators of abuse as described above, many women will be simply too afraid to report to the police. This, combined with lack of knowledge and negative experiences of the police in home countries, effectively prevents many migrant women from coming forward, as SBS director Pragna Patel explains:

*“Many of our service users come from countries of origin where there is low confidence in police; where women in particular are not taken seriously. Police are seen as corrupt and abusive. In places like India, Pakistan, Bangladesh, Middle East, Africa and the Caribbean, women tell us – and indeed research shows - that police frequently dismiss domestic abuse, promote reconciliation and mediation and at worst, exploit women – through detention, abuse, and even custodial rape. Perpetrators play on the fact that women’s only understanding of the police is that which they know about ‘back home’. If the police and government here are serious about protecting all victims of domestic abuse then they have a lot of work to do to reassure migrant women that they will be taken seriously and protected first and foremost. Winning the confidence of marginalised groups is key to building confidence in the police”.*

91. Denise McDowell, Director at Greater Manchester Immigration Aid Unit, also echoes these concerns:

*“GMIAU represents many people, particularly women, who have been trafficked and who are at risk from violence and exploitation. Many of the women we see have fled persecution in their home countries where the State offers no protection and is often linked to the persecution. In our work, we aim to build confidence in the UK police as a place where women can report crimes that have been committed against them. This ‘intelligence’ is often helpful to police who are involved in modern slavery and trafficking investigations. We had assumed that this sensitive reporting was in confidence until we heard reports of women reporting crime and having their immigration status checked and reported to the Home Office. If this situation is unchallenged women will lose any confidence they may have had in the authorities and likely remain in harmful and dangerous situations.”*

92. The fear of reporting to the police is largely created by perpetrators, women’s own perceptions as well as anecdotal accounts they may have heard from friends or community members about the likely police response. Below are some quotes from members of the Manchester-based Safety4Sisters Migrant Women’s Group as to how women have experienced and internalised those fears:

*“How can I report when I have no papers? I was scared.”*

*“He told me they would take my child off me if I told anyone. As a mother I was scared too much [...] he knew my weak point.”*

*"My husband said If you tell the police they could send me home and deport me – I never went to the police because of this".*

*"(My husband said), ' I will kill you here as no none knows you, you have no family, friends, no one will ask about you' "*

*"He said, 'If you open your mouth I will kill you, cut you into pieces and send it in a bag to you family'"*

93. Fear of reporting is not just an issue for the victims themselves, but can also affect the responses of the professionals and agencies supporting them. Dr Durga Sivasathiaseelan, GP and Women and Children's Clinic Coordinator at Doctors of the World, explains the disturbing dilemmas that agencies like hers find themselves in when supporting abused migrant women report their experiences to the police:

*"When dealing with victims of domestic abuse as a doctor, one of the things I would always explore with them would be a report to the police – both to ensure their safety from the perpetrator and also as a means of achieving redress and justice. However, in the current climate, I am forced to think twice about encouraging undocumented migrants or those with insecure status generally, to report to the police because I simply can't guarantee that the police won't work with the Home Office and focus on these women as 'illegal immigrants' rather than victims of crime. There is a real professional anxiety – even an excess of caution – about advising people to go to the police in case they end up being the subjects of immigration enforcement. We are very, very cautious about sharing information with the police. If there was some kind of guarantee of a firewall between immigration enforcement and crime reporting then we could feel more assured that our patients would be treated as victims first and foremost, and convey that reassurance to service users – but that guarantee would need to be pretty airtight.*

*In my general practice I do get requests from the police for information about a client when they are investigating a crime. Sometimes the police come into the surgery and ask for that information without an order. I stick robustly to the ethical guidelines and make it clear that unless I have assessed there to be an immediate risk to my patient or member of the public, then I can only disclose patient information if I have patient consent or there is a court order precisely specifying the information that needs to be disclosed. Some police officers accept this readily; others can be intimidating and really push you to give them the information there and then so they can progress their investigation.*

*As doctors we absolutely feel we get sucked into the immigration agenda. Because our agenda is patient-focussed and patient-centred, and ethics and confidentiality is such a fundamental tenet of our work, it gives us confidence to fight back against the police and the Home Office when their agenda conflicts with the wellbeing and health of our patients. However, that is much easier to do as a professional than as a vulnerable migrant - I can completely see why so many migrants are too scared to go to the police because they just cannot be sure that the police's primary concern will be to protect them."*

94. Marchu Girma, Grassroots Director at Women for Refugee Women highlights the problem further:

*"Every week we see over 100 refugee and asylum-seeking women at our drop-in centre in London. Many of these women will experience a period of total destitution, where they are unable to access any financial support or housing, at some point during*

*their asylum claims. Destitution makes women particularly vulnerable to sexual exploitation, particularly when they are unable to access safe accommodation.*

*Because of police data sharing with immigration enforcement, women with insecure immigration status often feel unable to report crimes against them for fear of being detained or deported. It is unacceptable that already vulnerable women, who may have previously experienced sexual violence in their country of origin or on their journey to the UK, are left unable to access police protection and justice when they are the victims of crime here in the UK. Perpetrators are aware of this protection gap, and we know of women who have been sexually abused repeatedly by men who have threatened them that reporting these crimes would result in their deportation.*

*Along with other members of the #StepUpMigrantWomen coalition of grassroots migrant women's groups, Women for Refugee Women is calling for a firewall between the police and immigration enforcement. This would enable women with insecure immigration status to access justice, without fear that their personal information will be passed on to immigration enforcement. All women, including those with insecure immigration status, must be able to safely report to the police when they are the victims of crime."*

95. The case studies below demonstrate further the ways in which such women are consumed by fear and its consequences. Women are likely to suffer abuse for even longer periods (see GC below), resulting in prolonged exposure to what can only be described as inhuman and degrading treatment. Others will experience an escalation in risk, (see BC, whose husband and mother-in-law – encouraged by the inaction of the police - subjected her and her children to abuse over a number of years both directly and through the use of the family court process.) Some women internalise the abuse and seek to harm themselves, (see KB below). Perpetrators thus achieve impunity and remain unsanctioned (see BB's case). The case studies in this section relate to victims of crime who are too fearful of the consequences of their data being shared with the Home Office to report those crimes to the police.

It is important to note that the new NPCC guidance would not assist in the following cases as the guidance will still likely result in their data being shared with the Home Office if they reported these matters to the police.

**a. Case study:**

- i. GC is 37. She came from West Africa at the age of 17. She and her sister, HC, had been forced into a marriage with a violent man who raped and abused them, at the age of 15. They escaped and their uncle helped them to obtain short-stay visas to enter the UK, in hope of a better life. Their uncle arranged for them to stay with a friend, but he had terminal cancer and died three weeks after their arrival. At this point, GC and HC went to stay with different families, but were both subjected to exploitation.*
- ii. GC and HC were forced to act as servants and were also sexually abused by the men in the households. They were destitute and kept ignorant of their rights by the families they lived with, who told GC and HC that if they reported anything to the police they would be deported. GC said, "The man of the house would come down at night when everyone was asleep. He began using me for sexual pleasure. He knew I was destitute and had nowhere to go. I couldn't go to the police because I was scared I would be detained or deported. I was at his mercy. He would say, 'Who are you going to tell?'"*
- iii. GC and HC were terrified and so continued to be financially and sexually exploited. GC was forced to leave the house she was staying when the children grew to school age because she was no longer needed to perform domestic chores. She became*

street homeless, sleeping on park benches and night buses. Eventually, she found a new family who enabled her to stay with them in exchange for domestic labour. Again, she was abused by the man in the house and male visitors. And again she felt unable to report these repeated rapes because of her insecure immigration status.

- iv. One night, about 5 years after they arrived, HC went missing. She went to meet a man that she met on an internet chatroom and has not been seen again. GC was devastated but was too afraid to go to the police. She called hospitals and asked friends with secure immigration status to file a missing person's report. But 10 years on, GC still does not know what happened to her sister.
- v. Being unable to report the sexual violence that she has experienced because of her insecure immigration status, and her sister's disappearance, has had a severe impact on GC's mental health and has enabled this cycle of exploitation and its effects to continue for almost 20 years. **(GC, Women for Refugee Women)**

b. **Case study:**

- i. In early 2018, the East London Rape Crisis helpline service received a call from BB. She wanted advice as she had been the victim of rape. She wished to report this to the police, but she wanted reassurance that the police would not question her on her immigration status, as she had heard about this happening to other migrant women. BB was unsure about her immigration status; she had entered the UK legally and had married, but that marriage had broken down and she was not sure what that meant for her status. The East London Rape Crisis service felt unable to give BB the reassurance she so desperately needed, precisely because they knew of cases where – as BB feared – the police had focused on women's immigration status rather than their status as a victim of serious crime. The service had to advise BB that the police should be prioritising her experience of violence and that they would support her and advocate for her, including challenging the police if necessary. Unfortunately in light of this, BB felt unable to pursue the case. She continued to engage with the helpline for a time but eventually moved on without ever making a police report. It is assumed that her rapist therefore remains unpunished. **(BB – The Nia Project)**

c. **Case study:**

- i. KB came to the UK in 2009 from Bolivia on a 6-month student visa. She met her partner and lived with him for 2 years. They had two daughters. Her partner subjected her to emotional and psychological abuse. KB did not report to social services and the police out of fear that her daughters would be taken away and deported. Her partner regularly threatened her with this which caused her great anxiety. In desperation and seeing no other 'way out', KB attempted suicide by drinking bleach. She finally decided she could not cope and tried to escape but due to her immigration status, could not access a refuge. She has therefore continued to live with perpetrator in the same house. KB was able to make contact with a specialist women's service that is helping her and has obtained immigration advice. **(KB, LAWRS)**

d. **Case study:**

- i. ZA was a Nigerian woman who had travelled to the UK as a visitor. She started a relationship with a British man. He was emotionally and psychologically abusive to her. ZA became an overstayer, something her partner used in order to prevent her from seeking help for the abuse from the police or other professionals. She could not return to Nigeria as she was at risk of forced marriage there. She didn't know where else to turn. ZA became pregnant and sought advice from Doctors of the World. ZA was able to build a trusting relationship with her GP and was supported to leave the relationship.

