

JOINT BRIEFING FOR HOUSE OF LORDS AHEAD OF COMMITTEE STAGE OF THE POLICE, CRIME, SENTENCING AND COURTS BILL

PART 2, CHAPTER 1 (SERIOUS VIOLENCE DUTY)

October 2021

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

Part 2, Chapter 1 of the Bill (Clauses 7-22) places a new statutory duty on bodies such as healthcare authorities (Clinical Commissioning Groups in England¹ and Local Health Boards in Wales), local authorities, education providers, prison authorities, and youth custody authorities to collaborate with each other to prevent and tackle serious violence.

We recognise that the intention of the serious violence duty is to protect communities from harm, save lives and prevent injury. These are aims which we wholeheartedly support – serious violence is a human rights issue which devastates communities across the country, hindering many people's ability to live safe and dignified lives. It demands an evidence-based and just response that works with, not against, communities that bear its brunt.

Instead, the proposals in the PCSC Bill are entirely unsubstantiated by evidence, will sanction injustice and discrimination, and risk fracturing public trust in public services and the authorities. **For the below reasons, we urge parliamentarians to give notice of their intention to oppose that clauses 7 to 22 (Part 2, Chapter 1) stand part of the PCSC Bill.**

If the above amendments are not selected or passed, we would urge parliamentarians to consider and support the following amendments to mitigate the worst effects of the Bill:

- **The amendments to remove the data-sharing provisions (including the carve-outs from crucial data protection safeguards) in the names of Baroness Meacher and Lord Paddick**
- **The amendments to reinstate public bodies' statutory duties in the names of Baroness Meacher and Lord Paddick**
- **The amendment to ensure depersonalisation of data and prevent individualised risk-profiling in the names of Baroness Meacher and Lord Paddick**

KEY CONCERNS

1. **While purporting to be a public health, multi-agency approach to tackling serious violence, the proposed serious violence duty would risk further criminalising communities**

¹ Existing legislation allows CCGs a number of permitted disclosures (see s.14Z23 NHS Act 2006). Clinical Commissioning Groups (CCGs) are set to be abolished under the Health and Care Bill (Section 13 inserts 14Z27 into the NHS Act 2006 'Abolition of Clinical Commissioning Groups'), which as of October 2021 is completing its passage in the House of Commons. CCGs will be replaced by Integrated Care Boards (ICBs) which are intended to take on the functions of CCGs and other tasks. This may significantly increase the amount and type of health and social care information which can be requested under the PCSC Bill.

over addressing root causes by being police-led and enforcement-driven. For example, local policing bodies will be given the authority to monitor specified authorities’ – which includes education and healthcare providers – compliance with their duties to collaborate to prevent and reduce serious violence (clause 13 (2)). As outlined below, the various bodies subject to the duty are also not equal partners: police are given the power to demand information from other bodies (like education authorities, healthcare bodies and local authorities) and they must acquiesce, in certain cases regardless of whether they determine sharing the information is in the public interest or breaches any of their other legal duties or professional obligations.

2. **A police-led approach is problematic because police and welfare-based agencies and organisations have fundamentally differing institutional missions and professional obligations.** Such an approach is likely to result in the prioritisation of policing objectives (including surveillance, enforcement, and punishment), at the expense of protecting people’s rights and improving their well-being and economic conditions and protecting wider public interests that safeguarding and data protection promote. In the words of the End Violence Against Women (EVAW) coalition, “the approach risks crude profiling, discrimination, intrusion into private life and creating a pipeline into the criminal justice system.”² Ultimately, responses to serious violence should not be the exclusive domain of law enforcement; rather, tackling root causes and community-led solutions have been recognised – including by the Government – to be critical elements of an effective and sustainable approach.³
3. **The provisions under Part 2, Chapter 1 that mandate data-sharing between different agencies with minimal safeguards have the potential to breach individuals’ data rights and their right to a private life.** The National Data Guardian – an independent watchdog tasked with safeguarding patient data in healthcare – has spoken out against these measures for the specific risks they pose to clinician-patient confidentiality.⁴ Organisations in the EVAW coalition have highlighted “their concerns around discriminatory and disproportionate targeting of Black and minoritised communities, as well as the potential for data-sharing which threatens individual privacy and places minoritised women, and particularly migrant women, at risk.”⁵
4. **The creation of carve-outs for professional duties of confidentiality and other restrictions on disclosure of information will erode relationships of trust between frontline professionals and the individuals they work with, and hinder the provision of vital**