*She went to stay with her sister, who had indefinite leave to remain. However ZA's sister strongly felt that, for cultural reasons, ZA should reconcile with her partner. Her sister was also worried that ZA's insecure status would somehow impact on her own status. By the time ZA's baby was born, ZA's sister was no longer willing to accommodate ZA. Feeling vulnerable and hopeless, ZA returned to her partner and was subject to further emotional abuse. Doctors of the World worked with Hackney Migrants Centre to find a refuge space for ZA and her baby and to support her to recover from her abusive experiences. However ZA simply would not countenance going to the police to report her partner's behaviour. She saw the police and the Home Office as being inextricably linked and was absolutely convinced that if she spoke to the police the ultimate outcome would be her deportation. (ZA - Doctors of the World)*

***“Black women [...] don't count [...] except where our immigration status is concerned”<sup>16</sup>***

96. SBS have frequently witnessed the ways in which the police response to women changes as soon as they become aware of their insecure status. Pragna Patel, SBS director explains:

*“With a migrant woman, increasingly what we are seeing is that the first question becomes not ‘how can we protect you’ but ‘how can we report you’. When a woman has insecure status it is often treated by police as a credibility issue. When the police attend an incident and the perpetrator says ‘oh she’s got insecure status and we’re separated’, we often see the police focus suddenly switch - so rather than investigate the possibility of a crime against the woman, they investigate the possibility of an immigration crime committed by her. What this reinforces in the minds of women is that police believe perpetrators.”*

97. Baljit Banga, director of the London Black Women's Project, has also noticed the shift in police response to migrant women:

*“Regrettably, we see this issue of the police prioritising migrant women's immigration status over their protection from domestic abuse, arising more and more. When a migrant woman approaches the police, her voice seems to go unheard; her problems unseen. What the police hear is the perpetrator. What they see is the woman's immigration status, not an individual in need of protection. Her experiences as a victim are erased. She feels unsafe, unsupported, vulnerable and isolated. Such an approach is putting women's and children's safety at serious risk. This is absolutely a consequence of the hostile environment. What the police should be doing is fulfilling their statutory duty to these women – dealing with the report of violence, ensuring the women and children's safety - and also referring them to specialist services; they know who the organisations are. We just don't see appropriate action from the police anymore. It is very frustrating and demoralising for professionals to see these failures and to see the police conducting themselves in a way which is detrimental to women's rights. These cases can be supported more effectively. They become high risk or require more costly intervention due to early failures by the police. There is a high emotional and social cost which results from these failures as well as a cost to the public purse. It is a type of institutional neglect which affects the support women get at the time they need it most. There is no consideration for women's rights in any of this. It is as if women with insecure status don't have rights. We seriously need to think about strengthening a rights-based approach and the police need to be reminded of their duty and purpose – which is to protect and not create further burdens for women who report violence. We need to see an end to this additional persecution and*

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<sup>16</sup> DY, SBS service user

*victimisation by the police. Not only does it undermine the work that organisations like ours do around prevention and safety, it also undermines human rights”*

98. Often women faced with the question, ‘what is your immigration status?’ will be unable to answer. As described above, many will not know – having been kept ignorant to ensure their dependency on perpetrators – and others may have fled their home without documents. As Meena Patel, who has worked with vulnerable women at SBS for over 35 years (including as a counsellor), explains, victims of domestic abuse often find it hard to give a coherent account of what has happened to them:

*“Many victims of abuse present as traumatised. I see a disproportionate occurrence of mental health problems amongst migrant women who have suffered violence. This trauma affects the ability of women to give a clear account. Some are too ‘numb’ or have ‘blocked the pain’, to explain; others are too frightened of revisiting what has happened to them so they just don’t speak or give vague answers. This reaction is compounded when a woman feels she is being disbelieved; for example when the police treat her as if she has done something wrong. Sometimes the police perceive what is actually a potential mental health issue, as a credibility issue. So they dismiss the woman and the abuse, and treat her as a wrongdoer. This in turn affects or exacerbates her mental health and wellbeing”.*

99. This form of police response - transforming a domestic abuse case into an immigration case - amounts to a form of institutional discrimination. It means that the safety and protection afforded to women in mainstream society is not afforded to BME or migrant women – as the case studies below demonstrate. There are a number of consequences to this. Firstly, when a woman is treated as ‘an illegal’ rather than a person – and disbelieved for this reason – it reinforces the messages they have often been given by perpetrators that they are worthless, sub-human and not worthy of attention or protection.<sup>17</sup> It ‘makes good’ the perpetrator’s threats. Secondly, a failure to respond appropriately to a woman simply reinforces a perpetrator’s sense of impunity and emboldens him to continue and indeed escalate the abuse. Thirdly, the police’s actions may impede their duty to deal with the crime of abuse; by focussing on the victim as the primary suspect rather than the perpetrator, they simply fail in their duty to protect and investigate serious crimes of domestic abuse, sexual violence and trafficking.
100. The case studies in this section highlight the treatment of migrant victims even when the police should be aware that they are victims of crime. They highlight the entrenched culture of prioritising immigration control over public safety and fair treatment of victims. The continued practice of the police working closely and on occasion on behalf of immigration enforcement, including by way of sharing data, has created a culture within the police service whereby migrant victims are treated as immigrants first and victims second, if at all. It should be noted that nothing in the new NPCC guidance would have helped these women, were it in force at the time.
- a. **Case study:**
- i. *RS was a young Romanian woman who was the victim of trafficking into prostitution in East London, organised by a network of Romanian pimps and traffickers. She had children who remained in Romania. She was a high-risk victim of multiple serious offences committed against her, including trafficking, false imprisonment, physical assault and sexual exploitation, both in the UK and in Romania. The London Exiting*

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<sup>17</sup> Safety for Sisters report, *ibid*, pp. 16-17



Action (“LEA”) outreach service, at the Nia Project, worked in RS’ area and she sought help from them to escape her prostitution/trafficking situation.

- ii. Previously, RS had been supported by a homelessness charity who were co-operating with the Home Office. On that occasion, she ended up returning to Romania with no other alternative provided. There was no risk assessment or enquiries made, which would have revealed that this was a very dangerous outcome for RS. On her return to Romania, she was subjected to further exploitation. RS then returned to England with the continued “assistance” of traffickers.
- iii. On another occasion, RS and several other young women were stopped by the police while involved in street prostitution. All the women were taken to the police station; they had been removed from the street as a part of an operation to deal with ‘on street prostitution’ in the area. The police operation was a response by the local authority, following several complaints from the local community. On this occasion, RS and the other women were given warnings and the “option” to return to Romania with no other alternatives. No buyers were arrested, detained or warned.
- iv. The police did not undertake any risk assessment or MERLIN police checks. If these checks had been done, they may have revealed that RS was being supported by the LEA service, and as a trafficked victim. Instead, RS, and all the other women, accepted the so-called voluntary return. She was then the victim of a further assault when she returned to Romania in retaliation for being linked with the police. RS’ numerous efforts to seek help from the Romanian police were unsuccessful.
- v. RS was returned to England again with the “assistance” of traffickers. At this point, the LEA service assisted RS to go to the police. The police had no understanding of the National Referral Mechanism and their role as first responders in completing the referral form. Instead, workers from the Nia Project helped RS complete the referral application form and Nia staff attended the multiple appointments with the police to also try to assist in bringing a prosecution against RS’ traffickers. The LEA also assisted with practical advocacy, including access to a ‘safe house’. RS was finally recognised as a victim of trafficking and assisted the police with the potential prosecution of an extremely dangerous trafficker and his associates. **(RS – The Nia Project)**

**b. Case study:**

- i. BC was a woman of Nigerian origin who came to the UK on a spouse visa. She lived with her husband and mother-in-law in the family home in the North East of England. BC was subjected to serious domestic abuse including physical and emotional abuse. In 2008 she gave birth to a daughter, DC and in 2009 had a son, FC. BC’s mother-in-law made it known that she considered DC should be ‘cut’ (subjected to FGM) when she was older.
- ii. BC telephoned the police on multiple occasions following incidents of abuse by her husband. Each time, her husband would make a counter allegation and point out that his wife was only in this country ‘because of him’. The police told BC that if they arrested her husband they would need to arrest her too. BC was terrified of being arrested and deported, and of being separated from her daughter, so she felt she had no choice but to drop the matter. At no stage did the police formally interview either BC or her husband or look beyond the mere cross-allegation by, her husband to ascertain credibility, or take any measures to protect BC and her children.
- iii. BC became increasingly concerned that her husband and mother-in-law would take DC to Nigeria in order to perform FGM on her daughter. In 2015, she sought advice

from her solicitor who commenced wardship and sought a Female Genital Mutilation Protection Order in the High Court. BC realised that she and her children could no longer live in constant fear of her husband's violence and threats. Because of the police's repeated refusal to take action against her husband, eventually BC and her children had to leave the family home and go into a refuge.

- iv. *During the family proceedings in court, BC's husband and mother-in-law continued to allege that they were the real victims of abuse. BC's husband tried to persuade the Home Office to deport her even though she was trying to regularise her immigration status. BC's husband and mother-in-law made false allegations to the police that BC had harassed her mother-in-law in the street and made threats to kill her and relied on these in the family proceedings to try and undermine BC's credibility and to assist in his case to prove she was unfit to care for the children. BC's legal team were able to prove that there was no such incident (using CCTV evidence) and the judge recommended in his judgment that that BC's husband and mother-in-law be investigated by the police with a view to being charged for perjury. However the police refused to take any action at all.*
- v. *In 2016, BC was ultimately granted a child arrangements order giving her residence of both children. Her husband was granted indirect contact only, and her mother-in-law was not granted any contact.*
- vi. *Having reviewed all the police disclosures and having had contact with the police throughout the case, BC's solicitor has no doubt that the police completely failed to understand or investigate her client's particular vulnerability to abuse as a result of her immigration status, treating it instead as a 'complicating factor' which excused their inaction. They had no insight into the impact of their failure to take protective action and instead, made a false assertion that they could either arrest both BC and her husband or neither. Such failure not only put BC and her children at continuing risk of serious domestic abuse and emotional harm, but also resulted in BC losing confidence in the police. In addition, it meant that BC's husband and mother-in-law were able to continue abusing and harassing her with impunity. (BC - Ben Hoare Bell Solicitors)*

c. **Case study:**

- i. *GG is a Brazilian national. She was in a relationship with a British man, who convinced her to come to the UK to marry him. Her partner told her that he would apply for a spouse visa, but he told her that she should come to the UK on a visitor's visa and he would 'sort everything out' once she arrived. Unaware of immigration law and procedures, GG relied on her partner's assurance and arrived on a visitor's visa. However, when she arrived, it became clear her partner had no intention of applying for a spouse visa. She was subjected to domestic abuse including physical abuse, controlling and coercive behaviour which included threats of deportation if she did not 'behave'. They had a daughter together, which increased GG's dependence on her partner. GG's partner hid her passport and documents so that she remained helpless. After a particularly violent assault by her husband, GG contacted the local police. She had visible bruises on her body and was extremely distressed. However, rather than investigate her injuries or assist her to obtain medical help, the police simply told GG she was not entitled to support as she had 'no recourse to public funds', and was a 'visa overstayer.' They told her to contact the Home Office directly and did not investigate the domestic abuse – or offer her any other assistance - at all. GG was homeless for a night before approaching the local housing authority, which also refused to help her. Her daughter remained with GG's partner. GG was able to secure the help of a specialist women's service who assisted her in family law proceedings regarding arrangements for her daughter, helped her find accommodation, and worked*

with immigration solicitors to obtain limited leave to remain. (GG – Latin American Women’s Rights Service)

**d. Case study:**

- i. *AR had come to the UK on a spouse visa. She had three children with her husband; a five year old and two year old twins. She was subjected to domestic abuse including restriction of her movement, financial control, verbal, emotional and physical abuse. Her husband would not allow her to take both her twins out at the same time. He insisted on one staying at home, in a deliberate attempt to stop her fleeing the marriage with the children. AR’s husband also used her immigration status against her telling her that if she called the police to report the abuse, then she would be arrested and deported as she had ‘no rights’ in this country. He said that they would not believe her anyway. He also said that if she tried to take the children away from him, he would go to court and would be given care of the children because she had no money and could not speak English.*
- ii. *In January 2016, AR confided in her sister who referred her to the London Black Women’s Project (“LBWP”). At that stage, she was unsure about her immigration status as she believed her husband had failed to pay the fee to renew her spouse visa. AR also found out that her husband had instructed immigration solicitors and told them that she was an ‘overstayer’.*
- iii. *AR was supported to make a report to the police. At first the police seemed sympathetic. However, they then spoke to her husband, who repeated his claim that she was an ‘overstayer’. The police then told AR that they could not be certain as to who was the actual perpetrator in the circumstances and said they did not believe that it was the husband on the basis of what she reported. AR was left devastated and had no faith in the police; they had behaved exactly how her husband had said they would. She was not believed. It would appear that once the police established (based on the husband’s account) that AR had insecure status, the ‘topic of conversation’ changed from one about domestic abuse to issues of immigration enforcement.*
- iv. *With the support of her sister and LBWP, AR instructed family solicitors to obtain a non-molestation order against her husband and was able to relocate with her children to a safe area. She also instructed new immigration solicitors. However, AR has lost all confidence in the police and their ability and willingness to protect her and her children.*

**e. Case Study:**

- i. *SH is an Indian national who married her husband in India against the wishes of both their families. They arrived in the UK on visitor’s visas which expired 6 months later. SH had two young children, one of whom was born in the UK. Following their arrival to the UK, her husband began drinking heavily and was verbally and physically abusive and controlling. He often threatened to kill SH and on one occasion attempted to strangle her. SH was afraid of making a report to the police because of her insecure immigration status; she feared being detained. Her husband then applied for asylum and she was made a dependent on his claim. This was refused in 2010 and she was not aware of any further applications made by her husband, who continued to subject her to abuse.*
- ii. *On 1st January 2014, SH was assaulted by her husband, who was drunk. He broke the furniture in the room, pulled her hair, hit her in the face and threw a table at her. He also took a knife and threatened to kill her and the children. He then left home and*

said that he would be back on 6th January to claim money from her. He called her several times after the incident, threatening her and ordering her to pay him money.

- iii. On 6 January 2014, SH attended SBS offices, desperate for assistance. SBS workers arranged for her to make a report to the police. Two officers attended the SBS office and took initial details from SH about the incident of 1 January 2014. Whilst in the presence of SBS, no questions were asked about her immigration status. However, the police then took SH to the local police station in West London; they said that they needed to take a full statement from her in a language that she could read and sign. Once at the station, SH was asked more questions about her immigration status causing her to panic. She immediately telephoned SBS and a caseworker had to speak to the police and repeatedly impress upon them that their priority was to ascertain the risk to her safety and that of her children as victims of domestic violence and to protect them. It was pointed out that the presenting issue was domestic violence and not SH's immigration status, which was a matter that SBS was assisting her with. Fortunately, as a result of SBS' intervention, no further action regarding SH's immigration matter was taken by the police. However, her husband has yet to be arrested. According to the police, he could 'not be found'; however it was not clear what efforts the police had made to trace him. (SH- SBS)

f. **Case Study:**

- i. AB was a young woman from Pakistan. At the age of 15 she was married to a cousin of hers, a British national whom she had only met briefly as a child. She saw him again on her wedding day and noticed he spoke very little. She felt that something was not right. However, she felt obliged due to cultural and family expectations to go through with the marriage. After the wedding, her husband and his family returned to the UK and she remained in Pakistan until she reached the age of 21, whereupon her husband applied for a spouse visa to allow her to join him in the UK. She travelled to England in November 2017 and moved into the family home in East London with her husband, mother-in-law, father-in-law, sister-in-law, brother-in-law and their respective spouses.
- ii. Upon her arrival, AB was treated as a domestic servant and made to carry out all the housework and cooking from early in the morning until late at night. It quickly became apparent to AB that her husband had some form of mental and physical disability. He could barely speak and needed help to eat, dress and go to the toilet. When she raised her concerns with her in-laws, they shouted at her, verbally abused her and physically assaulted her by hitting her face and body. In desperation, AB tried to confide in her husband's grandmother, who lived separately from the family. However the grandmother informed her father-in-law. AB's father-in-law threatened her with a knife and he together with her mother-in-law and husband physically assaulted her.
- iii. AB was terrified and fled the home the next day and was able to find the local police, who she thought would help her. AB's English was limited and she was very distressed. She was able to communicate that she had entered the country as a spouse and had been abused. However, the police were more interested in the fact she was a migrant. They took only brief details from her and did not offer her an interpreter. They considered her to be a victim of modern slavery and so made a referral under the National Referral Mechanism. They did not ask for details of the abuse, nor did they interview her or take details of her husband and his family. They simply made the referral without first directing AB towards an immigration solicitor for independent advice as to her status and the appropriateness of their actions. Nor did they refer her to a specialist service for black and minority women. The police then closed the case with no further action. At this point they referred her to a local (generic) Independent Domestic Violence Advocacy ("IDVA") service. The local IDVA service referred her to the specialist service - Ashiana Network.

- iv. *When AB arrived at the Ashiana Network Project, she was still wearing the same clothes she had on when she fled the home two days previously and had no other belongings. She was confused and did not understand why the police had not helped her. Ashiana were able to find her a refuge outside London. The immigration solicitor at Ashiana was extremely concerned that the police had simply taken it upon themselves to make a decision about how AB should regularise her status without seeking independent advice. Had AB received the correct advice she have known the correct route was to apply under the Domestic Violence Rule (“DV rule”), which allows spousal visa applicants whose marriage has broken down due to domestic abuse, an opportunity to apply for indefinite leave to apply. Ashiana support staff were also horrified that the police had not taken any steps to investigate AB’s complaint of domestic abuse. When they contacted the police, they were repeatedly ignored and the police refused to share even the most basic information with them including the crime reference number or details of AB’s initial attendance at the police station. The police simply said ‘there was no evidence’; but it appeared to Ashiana that the police had not actually taken any steps to establish whether there was any evidence. Moreover, they strongly suspected that the police thought that by (incorrectly) referring AB under the National Referral Mechanism that they had ‘dealt with the problem’. This strongly points to the fact that the police clearly saw AB as an immigration problem and did not concern themselves with the potential crimes committed against her.*
  
- v. *AB’s solicitor prepared an application for AB to remain in the UK under the Domestic Violence Rule. However this was greatly complicated by the police’s referral to National Referral Mechanism, which meant that in essence, AB now had two applications pending – one as a victim of domestic violence and one as a victim of trafficking. The police’s non-cooperation with Ashiana also meant that AB was deprived of being able to rely on evidence from the police which would have supported her Domestic Violence Rule application. There were significant delays in the Home Office dealing with the application. It took 10 months for AB to finally receive a positive decision on her application, during which time her mental health deteriorated so severely as a result of the trauma of the abuse and the stress of waiting for a decision, that she attempted suicide twice. Meanwhile as a result of the police’s actions, she has still received no justice for the abuse she has suffered and the perpetrator and his family remain at liberty to abuse another young woman. Although AB now has indefinite leave to remain, she feels betrayed by the police as they took no interest in her as a victim of crime. She continues to have difficulty trusting professionals as a result. (AB –Ashiana Network)*
  
- g. **Case study:**
  - i. *DY was a Nigerian woman. Whilst living in Nigeria she was the victim of an armed robbery, during which she was raped. She later travelled to the UK, as the dependant of her husband who was on a student visa. During her marriage, her husband abused her. They were unable to conceive, something DY’s husband blamed her for and he eventually abandoned her in 2012. Shortly after this, her home was raided by immigration officers. Having her home ‘invaded’ in this manner brought back traumatic memories of the robbery and rape in Nigeria. Ultimately no action was pursued against DY but she was left traumatised. DY later applied for leave to remain under article 8 ECHR due to the sexual violence she had suffered in Nigeria and the ostracism she would face in Nigeria due to the sexual violence she had suffered, but also the breakdown of her marriage.*
  
  - ii. *In 2013, DY was struggling to find affordable accommodation. She moved in with a work colleague who offered to rent her his box room for £40 a week. Her work colleague knew of DY’s history and she thought she would be able to trust him. DY’s colleague lived with his elderly father. DY felt her colleague mistreated his father but*

when she challenged him, her colleague became abusive. He started to demand more rent from her, which he knew she could not afford. He started forcing her to do unpaid household work for him. Eventually her colleague told DY she had to leave. While she was searching for new accommodation he continued to be abusive. He cut off the electricity to DY's room, demanding more rent to restore it.

- iii. *One day, DY came home and her colleague started an argument. He hit her on the back and she defended herself. DY fled and went to stay with a friend. She later returned to collect her belongings but her colleague locked her out and refused to let her take belongings. DY did not know what to do. She was very frightened of the police, as her only experience of the police was in Nigeria, where the police were known to be abusive and corrupt. She was also still deeply affected by the immigration raid. DY was frightened of what the police in England would say in light of her immigration status. Confused, DY wandered around on the streets and met a police officer on duty, who she spoke to about what had happened. The officer arranged for the police to attend her colleague's property. Police officers spoke first to DY and then to DY's colleague, who told them about her immigration status. DY felt that it was after this that the police's attitude towards her changed. They then started asking her for documents to prove her identity. She explained these were at the house of the friend. The police said they needed to 'do some checks' on her and insisted on accompanying her to her friend's house. DY was able to provide the police with the documentation they wanted. However, after this they seemed disinterested and told her that they no longer had time to help her collect belongings. The police officers asked whether she wanted to press charges, and said she would have to go to court and give evidence. They put the onus firmly on DY. By this time DY was too frightened and traumatised to do anything else. The police did not help her collect her belongings, nor did they take any steps to investigate her experiences of exploitation and assault by her colleague. DY was left terrified and became very distrustful of the police and indeed anyone she saw as agents of the state. She told her counsellor that she would not feel confident approaching the police in future. She is worried it would trigger her existing trauma. DY is considered a vulnerable woman and is under the care of her local mental health team. DY has said she feels like black women like her "don't count...except where our immigration status is concerned". (DY – SBS)*