² End Violence Against Women, *Police, Crime, Sentencing and Courts Bill enters Report Stage amid opposition from women’s groups*, 5 July 2021, available at: <https://www.endviolenceagainstwomen.org.uk/police-crime-sentencing-and-courts-bill-enters-report-stage-amid-opposition-from-womens-groups/>

³ Pg. 60, HM Government, *Serious Violence Strategy*, April 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf

⁴ Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser*, The Independent, 11 October 2021, available at: <https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html>; National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation’s bright vision for the future of health and care*, 4 October 2021, available at: <https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care>

⁵ End Violence Against Women, *Police, Crime, Sentencing and Courts Bill enters Report Stage amid opposition from women’s groups*, 5 July 2021, available at: <https://www.endviolenceagainstwomen.org.uk/police-crime-sentencing-and-courts-bill-enters-report-stage-amid-opposition-from-womens-groups/>

services such as health, social care and education. As noted by the National Data Guardian, “[i]f people feel that their information may be used in unexpected ways, for purposes they may not support, this greatly undermines the fundamental relationship of trust. The effect may be to deter patients from seeking treatment, or, when seeking treatment, to only disclose partial or false details, thereby denying clinicians the information they need to deliver safe and effective care.”⁶ More than 665 frontline health, social, youth, and education workers have warned that the proposals in the PCSC Bill could force them to betray the hard-earned trust and relationships they have built with the young people they work with, and potentially entrench the root causes of serious violence.⁷

5. **Practices of expansive data-sharing with minimal safeguards may give rise to individual risk-profiling and targeting, which is likely to entrench racially disproportionate policing and structural inequality.** In enabling these practices, the serious violence duty risks putting on a statutory footing the very same systemic failings of the London Metropolitan Police Service’s Gangs Matrix that were identified following investigations by the Information Commissioner’s Office (ICO) and the Mayor’s Office of Police and Crime (MOPAC). For example, one of the key problems identified in the Gangs Matrix by the ICO was that it failed to distinguish between victims of serious violence and perpetrators of serious violence, resulting in chronic and widespread surveillance and criminalisation of individuals, their families and their communities.⁸ Similarly, the serious violence duty as currently drafted explicitly provides that victims of serious violence are to be included within the definition of people “involved in serious violence”. While we reject the use of categories of ‘perpetrator’ and ‘victim’ given the complexity of the root causes of serious violence (e.g. in the case of children), the duty as currently drafted could result in the same forms of surveillance and criminalisation being targeted at those traditionally considered ‘victims’. If the duty were truly a rights-based, public health approach, it would seek to safeguard all those at risk of violence and enable – rather than hinder – the relationships and conditions that people and communities need to be safe.

AMENDMENTS

6. We believe that the serious violence duty as drafted is incompatible with a public health approach, will prevent people from accessing vital services and erode relationships of trust, and ultimately exacerbate the root causes of serious violence. **For this reason, we urge**

⁶ National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation’s bright vision for the future of health and care*, 4 October 2021, available at: <https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care>; Diver, T., *Priti Patel’s crime Bill will turn us into police informants, complain medics*, The Telegraph, 13 September 2021, available at: <https://www.telegraph.co.uk/politics/2021/09/13/priti-patels-crime-bill-will-turn-us-police-informants-complain/>

⁷ Liberty, *Frontline workers warn Policing Bill puts young people at risk*, 13 September 2021, available at: <https://www.libertyhumanrights.org.uk/issue/frontline-workers-warn-policing-bill-puts-young-people-at-risk/>; Modin, A., and Topping A., *Policing bill will deepen racial and gender disparities, say experts*, The Guardian, 13 September 2021, available at: <https://www.theguardian.com/uk-news/2021/sep/13/policing-bill-will-deepen-racial-and-gender-disparities-say-experts>; Sharman, J., *Policing bill ‘will put young people at risk’, hundreds of experts warn*, The Independent, 13 September 2021, available at: <https://www.independent.co.uk/news/uk/politics/policing-bill-2021-data-surveillance-b1918664.html>

⁸ Information Commissioner’s Office, *ICO finds Metropolitan Police Service’s Gangs Matrix breached data protection laws*, 16 November 2018, available at: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/>

parliamentarians to give notice of their intention to oppose that clauses 7 to 22 (Part 2, Chapter 1) stand part.