**h. Case Study:**

- i. *TT was a Black African woman married to a White British man. She came to England on a spouse visa. Her husband regularly abused her. On one occasion he tried to smother her with a pillow. TT called the police. Her husband admitted trying to smother her but claimed it was in self-defence as TT had attacked him first. Although there was no evidence that TT had assaulted her husband, the police readily accepted her husband's claim. They questioned TT about her immigration status at length. They took no further action against TT's husband. TT was shocked. After this, TT's husband taunted her, threatening to 'send her back to her country' and frequently threw her out of the marital home in the early hours of the morning, forcing her to beg to be taken back. TT felt trapped. She couldn't leave her husband as she had nowhere to go and 'no recourse to public funds.' Sometimes TT's husband called the police to falsely claim she was harassing him. On other occasions, TT tried in desperation to seek help from the police. She tried to tell police that her husband had thrown her out of the house and was abusive. However he would say that she had 'left of her own accord'. TT said that every time the police attended, they asked her about her immigration status and this was what they seemed most interested in. She said she provided the police with 'a lot of evidence' of the domestic abuse but they were not interested and never investigated. She feels that because her husband was well-off and articulate,*

and she by comparison was only seen as an 'immigrant'. The police just believed her husband. (TT - SBS)

**“Women are not merely being disbelieved and dismissed but actually criminalised”**

101. Some of the most shocking cases we have worked on or those that have been brought to our attention by other agencies, involve abused migrant women who, when reporting to the police, are not merely disbelieved or discredited but are actually arrested, detained and charged with devastating consequences. Firstly, they are denied protection and are treated as offenders and criminals in respect of their immigration status; secondly, such punitive and potentially unlawful action amounts to state collusion with perpetrators who are effectively given a license to continue to abuse women and thirdly, such a draconian police response results in the re-traumatisation and re-victimisation of women and flies in the face of government commitments, strategies and policies on protecting women from domestic abuse and prosecuting perpetrators.
102. The case studies in this section relate to victims of crime who have approached the police for help, but are instead arrested and/or detained for immigration offences. It is important to note that the new NPCC guidance would not have assisted any of these victims, if it were in force, as the guidance would still likely result in their data being shared with the Home Office.
  - a. **Case study:**
    - i. *MB is a woman of Pakistani origin. She married her British husband (a cousin) in Pakistan in 2007. She travelled to the UK in December 2011 on a spouse visa. She moved into the family home with her husband, his mother (who is MB's maternal aunt), her brother-in-law and his wife and children. MB described her life with her husband and in-laws as a living hell. She was abused by her husband and in-law: she was regularly physically beaten, not allowed to eat more than once a day, locked in the home and not allowed to use the telephone. She was not even allowed to lock the door to the bathroom as her husband's family felt she might harm herself and contact the emergency services, which in turn would expose their abuse. The family would check the fridge to see if she had eaten anything whilst they had been out and would hit her if she had. Once, she was physically beaten for eating one of the children's yoghurts. She essentially survived on cornflakes which she would secretly eat in the evening.*
    - ii. *MB was treated as a domestic servant for the family. In addition, her husband and in-laws made her work as a carer for a relative and was paid £400 a month. This money was paid into an account opened in her name, to which she had no access as her husband and his family retained all the information. MB worked as a carer for two years but never received any of her earnings. She was told by her husband that the money would be used as the deposit for a new home, but she did not dare ask about the money as she knew that she would face violence.*
    - iii. *MB had relatives living in Birmingham. She was allowed to visit them, but only under the supervision of her husband/in-laws. These relatives would often ask her to undertake domestic tasks, for which they would pay her in cash. This money too was immediately taken from MB by her mother-in-law to go into the bank account, to which MB had no access.*
    - iv. *MB contacted her father in Peshawar, Pakistan, to tell him about the violence and abuse that she suffered on a daily basis. He told her that she should not return to Pakistan as this would shame the family. He told her that if she did, he would kill her himself. MB was terrified of the dishonour she would bring on her family (particularly*

given that her family and her husband's family are related) and of being subjected to honour-based violence and even murder, so she did nothing.

- v. *In 2016, MB suffered serious abdominal pains and was admitted to hospital by ambulance. Her husband and in-laws threatened her and told her not to say anything. However, MB did confide in a female doctor, who advised her to call the police. She did so, but her husband and in-laws told her repeatedly that there was no point in her complaining about her situation as she "didn't have a visa." When the police arrived, they asked her to make a statement with the help of an interpreter. However, based on what her husband's family had said about the police not assisting her, she refused to give a statement out of fear of what they would do. The police did not pursue the matter.*
- vi. *Another member of the medical staff at the hospital made an appointment for MB to speak to someone at Women's Aid in July 2016, which MB attended. However, on 9th July 2016, MB was re-admitted to the Emergency Department of her local Hospital, following a further incident of physical domestic abuse. She told medical staff that she had no life and wanted to end her life. At this point, the staff called the police again. MB was supported to make a statement and she was placed in temporary accommodation. However, her husband and his relatives followed the police car that was taking her to the local Women's Aid office, to try to find out where she was being taken. Since then MB has had to wear a face veil to hide her identity as she is terrified of being killed by her husband and his family. In January 2017 she obtained a non-molestation order against her former husband.*
- vii. *In March 2017, MB approached her MP for assistance. She had made an immigration application for indefinite leave to remain under the Domestic Violence Rule but had been refused for various reasons, and wanted advice about appealing and regularising her status. The MP and her office worked with MB on her appeal. On 9 August 2017, MB was assaulted in the city centre by a person unknown to her who tried to forcibly remove her face veil. MB suspected her assailant may have been directed to attack her by her former husband. The local police were notified of this by the local authority's 'abuse team', as a potential hate crime. On 11 August 2017, the police were called by MB to her address as she had received a letter from her husband threatening to kill her. However, rather than identifying MB as the potential victim of a hate crime and the victim of serious and prolonged domestic abuse and potential honour based violence, which had previously been reported to the police, the officers' enquiries identified her as 'wanted' for immigration matters. MB was taken into police custody. She was taken to the police station and from there to Yarls Wood Immigration Removal Centre. MB was by now very shocked and frightened and did not understand where she had been taken or why she was there. She was able to make contact with her MP, who established that she was in Yarls Wood. MB's MP personally contacted the Detective Chief Constable of the local police force to ask why a highly abused and vulnerable woman was being treated in this way, and also contacted MB's solicitors to instruct them to take action. After persistent action by the MP, MB was released from Yarls Wood 3 weeks later. MB was granted indefinite leave to remain in November 2017. (**'MB' – Office of Jess Phillips, MP for Birmingham Yardley**)*

**b. Case study:**

- i. *MM is a woman of South American origin. She travelled to the UK in 2001. MM had a son, now aged 11, by a previous partner, who was entitled to British citizenship. MM herself was initially undocumented. In 2011, she married her husband, a Portuguese national. She was then granted a five-year visa as the family member of an EEA national. They had a daughter together, now aged 5. MM discovered that her husband had a drug addiction which made him extremely paranoid. He subjected her to verbal*



and psychological abuse. MM was not allowed to leave the house without her husband's permission. He told MM that she was the one who was mentally ill and paranoid, and that there was nothing wrong with his behaviour. He would read her messages and emails to monitor her. MM managed to escape the abuse and went to a refuge in 2013. She made an application in 2015 to regularise her immigration status, as her family member visa was about to expire, but her application was refused in 2016. In desperation, fearing she would be deported and separated from her children, she contacted her husband. He manipulated her into believing that if she returned to him, he could help her regularise her immigration status. Believing that she had no other choice, MM returned to live with her husband. However, his abusive behaviour continued as before. In 2017, following her husband making threats to hurt her and showing signs of paranoid behaviour and drug misuse, MM called the police. Her husband told the police that she was "illegal". The police immediately telephoned the Home Office, who confirmed she did not have status. They then arrested M and kept her overnight in a police cell and released her a day later but she was required to report to the Home Office Reporting Centre every 2 weeks. The police did not investigate her allegations of abuse against her husband. There was then a further incident with her husband (involving similar behaviour); MM called the police again. They advised him to leave the house for a day. Her husband returned after that, again promising to help with her immigration application. MM made contact with a specialist women's service that is helping her obtain independent immigration advice. MM is angry that the police treated her as a criminal but took no action against her husband. She is afraid of losing her children. (MM – LAWRS)

**c. Case study:**

- i. KR is a woman of Peruvian origin, who is a Spanish national. She came to the UK in 2015 to join her British husband. She had little knowledge of English. Her husband and his family subjected her to psychological abuse. On one occasion her husband began to argue with her and pushed her. Frightened, KR threw a plastic bottle at him in the hope of getting him away from her. Her husband called the police, who arrested her for assault. KR tried to explain that she had acted in self-defence. At the police station, the police refused to listen to her account of the abuse she had been subjected to. Instead, they contacted the Home Office and asked an immigration official to question her. KR was asked for her passport. She was able to produce her Spanish passport. The immigration official then demanded to see her Peruvian passport. KR was held for 24 hours in the police station; she tried repeatedly to explain how she was the victim of abuse but the police demonstrated no interest in this; only in her immigration status. She was released but subjected to a restraining order. KR separated from her husband but he is constantly trying to provoke her into breaching the restraining order. KR is now working with a specialist women's service and trying to obtain legal advice on her immigration position. (KR, LAWRS)

**d. Case study:**

- i. NF is a Brazilian national with Spanish citizenship. She lived with her partner and their young son. Her partner would regularly physically assault her and was also emotionally abusive. On one occasion, the day after NF had had an operation on her wrists, her partner started an argument with her and began hitting her. NF was unable to defend herself as her hands were covered in surgical dressing. NF managed to call the police. NF was questioned by the police officer without an interpreter. NF was distressed and her English was limited and so couldn't communicate with the officer. She telephoned a friend and asked if the friend could come to her home and assist with interpretation. In the meantime, one of the officers went to another room with NF's partner. NF was told to remain in the kitchen. By the time NF's friend arrived, the police had placed NF under arrest. NF's partner claimed, falsely, that she had hit him in the

head. The police seemingly paid no attention to the inherent unlikeliness of NF being able to assault her husband given that her hands were bandaged. NF was taken to the police station and placed in a cell overnight (from 8pm to 2pm the following day). During the night, a woman went to her cell and said she was from the Home Office. She asked about NF's nationality and status. At no point during her time at the station was NF given the opportunity to explain her account of the incident or her history of abuse. She was not allowed to take the prescribed pain medication for her hands until the early hours of the morning when the police doctor approved the medication. She did not receive food between 8pm and 10am. NF was able to secure legal advice the following morning and was released on bail. A month later, NF received a letter telling her that she was 'released under investigation'. NF contacted a specialist women's service who secured legal advice about the criminal case and also helped her obtain advice on taking action against the police. Unfortunately NF did not qualify for legal aid and simply could not bear the stress of trying to take legal action unrepresented. NF was left angry and traumatised; despite being the victim and seeking the help of the police, she was treated as the perpetrator and interrogated and detained because of her immigration status. (NF, LAWRS)

e. **Case study:**

- i. NR is an Indian national who married her British national husband in October 2006. In February 2007, NR was granted a spouse visa to join her husband in the UK. Upon arrival, she lived at the matrimonial home in West London with her husband, father-in-law, mother-in-law, sister-in-law (who was herself going through divorce proceedings), her older brother-in-law (who was mentally and physically disabled) and his family and her younger brother-in-law and his family.
- ii. Prior to the marriage, she was reassured by her husband and in-laws that she could pursue further studies following her marriage. However, upon her arrival, her husband told her that courses in the UK were very expensive and suggested that she continue her studies in India. NR then returned to India on a couple of occasions to complete her studies, however, her in-laws demanded that she return before she had been able to complete her education. In the meantime, NR's family arranged a marriage between NR's younger sister and NR's husband's brother.
- iii. NR returned to the UK in early 2008, along with her sister. Soon after their arrival, her mother-in-law seized their passports on the pretext of getting their visa extended, but never returned them. NR's jewellery was also taken for 'safe keeping'. NR and her sister were then subjected to increasing control and abuse. They were prevented from contacting their family in India and were forbidden from visiting them again. They were both imprisoned in the home and not given any money for their personal expenses. NR was made to do all the household chores including cooking and cleaning and also had to provide full time care for her disabled brother-in-law. She was not allowed to eat dinner until all of her family members had eaten and her mother-in-law regulated the quantity of food she was allowed to eat. NR was subjected to verbal, physical and emotional abuse and neglect throughout her marital life. Her husband would invariably support his mother or sister in an argument against her. He also verbally abused and beat NR, usually at the instigation of her mother and sister-in-law. NR was beaten even when she was pregnant with her first child in 2008. Her daughter was born two months premature in March 2009 and as a result, her husband subjected her to even more abuse. He would swear at her and would repeatedly tell her to 'throw the baby into the bin'. At that time, NR felt unable to report the abuse to anyone including her GP.
- iv. NR's sister-in-law also regularly verbally and physically assaulted her, often for petty matters such as not serving the food on time. Her sister-in-law often hit her with anything that she could find, for example kitchen utensils, coat hangers etc. On one

occasion, her sister-in-law threw hot tea at her. On another occasion in August 2009, when her older daughter was about 5 months old, her sister-in-law became angry and hit her on her face with slippers. NR called the police and made a report but the police did not take any action.

- v. Due to an escalation of abuse towards NR and her sister, her sister contacted a relative who lived in Birmingham who became concerned and visited the sisters the following day. As NR was extremely distressed, she was taken to live with her relative in Birmingham. However, whilst she was there, her husband and mother-in-law contacted her repeatedly by phone and requested her to return. They told her that they would change and promised not to abuse her again.
- vi. In March 2010, NR returned to the matrimonial home and became pregnant with her second daughter. However her husband and sister-in-law had resumed their ill-treatment and physical abuse of her. Following one incident when she was hit with a coat hanger, NR called the police. The police arrested her husband but he was later released on bail with a condition that he should not visit the family home for 15 days. No further action was taken and NR's husband resumed his abuse of her.
- vii. In July 2013, following an argument, NR's husband slapped and kicked her continuously throughout the night and in the morning continued to swear at her and verbally abuse her, especially when she answered him back. NR threatened to call the police and so her husband eventually stopped.
- viii. In early October 2013, NR was packing lunch for her daughter, when her mother-in-law began to question her about the housework. NR handed her daughter's lunch box to her husband and asked him to take her daughter to school. Her husband became angry and threw the lunch box at her, hitting her back. He then began swearing at her and slapped her. NR took her daughter to school and on her return, she asked her husband to return her passport stating that she wanted to have a break and visit her family in India. He again started swearing at her and told her to get out and physically pushed her out of the house. NR went to the local police station and asked for police assistance in recovering her passport. When questioned why she needed her passport, NR gave an account of the assault and ongoing abuse that she experienced from her husband and in-laws and explained that she could no longer tolerate their abuse and ill-treatment.
- ix. NR was told to stay in the police station while 3 police officers attended NR's marital home with the intention of arresting her husband. However, when they got there, they were informed by NR's mother-in-law that NR and her sister were overstayers. At the same time, NR also arrived at the marital home accompanied by a male and female police officer. On hearing that NR and her sister were overstayers, the police made no further attempt to investigate their reports of domestic violence and instead took them away and detained them whilst the police carried out further investigations into their immigration background. No account was taken of their experiences of domestic violence or of their need to collect their children or their belongings. NR and her sister did not know about their lack of immigration status and were shocked to discover that their husbands and in-laws had not regularised their stay in the UK as their spouses.
- x. NR and her sister were reported to the UKBA by the police and were given a note from the Home Office notifying them that they were 'liable to detention' and were required to report to a reporting centre on a weekly basis. It was only later that evening, at around 8 or 9pm, that NR was accompanied back to the marital home by the police in order to collect her children, belongings and other documents. She was referred to social services who assisted in accommodating her and her children in a temporary bed and breakfast accommodation but for three nights only. SBS was then contacted

who provided NR and her sister with long term support and assistance with accommodation.

- xi. *In November 2013, the police informed NR that they were discontinuing their investigations into her report of domestic violence. No reasons were given. NR was extremely distressed on hearing the news and requested SBS to write to the police requesting the reasons for the discontinuance. No response was ever received. (NR, SBS)*

**f. Case study:**

- i. *AA came to the UK on a visitor's visa from a country in Africa in 2001. However she overstayed her visit visa and remained in the UK working. AA had a child, BA, who remained in Africa with AA's mother. AA's husband joined her in the UK in 2004. They subsequently had another child, CA, in 2005. After the birth of CA, AA's husband told her to stop working and claimed he would support the family. He was controlling and abusive. He held all the money in the household and would take her shopping, and control her expenditure. He also coerced her into perpetrating benefit fraud on his behalf. A few months after the birth of CA, AA's husband began to beat her, accusing her of sleeping with other men while he was out at work. He raped her regularly, and beat her if she would not comply. When she became pregnant again, he denied paternity and tried to force her to have an abortion. He continued to beat her and rape her during her pregnancy. Their child, DA, was born in 2008 and another child, EA, was born in 2011.*
- ii. *AA later started working to support the family. Her husband was furious. He became angry when AA tried to leave the house to go to work, sometimes stopping her by refusing to give her money for transport, and also by retaining all her earnings. He made sure AA had no independence and though she tried to leave him many times she was always forced to go back to him because she had no money to look after her children and nowhere to go. Eventually after around a decade of this treatment, AA finally managed to leave him with assistance from a domestic violence charity in 2015. The charity also referred her to Children's Services, who provided her and the children with support and accommodation under s17 of the Children Act 1989, in a confidential location. However AA's husband found her and manipulated into accepting him back. AA's husband would turn up to her flat unannounced demanding to see the children, staying for days at a time, and continuing to force her to have sex. AA called the police on several occasions to get him to leave, but charges were never pursued, even though she reported he raped her. This was because AA's husband persuaded her to drop the charges. A Child Protection Plan was then put in place with conditions which included AA's husband not having contact with the children or coming to the flat.*
- iii. *A few months after the Child Protection Plan was put in place, AA's husband did come to the flat. AA called the police, explaining that the history and that there was a Child Protection Plan in place which AA's husband had breached. The police then spoke to her husband. She does not know what they discussed, but after speaking to AA's husband the police's behaviour towards AA changed. They began to interrogate her, asking why she had not brought her first child to the UK from Africa. AA said it was because of her immigration status. The police then said she was illegal and would be arrested on immigration offences, and asked to see her children's birth certificates. As the name on the children's birth certificates did not match hers she was arrested for kidnap. The police left CA and DA in the care of AA's husband, despite being told that there was a Child Protection Plan under which he was not supposed to have any contact with the children, and despite the history of domestic abuse and rape.*

- iv. *Shortly following her arrest, the kidnap charges were dropped because the police ascertained the children were hers. However, she was detained by the police overnight for immigration offences. The next day she was visited by an immigration officer and served with a notice of removal, requiring her to leave the UK. During the period of her arrest, AA was crying constantly and was terrified that she would never see her children again. She was later told that her children had been given to her husband by the police, who had contacted him to collect them after her arrest. AA was horrified.*
- v. *AA resumed care of her children following her release from custody. With help from JCWI, she was later able to apply for leave to remain in the UK. However, she is now being prosecuted for the benefits fraud that AA's husband compelled her to engage in, whilst he faces no action. The children are now having some contact with AA's husband but are traumatised by the abuse witnessed and her child CA is receiving assistance from Child and Adolescent Mental Health Services due to self-harming behaviour. (AA, Joint Council for the Welfare of Immigrants)*

**g. Case Study**

- i. *Mr Miraslow Zieba's case is not one of domestic abuse but we have included it as an egregious example of a victim being treated as a criminal and subjected to deportation and being thereby forcibly separated from his wife, whilst the perpetrator of violent crime against him remained unpunished. It is a good example of how all migrant victims of crime are at risk of being treated as migrants first and victims second, if at all. Please note that this matter was reported in the press (see paragraph 75 iii), but we have been given further background information from Mr Zieba's solicitor, and Mr Zieba's permission to share this information for the super-complaint.*
- ii. *Mr Zieba is a Polish national who was living and working lawfully in the UK. One month after moving to the UK he was subject to a traffic stop and a one-inch blade was found in a zipped pocket inside his jacket. He was arrested. At the police station he explained that he had the knife as he used it for maintaining his motorcycle and in any event did not realise it was unlawful to carry it in the UK. This was accepted but as ignorance of the law is not a defence, he was offered and accepted a caution.*
- iii. *He was stopped several more times over the years, but was never arrested again, nor was any further wrongdoing asserted. At no stage during those traffic stops was his name or contact data provided to the Home Office.*
- iv. *In July 2017, Mr Zieba and his wife sought from their landlord greater security for their tenancy, and asked for a formal contract. Their landlord refused and angry at their request, demanded they leave the property immediately. They said they required time to find new accommodation. The next morning, the landlord returned to the property with two other, armed, men. Mr Zieba was held down with a knife to his throat and his wife told to pack their belongings. She was also assaulted and suffered bruising and lacerations to her arm and cuts to her face and feet. They were escorted from the property and Mr Zieba was told to get his car. He was told if he called the police the men would break his wife's fingers with pliers that they brandished. However Mr Zieba worried that they might do so anyway, so as he went to get his car, he flagged down a passer-by, explained that he and his wife were being attacked and asked them to call the police.*
- v. *When the officers from Essex Police Force arrived, they refused to listen to Mr Zieba, despite his having requested their attendance to report the crime. Mr Zieba was taken to the police station and thought this was to give a statement. However it later transpired that the police had arrested him. There is much confusion as to the reason for the arrest and a question mark over the legality of it. While at police station Mr Zieba*

*tried again to report the crime and explain that he had sought the police's attendance, but claims that the officers were uninterested in his position as a victim of crime. He was not questioned in relation to any crime either, but simply placed in a cell, his details provided to the Home Office and he was later handcuffed and taken into immigration detention. The Home Office began deportation proceedings against him based on the earlier caution arising from the traffic stop and his previous criminal history in Poland. Mr Zieba did not deny these matters but had not been involved in any criminality for 6 years prior to leaving Poland. He was eventually deported.*

- vi. *The landlord was never arrested. The police claimed that Mr Zieba and his wife had said they did not want to pursue the issue. Both strongly deny this, and did want action taken. While Mr Zieba had grounds for a complaint and potentially a civil claim against the police, these were not pursued as the couple were focused on dealing with the immigration matter. Of further concern, for the purposes of this super-complaint, the landlord remains at large and continues to rent properties to members of the public. As such, the police failed to investigate and potentially prosecute someone who may act in this way again.*
- vii. *We understand that when questioned by a journalist, the police stated that when encountering a foreign national they always conduct a security check with the Home Office. This appears to be an unofficial policy as it is not referred to in any FOIA responses to Liberty. Had Mr Zieba not asked the passer-by to contact the police to report the violent crime he was a victim of, it is unlikely that he would have been deported and forcibly separated from his wife. (Mr Zieba, details provided by Fahad Ansari, solicitor at Duncan Lewis)*

***“MARAC becomes slanted towards investigating immigration matters rather than safeguarding women and children, with serious consequences for individual women and children as well as public protection”.***

- 103. A persistently recurrent theme that has arisen in SBS' casework and that of other organisations is the way in which a focus on immigration and data sharing with the Home Office has now seeped into the way in which local statutory services, in particular, MARACs operate.
- 104. A MARAC is a meeting where information is shared on the highest risk domestic abuse cases in a local area, with a view to safeguarding victims of domestic abuse and their children. It is attended by representatives of local agencies such as police, health, children's social care as well as non-statutory services such as local Violence against Women and Girls (VAWG) services. Each MARAC will have a chairperson, whose role is not only crucial to ensure the MARAC is effectively and efficiently run, but additionally – in our experience – has a great deal of influence as to how MARACs are run and what is discussed and decided. The MARAC steering group will decide who will chair the MARAC; the guidance from SafeLives suggests that *“in most areas the best placed person to fulfil these requirements is the Detective Inspector from the Public Protection Unit, or a Senior Probation Officer”*.<sup>18</sup> SBS's local MARAC in Ealing has historically been chaired by the police and certainly our wider experience is that MARACs are often chaired by the police, and, even where they are not, the police have considerable influence within MARACs such that other representatives tend to defer to the 'expertise' provided by the police.

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<sup>18</sup> SafeLives Frequently Asked Questions for People Involved in MARAC - [http://www.safelives.org.uk/sites/default/files/resources/MARAC\\_FAQs\\_for%20MARAC%20practitioners\\_2013%20FINAL.pdf](http://www.safelives.org.uk/sites/default/files/resources/MARAC_FAQs_for%20MARAC%20practitioners_2013%20FINAL.pdf)

105. The case studies below focus on the role of the police within MARACs and the increasing emphasis that appears to be placed on immigration enforcement. This approach is shaping the agenda and outcomes for victims whose cases are discussed at MARACs. The concern here is that, led by the police whose views are highly influential, MARACs are moving away from a primary focus on safety, protection and safeguarding to a focus on surveillance on immigration. This increasing practice is subverting the very ethos of agencies that are tasked by law to protect and support vulnerable women and children.
106. SBS' Meena Patel has been attending our local MARAC on behalf of SBS for almost 3 years. Her experience is that during that time, the question of immigration status (of both the victim and perpetrator) and the need to involve the Home Office has been raised repeatedly within the MARAC, despite there being no obvious link between the Home Office and immigration authorities having any responsibility for safeguarding matters. She has advocated strongly in order to challenge and change what is a growing institutional MARAC culture. For example, Meena Patel describes being taken aback when another agency representative asked about the immigration status of the perpetrator of domestic violence in relation to a case they were discussing. When she raised the relevance of the question, the Chair of the MARAC, who is a police officer, responded: *"don't worry; we always do our (immigration) checks"*. Meena Patel notes that investigation into immigration backgrounds of perpetrators and victims appears to be a routine practice by the police even before a case gets heard at a MARAC:

*"When I first started attending MARACs, they were always talking about immigration status. The MARAC chair was interested in whether a victim with insecure status could return back to her country because she might be 'safer there'. I had to challenge this as it was an assumption that was not only possibly incorrect but also dangerous. In 2016, in another case, a high-risk victim was discussed at Ealing MARAC. Her perpetrator had insecure status and the social services representative said "the best course of action" would be to contact the Home Office and have the perpetrator deported. No other agency, including the police challenged this. The consensus amongst the agencies was that it was 'best' to deport the perpetrator! I had to intervene and say that it was wrong to look at that as a way of ensuring safety. I pointed out that the perpetrator may have rights and deserved to be able to at least have a right of reply and that he was entitled to due process. Also, I had to point out that taking such a course of action wouldn't necessarily protect the woman as she may be put at increased and further risk if the perpetrator blamed her for his deportation. It took me 10 minutes to persuade MARAC that, checking with the Home Office in respect of immigration matters, was not an appropriate safeguarding measure; to remind them that this forum is for safeguarding not for immigration enforcement. I said that we were in danger of losing the focus on what MARAC was actually intended for. I said that it was wrong and discriminatory to try and use the forum to deprive someone (perpetrator or victims) of their immigration status by reporting them through the back door. No one responded to this except the police, who did accept my point. As a result of my interventions, over the course of the last two years or so, I have instilled a firewall culture within our local MARAC. It is now much more focussed on supporting women and safeguarding them and children through the legal system and other support services including organisations like SBS. That is exactly where their focus should be".*

107. However, such good practice is not necessarily shared across other MARACs. Rosie Lewis, Deputy Director & VAWG Services Manager of the Angelou Centre too has noted the shift in the attitude of professionals at multi-agency meetings towards migrant women:

*"Women without recourse to public funds or uncertain immigration status are often treated with suspicion by mainstream or non-specialist VAWG agencies who do not*

*investigate the risk of further harm to women and children, but instead look into immigration status first. Despite all local agency protocols that are put in place in the name of 'safeguarding' for women and children who experience violence and abuse, these are not consistently followed and statutory agencies will consider immigration (and thus economic) status over women and children's safety. Although at present we are unaware of Home Office representation at any of the multi-agency meetings we participate in, we have noticed a shift in the attitude of services towards black and minority women and children who do not have a British Passport, where there is a presumption that they have no rights and therefore no associated funding or support options. In effect women and children's safety is being forfeited because of discriminatory actions from agencies who are often failing to follow national guidance, legislation or local safeguarding protocols. Their actions breach the legal and human rights of women and children who often have no other support mechanisms in the UK and they directly jeopardise their safety without the agencies being accountable for this abuse of power."*

108. The case studies below demonstrate how MARACs and multi-agency forums set up to address safeguarding issues in high risk domestic violence cases are instead more preoccupied with immigration fishing exercises. The disturbing SBS case of JK (below) highlights how senior officers and MARAC Chairs have become co-opted into the immigration compliance and 'hostile environment' agenda. In this case, the police officer went to the extraordinary length of informing SBS that the victim with insecure status should not call the police even in an emergency as the police were 'duty bound to report her to the Home Office if she was flagged up on their system.' The officer also stated that the police could not guarantee that she would not be arrested. The implications are clear: women like JK with insecure status must not come to the attention of the police even if their situation is life-threatening otherwise they risk being arrested and detained for immigration purposes. What is also particularly alarming about this case, is that the police officer and Chair of MARAC giving such advice, thought they were safeguarding JK by warning her not to contact the police even in emergencies.
- a. **Case Study:**
- i. *JK was an Indian national. In 2009 she was forced by her parents to marry her husband PS in India. In December 2010, she entered the UK as a student and her husband joined her shortly thereafter as her dependant. She soon discovered that he was addicted to cocaine and heroin. He was physically abusive to her and also subjected her to coercive and controlling behaviour such as checking her phone bills obsessively, and emotionally abusing her when he deemed her calls to be suspicious. JK's husband frequently punched her in the face or hit her head against a wall. JK was desperately unhappy but her parents had threatened to kill her if she ended the marriage. In 2013 JK discovered she was pregnant. In 2013, she was seen crying at a bus stop by Mr S. Mr S befriended her and they began a brief relationship. However, due to intense family and community pressure, JK knew she could not leave her marriage and eventually ended the relationship in 2014. In retaliation, Mr S told JK's husband and in-laws about the affair and circulated intimate photographs of her. JK was disowned by her parents and ostracised by the community. She returned to her husband but the abuse continued even during her pregnancy. Her parents said she deserved the abuse from her husband. During an antenatal check-up, JK disclosed her husband's drug use, which resulted in a referral to children's services.*
- ii. *In 2014, JK was referred by children's services to SBS. She was assessed by SBS to be extremely vulnerable and at high risk of domestic abuse. Her student visa expired in October 2014 and SBS referred her to a solicitor for immigration advice. SBS also referred her case to the local Multi-Agency Risk Assessment Conference (MARAC),*



where JK's case was discussed in December 2014. At this point, despite SBS' best efforts to persuade her otherwise, JK wanted to remain living with her husband as she felt unable to separate and because she had nowhere else to go due to lack of financial independence. She also remained in fear of honour based violence from her family if she left her marriage.

iii. The SBS representative at MARAC informed other agencies that SBS was supporting JK and that part of the safety measures that needed to be put into place was a method by which she could make direct calls to the police in case of an emergency. The SBS representative stressed that whilst JK built up the confidence she needed to leave her husband, all agencies and particularly the police should be alert to her calls as she and her son remained at high risk. However, the MARAC Chair responded by stating that SBS should be careful about advising JK to call the police due to her insecure status. The police representative also interjected and said that if JK telephoned the police, she would be arrested for immigration offences. The police officers said that they would be 'duty bound' to detain and arrest JK as the Police National Computer would flag up her immigration status. The SBS representative strongly objected to this as it prioritised JK's immigration status above her safety and that of her son. The police and MARAC Chair maintained that SBS should not advise JK or women with insecure immigration status to call the police, even if there was an emergency. SBS were appalled by this stance and wrote a letter of complaint to the Borough Commander and to the Chair of MARAC SBS also arranged a meeting with the local borough commander at which the police confirmed the view that their paramount duty is to arrest migrant women with insecure status and not to protect even in cases of domestic violence. They were unable to identify the legal source of this 'duty' or to understand the potentially life-threatening implications of their stance on migrant women suffering domestic abuse. Following further objections made by SBS, the Commander agreed to raise the matter as a policy issue at the next Police 'Gold Group' meeting but the matter appears to have been dropped as SBS heard nothing more since. (JK SBS)

b. **Case Study:**

i. ZR came into the UK (initially to Scotland) on a student visa to study for her PhD. Her husband had been living and working in the UK for 5 years, managing businesses. They had been married for 4 years. ZR was pregnant when she arrived in the UK and the violence started immediately. ZR was subject to physical and sexual abuse (thrown down stairs, threatened with knives, strangulation and rape), coercive control, emotional and psychological abuse and threats to her family in her country of origin and her unborn baby. ZR was economically dependent on her husband and had to give up her PhD at the local university. She was unable to tell her family about the violence due to threats from her husband to have her sisters raped. In addition, ZR's father was deceased and the families were related, which made her too frightened to disclose the abuse. She didn't even access antenatal care until she was 7 months pregnant. ZR called the police four times during her marriage. But as soon as the police arrived, ZR's husband would tell them that she had insecure immigration status. ZR stated that, during 3 of the call outs, once the police were told about her immigration status, they didn't pursue any further enquiries about the abuse. Each time ZR called the police, her husband would insist that they move to another area. As a result, ZR and the perpetrator moved four times within a year. The police did not assess her as being at a high risk. They made no referrals for her to see specialist agencies or even Children's Social Care when after the fourth call out, ZR was visibly pregnant.

ii. Shortly after ZR and her husband moved for the fourth time (this time to an area within England and Wales), ZR gave birth. Her midwife noticed that ZR's husband was being controlling during a difficult birth and so referred her to children's social care. The hospital safeguarding lead also referred ZR to a BME women's service.

- iii. *During the early stages of statutory agency involvement there was a Strategy Meeting that the specialist BME organisation attended. ZR was not present. During this meeting, police and social services questioned ZR's credibility and the levels of abuse she disclosed. This was mainly due to early police records which focused solely on her immigration status rather than the abuse that she had suffered. Despite showing evidence of her valid student visa the police insisted on making direct contact with the Home Office, inferring that she was disclosing abuse only to advance an immigration or asylum application. The police were highly influential in persuading Children's Social Services and others to prioritise this action over any plans for ZR's safety, thus allowing her husband to continue to control and abuse her because she was economically dependent on him as she had 'no recourse to public funds'. The police, and others at the meeting had no understanding of the dynamics of abuse for migrant women like ZR and how immigration is used to exert absolute control by perpetrators. The fact that ZR had been abused and had witness evidence from her midwife was initially disregarded. At several meetings, Children's Social Services inferred that ZR was 'making it up' and that the threat was minimal as her husband 'presented well'. They put the abuse down to a particular 'dynamic' between the two rather than domestic abuse.*
- iv. *ZR was supported by the BME service with her safety. They advocated for her at the meeting and obtained civil protection orders on her behalf on the basis of ongoing risk to her and her young child. Eventually, three months later, the police and other agencies recognised that ZR was at risk and so all contact with child and the father was stopped. (ZR, anonymous women's organisation)*
109. As the case studies and quotes from SBS in particular show, through proactive involvement of independent specialist advocacy organisations in MARAC and other multi-agency forums, it has been possible to gradually shift the focus away from immigration enforcement and to instil good practice locally, with the outcome that the police and other agencies responsible for safeguarding in their local MARAC have gone back to 'first principles' rather than getting caught up in an immigration control agenda. However, in other areas, we are aware that this is not the case. The danger is that where agencies are focused on immigration over safeguarding, a culture of mistrust is created. Victims – and even supporting agencies – may be deterred from reporting abuse. This strengthens the hand of perpetrators, creates further risks for women and also amounts to a discriminatory, two-tier system of protection and retribution for migrant victims and perpetrators: migrant victims of abuse receive a differential and less effective response from the very multi-agency frameworks that should be supporting and protecting them, and perpetrators are not held accountable through the civil and criminal justice systems.
110. Our view is that the response of the police makes a huge difference to the way in which MARACs approach safeguarding matters and can and does shape the outcomes for migrant women. The institutional MARAC cultures that develop show a high level of deference to the police as law enforcers, however, this deference also means that other agencies do not feel able to easily question or challenge police practice. A policing culture which prioritises immigration enforcement then becomes replicated in the institutional culture of other organisations. This is an essential component of understanding why policing and immigration functions must be kept separate.
111. More recently, SBS has had anecdotal information that the Home Office has embedded or is seeking to embed an immigration enforcement officer within MARACs, police and social services and other statutory agencies, often on the fallacious ground that immigration is a "safeguarding concern". We find this justification problematic and disingenuous in the context of what is a very 'hostile climate' for all migrants. As Pragna Patel says:

*“We are seeing immigration enforcement being conflated with safeguarding issues, but let us be clear about this. Reporting and detaining women or men as a ‘safeguarding’ measure is nothing of the sort – it is a violation of civil and human rights. Immigration enforcement masquerading as safeguarding is not a protective measure. It is a sloppy, quick fix measure which does nothing to resolve the risks to women and in some cases may heighten it.”*

## **Conclusion**

112. Drawing on our own evidence and investigations outlined herein, as well as that of a range of organisations, many of whom are based within the black and minority women’s sector (who are therefore best placed to provide the most useful information given the focus of this complaint), we make the following observations which should be considered when investigating this super-complaint:

### *Safeguarding and immigration enforcement*

113. There is no evidence to suggest that taking immigration enforcement steps against a victim of crime, either by arresting them or passing their details to the Home Office can be considered safeguarding for the victim. Indeed, our experience suggests that instead it is preventing people from reporting crimes, and thus making victims less safe.
114. We are aware that various police forces and the Home Office have stated to groups who have raised concerns about their data sharing practice that data is shared for "safeguarding purposes." We note that this has again been suggested in the Chief Constables’ Council paper containing the new guidance.<sup>19</sup> However neither the police nor the Home Office has provided any description of what specific safeguarding is undertaken by the Home Office nor why it is believed that immigration enforcement can play a role in safeguarding at all. No evidence has been given of any actual safeguarding steps taken by immigration enforcement teams as a result of the police sharing victims’ and witnesses’ data. Moreover, vitally, no explanation has been given as to why the police, who are acting to investigate the crimes and purportedly treating the victims as victims, cannot take the safeguarding steps required. If safeguarding is a genuine reason for data sharing, then we would ask the investigative team to put the police to proof on this issue.
115. Anecdotal evidence as well as evidence from Northumbria and Northamptonshire police,<sup>20</sup> also suggests that data sharing extends to the Home Office, embedding immigration officers within police work, including handling domestic violence cases. As such, as part of the complaint, we consider that the super-complaints team must robustly probe the assertion that immigration enforcement plays any role at all in safeguarding in this context and seek evidence of this.
116. On a final point about safeguarding, the above must also be considered in the context that victims of crime are not reporting as a result of data sharing. As such, if safeguarding is the priority, then surely ensuring victims have the confidence to report crimes should be the main focus.

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<sup>19</sup> Ibid Paragraphs 2.8, 2.9 and 4.5

<sup>20</sup> Safe reporting of crime for migrants with insecure immigration status - Roundtable report, Step Up Migrant Women UK and Latin American Women’s Rights Service, May 2018, p16 – <https://stepupmigrantwomenuk.files.wordpress.com/2018/06/lawrs-safe-reporting-roundtable-report.pdf>

### *Creating a Hostile Environment:*

117. While there has long been an issue of the police, we say unlawfully, sharing data with the Home Office, both complainant organisations, and others we work with, have noted a significant increase in this practice as the direct result of the Government's 'Hostile Environment' agenda on immigration. The purpose of the hostile environment is to make life uncomfortable and even unliveable for those with uncertain immigration status. There has been a raft of legislative changes as well as internal 'memorandums of understanding' which compel professionals such as employers, landlords, NHS staff and other public servants to check a person's immigration status before they can offer them a job, housing, healthcare or other support, leaving those with irregular status in fear and unable to access jobs, housing and services. We refer you to Liberty's "Care Don't Share" report which covers some of these issues in more detail.<sup>21</sup>
118. Crucially, we note that there is no such impetus or legislation compelling the police to do so, yet in our collective experience this atmosphere has led to the police acting as though these changes have been imposed and that they have a duty to report those with irregular status to the Home Office also. Worryingly the new NPCC guidance appears to support this view, stating as it does that police officers "should" contact immigration enforcement if they suspect a victim may be an illegal immigrant.

### *Creating barriers to reporting crimes*

119. A key consequence of the blurring of police functions with immigration enforcement is that it creates even greater barriers for some of the most marginalised and vulnerable victims of crime, including women subject to violence and abuse. Such women are already frightened and intimidated into silence by perpetrators who routinely use their immigration status as a weapon of control. Having to face a potentially hostile police response, and in the knowledge that their data may be shared with immigration enforcement teams, only serves to heighten their fear of authority and deters women from seeking outside help.

### *Conflict of police duty to protect and the practice of reporting to the Home Office*

120. Immigration rather than safety appears to be the paramount concern when the police engage with either victims, witnesses or even perpetrators of crime. There is overwhelming supporting evidence below to show that many police officers appear to be, at best, confused as to what their priorities should be. The new NPCC guidance does nothing to clarify that confusion given that it states that victims should be treated as victims but also states their data should be passed to the Home Office. When faced with a conflict between their duty to protect the public and investigate crimes on the one hand, with a perceived duty to share data and enforce immigration rules on the other, too often we hear of officers prioritising the latter and acting as de facto Home Office agents instead of police officers as demonstrated by the case studies herein.
121. We submit that not only is there a failure of implementation in accordance with the plethora of laws, police policies and guidelines that exist, but that there is at the heart of the policing in the UK, an institutionalised culture of immigration surveillance and control.

### *Contravention of government policies and strategies on violence against women and girls*

122. The growing practice of viewing victims of crime with insecure immigration status as potential "illegals" first and as victims second, contravenes a range of government

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<sup>21</sup> <https://www.libertyhumanrights.org.uk/sites/default/files/Care%20Don%27t%20Share%20Report%20-%20December%202018.pdf>

action plans and strategies, relating to victim's rights, and in particular those which seek to address the issue of violence against women and girls. For example, the Victims Code (2015) states that: "*Victims of crime should be treated in a respectful, sensitive, tailored and professional manner without discrimination of any kind*". This non-discrimination must equally apply to discrimination on the basis of immigration status.

123. The Victims' Directive also provides minimum standards for EU member states, including the UK, that ensure that victims' safety and dignity is regarded above their administrative status. In addition, the government's action plans on violence against women and girls makes specific reference to the need to ensure safe spaces to allow women to disclose violence and to support earlier identification and intervention to stop violence and abuse from escalating. The 2016-20 VAWG strategy for instance refers to the need to improve confidence in the criminal justice system and to bring more perpetrators to justice and to do more to rehabilitate offenders.<sup>22</sup> Yet current police practice appears to treat migrant victims and witnesses as 'illegals' and to deal with them through immigration enforcement measures that flout at every level, the stated aims of the strategy, while also creating an atmosphere and environment that stops many women and girls feeling able to report the crimes at all.

*A discriminatory approach to protecting migrant victims of crime.*

124. Evidence shows that the police have adopted, at best, an inconsistent, and, at worst, a discriminatory approach to migrant victims of crime. The case studies above highlight how the paramount concern on the part of the police is not the safety and well-being of the victim or witnesses but instead one of ascertaining whether or not the victim or witness is lawfully in the UK. No account is taken of the fact that many have a right to make an application to regularise their stay as victims of domestic violence but have never had the opportunity to do so or obtain the support needed because they are trapped in abusive marriages or exploitative relationships. With specialist immigration advice and representation, the overwhelming majority of women that specialist agencies like SBS assist, go on to make successful applications to remain in the UK. However, when such women engage with the criminal justice system, instead of being assisted to access protection and justice, including specialist advice agencies in respect of their immigration matters, they are arrested and detained for their lack of immigration status. We are also concerned with what appears to be a growing view that immigration officers can play a 'useful' role in 'safeguarding' by offering immigration advice and options to victims. This is alarming given that the primary role of immigration officers is to investigate potential immigration offences and enforce the law. They are not independent enough to provide legal advice or assist in supporting victims and witnesses of crime. This approach remains highly discriminatory since migrant victims or witnesses of crime are not afforded the same approach or response that is theoretically, afforded to others in society. There is a concern that the police view the reporting of crimes by victims as an opportunity to carry out immigration fishing expeditions.
125. What we need is a humane, 'protection-first and last' approach to all victims of crime, irrespective of their immigration background, rather than the punitive and disbelieving approach to protection that we currently witness to those with insecure status. We need a police service that prioritises its duty to protect the public and investigate crime and to do so, we need an end to the sharing of data with immigration enforcement officials

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<sup>22</sup> Ending Violence against Women and Girls Strategy 2016 – 2020, HM Government, March 2016, p.4

so that victims with insecure status can fearlessly access the police service and report perpetrators. Without this, clearly the public interest is significantly harmed.

126. Please note that within this super-complaint we have made reference to the police “reasonably suspecting” a victim or witness to crime being an illegal immigrant. However we do not accept that this suspicion is always reasonably held; we believe that some are suspected simply due to their race and/or having an accent or different appearance. This is not a reasonable ground for suspicion. We understand, anecdotally, that contact with the Home Office to check immigration status by sharing personal data of the victim takes place routinely in relation to BME victims and witnesses and/or those with accents. We recognise that this is anecdotal (though see case study of Mr Zieba in which the police stated this was routine practice to his solicitor). However we do not have access to data held by the police as to whom they contact the Home Office in relation to and as such, are unable to firmly make this assertion. Should the super-complaint team consider this relevant to the investigation, they may wish to request the evidence and if it is correct that BAME victims are significantly more likely to have immigration checks conducted, then the team may wish to consider whether this is a discriminatory practice.
127. If this is the case, then in our view the police may be in breach of their public sector equality duty under s149 Equality Act 2012. Schedule 19 of the Equality Act 2010 confirms that various police offices (Chief Constables, the Commissioner of Police of the Metropolis, British Transport Police and Police and Crime Commissioners) are public authorities for the purposes of the Act. Therefore, they are subject to a public sector equality duty under s149 Equality Act 2012. S149 states that:
- “A public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act”.
128. We submit that the police forces, and those responsible for their conduct, are arguably in breach of their public sector equality duty as they are discriminating in their provision of a service on the basis of a victim or witness’s nationality. The overall practice also prevents undocumented persons or those with insecure status having full access to the criminal justice system, which could be considered a further violation of the duty arising.

### **Proposed solution**

129. It is notable that having heard evidence from various organisations, including Liberty and SBS, the ninth report of session 2017–19 of the Home Affairs Committee looking at the issue of domestic abuse stated 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.”*
130. We agree with this recommendation and consider it should be extended to migrant victims of all crimes.
131. All forces need a policy which protects victims from fearing accessing the police service and it ought to be consistent throughout the country so that people can report to any/all forces safely. The new guidance purports to do this. However even assuming it is implemented by all forces, which we have yet to see any evidence of, it is drafted in terms which are too wide to allow for any certainty. Moreover, as outlined previously

in this document, the fact that the guidance states that it is “wholly appropriate” that officers “should” contact immigration enforcement teams if a victim is suspected of being an illegal immigrant, we believe that victims of crime with insecure status will be strongly deterred from reporting to the police.

132. A complete firewall between the police and immigration authorities is necessary and the only satisfactory and complete solution.
133. Firewalls have a strong legal basis, having been supported and recommended by international human rights bodies such as the UN Office of the High Commissioner for Human Rights (“OHCHR”) Committees on Economic, Social and Cultural Rights and the Protection of the Rights of All Migrant Workers and Members of their Families and the European Commission against Racism and Intolerance (“ECRI”).
134. Guideline 10.11 of the OHCHR’s ‘Recommended Principles and Guidelines on Human Rights at International Borders’ (2014) provides that states “*should consider [...] including explicit data protection guarantees in information sharing and exchange agreements between States and within States, including through establishing ‘firewalls’ between immigration enforcement and public services.*”
135. Moreover, the ECRI’s General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination (2016) strongly recommends the implementation of firewalls and explains that “*Irregularly present migrants must be able to report crime to the police without fear of being reported to immigration authorities. It is in everyone’s interests that crime is reported and investigated. It is highly detrimental to good policing that people should be deterred from reporting crime for fear of the consequences for themselves insofar as they are victims of crime.*” (page 27).
136. The European Union Agency for Fundamental Rights, in its report entitled ‘Apprehension of migrants in an irregular situation – fundamental rights considerations’ (2013), puts forward a number of principles to guide Member States’ immigration law enforcement bodies. Principle 9 provides that: “*In the interest of fighting crime, Member States may consider introducing possibilities for victims and witnesses to report crime without fear of being apprehended*”.
137. We submit that, if the investigation agrees with our view that the current policy and practice of the police forces is not appropriate and fails to serve the public interest, then it must recommend a firewall preventing the sharing of data of victims and witnesses of crime with the Home Office.

#### *Identifying good practice*

138. Organisations like SBS and others have been able to identify pockets of good practice which we highlight below. What is apparent is that there can be positive outcomes for victims where there is a holistic approach and co-operation between agencies with the focus on safeguarding as the paramount duty.

#### *Robust advocacy and partnerships*

139. As Sugra Akbar from the Saheli Project in Manchester notes, a good and effective referral pathway between police and local services can go a long way in avoiding the pitfalls, risks and dangers associated with victims of crime who have insecure status:

*“At our refuge for victims of domestic abuse, the vast majority of women we work with who have NRPF are women who have come to the UK on spousal visas. We have had a good response from some of the police force locally and nationally, whereby they will refer women to us for help and support. Our experience has been that the*

*police officers we deal with are prioritising protection of these women rather than trying to get involved in the immigration side of things, which is a positive step. We are, however, aware from wider networks that abused women with insecure immigration status have been reported by police to the Home Office, which is appalling. It shouldn't matter where in the country a migrant woman is – or whether a woman is fortunate enough to access support from agency which has good working relationships with the police –the response she gets from police should be the same. And that should be a response which make her safety, not her immigration status, the number one priority”.*

140. SBS has also noticed that where there is strong advocacy on behalf of victims by specialist agencies and robust multi-agency partnerships, the outcomes for victims are much better. SBS' work at the local level and its interventions in local MARACs, have been very productive in steering the police and multi-agency responses away from a focus on immigration to a focus on protection and safeguarding. SBS' local MARAC has been very receptive to SBS' input and the lead it has shown in addressing victims of domestic violence with insecure status. (See the section on MARACs above.) Some of the measures outlined below on developing local partnerships are based on the good practice that SBS has initiated in its locality.
141. It is vital that policies and guidance seeking to institutionalise good practice are developed and implemented if the police and, more generally, the criminal justice system, is to end current discriminatory practices and retain the trust and confidence of vulnerable victims and those who advocate for them. We need to see clear commitment from the police to protect and assist victims of crime, irrespective of their immigration status, through the implementation of a firewall. The consensus amongst professionals and specialist BME women's organisations who have worked with vulnerable migrant women for many decades, is that there are no circumstances in which it would be desirable to share information or involve immigration officers as a safeguarding measure. As well as a data firewall, the following steps have been identified as good practice and need to be implemented alongside it:
  - a. Develop a clear understanding within all police forces of their overriding duty to protect and investigate crimes of violence;
  - b. Develop a clear and consistent understanding of immigration status as risk factor in cases of domestic, and other forms of gender-based, violence and as a factor heightening vulnerability for migrant victims of crime;
  - c. Develop and implement clear policies and guidance to all police forces, directing all officers to maintain a clear line of separation between themselves and the Home Office when assisting victims of crimes, highlighting the dangers and risks of sharing data with the Home Office;
  - d. Ensure that there are clear pathways to specialist BME agencies and to immigration advisors so that victims have access to sound legal advice and emotional support on their immigration matters;
  - e. In the absence of access to specialist services, ensure that victims have access to independent advocacy services or that they obtain independent advice and support;
  - f. Work with MARACs to develop protocols that forbid the sharing of data and information with the Home Office and immigration authorities;
  - g. Develop mandatory police training modules for the police at all levels, particularly rank and file officers on the policing of domestic violence and its



overlap with immigration and asylum matters with specific focus on the rights of victims and police duties to protect and investigate crimes overriding surveillance of immigration status;

- h. Develop clear protocols between the police and the Home Office in respect of the implementation of the firewall. If the new NPCC guidance is indeed in force, it is vital that the police publish any protocol in existence showing on what basis information is shared and for what purpose; and
  - i. Develop robust monitoring and review mechanisms to assess and review police response to victims of crime who also have insecure immigration status.
142. In order to develop good practice on developing partnerships between the police and local services, protocols with specialist or local victim services should be developed and implemented with consideration given to the measures outlined below. All of these are measures that have already been put into place by SBS in its local area; they have made a vital difference to the quality of policing and to the support that victims of crime receive:
- a. Ensuring that a victim's advocate can sit in on all interviews and meetings with the police so that she/he can be supported and full account is taken by the police of further risks and vulnerabilities;
  - b. Where possible, allowing a victim to be interviewed at a specialist centre or in another safe environment of the victim's choosing to enable full disclosure and support;
  - c. Maintaining good, regular communication between the officer in charge of the investigation and the victim and their advocate; and
  - d. Developing effective working relationships with specialist services so that they can feed into mandatory training for the police both locally and nationally on the dynamics of abuse and exploitation and its overlap with immigration status as a risk factor.

### **Suggested evidence gathering**

143. While as investigators you will no doubt be able to decide what evidence you need to collate in order to investigate this super-complaint, we have identified some documents and evidence you may wish to seek:
- a. Any memoranda of understanding between police forces and the Home Office, including those that may be unpublished;
  - b. Any policies or guidance, including those that may not be in the public domain;
  - c. Training documents from each force regarding how victims and witnesses of crime are to be dealt with if it becomes apparent that their immigration status might be insecure; and
  - d. The academic study on this issue which is being conducted by Kings College London, in conjunction with the Latin American Women's Rights Service. It is due to be published in January 2019.

We hope that this super-complaint will be investigated and look forward to hearing from you in due course.