7. If the above amendments are not selected or passed, we would urge parliamentarians to consider and support the following amendments to mitigate the worst effects of the Bill:

- **The amendments to remove the data-sharing provisions (including the carve-outs from crucial data protection safeguards)** in the names of Baroness Meacher and Lord Paddick
- **The amendments to reinstate public bodies' statutory duties** in the names of Baroness Meacher and Lord Paddick
- **The amendment to ensure depersonalisation of data and prevent individualised risk-profiling** in the names of Baroness Meacher and Lord Paddick

Clause 9

In the name of Baroness Meacher and Lord Paddick

The above-named Lords give notice of their intention to oppose the Question that Clause 9 stand part of the Bill.

Effect

This amendment would remove Clause 9 from the Bill. Clause 9 gives the Secretary of State the power to make regulations conferring powers on various agencies to work together to prevent and reduce serious violence, including through the disclosure of information (clause 9 (2)). Under clause 9 (4), regulations made under this section may provide that any information disclosure taking place does not breach any obligation of confidence owed by the person disclosing information, or any other restriction on information disclosure (however imposed).

Clause 15

In the name of Baroness Meacher and Lord Paddick

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

Effect

This amendment would remove Clause 15 from the Bill. Clause 15 enacts a power to disclose information. Disclosures under this clause benefit from the same 'carve-out' in clause 9 (4) above, under clause 15 (4).

Clause 16

In the name of Baroness Meacher and Lord Paddick

The above-named Lords give notice of their intention to oppose the Question that Clause 16 stand part of the Bill.

Effect

This amendment would remove Clause 16 from the Bill. Clause 16 enables the police to request information from a wide range of agencies, including educational authorities, healthcare providers,

and local authorities, to assist it in its exercise of the serious violence duty. Clause 16 (4) specifies that it is a legal requirement to disclose any information the police request.

Clause 17

In the name of Baroness Meacher and Lord Paddick

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

Effect

This amendment would remove Clause 17 from the Bill. Clause 17 allows Secretary of State the power to give directions to a specified authority to mandate compliance with the duty, including the information disclosure requirement in clause 16 (4).

Briefing

1. Clauses 9 and 15 establish powers on the part of a wide range of agencies to disclose information to the police (and to one another) under the duty to prevent and reduce serious violence. While the Explanatory Notes state that clauses 9 and 15 are designed to create a “permissive gateway” for the sharing of information, when understood in the context of the duty and powers of the Secretary of State under clauses 16 and 17 respectively, it becomes clear that the police, who are at the apex of this duty, can require information disclosure from such agencies essentially whenever it so chooses.
2. Under clause 16 (1), a wide range of agencies will be required to hand over any and all information upon request by a local policing body, for the purposes of enabling it to exercise its functions under the serious violence duty. Clause 16 (4) makes clear that this is a legal obligation, that is further backed up by the Secretary of State’s power to make orders mandating compliance under clause 17. While a Government Minister stated at Committee Stage that she hoped that the powers under clause 17 would be “used infrequently”,⁹ this is no guarantee, and the power remains highly worrying, especially when considered in light of clauses 9 (5), 15 (4), 16 (6). These provisions, ostensibly an attempt to reinstate data protection legislation, are confusingly drafted, with the effect that existing data protection legislation is to be read in line with the duties under the PCSC Bill, rather than the other way around. For example, Clause 15 (4) provides that

“this section does not authorise a disclosure of information that—(a) would contravene the data protection legislation (*but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account*) (emphasis added).”

3. The effect of the qualifying language (in italics) is that, in determining whether a disclosure of information would contravene the data protection legislation, the power conferred by clause 15 is to be taken into account. This drafting is circular, and as a result is susceptible to being interpreted in a way that will allow the serious violence duty to *supercede* the data protection legislation. It is unclear whether any attention has been paid as to how the powers conferred

⁹ Column 259, Police, Crime, Sentencing and Courts Bill (Sixth sitting), 25 May 2021.

by clause 15 (and clause 9 and 16, which use similar qualifying language) will actually influence assessments of whether there is a legal basis for the processing of data, not to mention of necessity and proportionality, under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

4. Worryingly, clauses 9 (4), 15 (3), and 16 (5) provide that disclosures of information under these provisions will not breach professional duties of confidentiality and any other restriction on disclosure “however imposed”, a definition so broad as to potentially include everything from contractual restrictions, court orders, to statutory restrictions on information disclosure. From a data protection standpoint – and given the overlap between Article 8 ECHR (right to respect for one’s private and family life) and the duty of confidentiality which both require a balancing act to be undertaken before they can be interfered with - a general overriding provision for confidentiality and other restrictions would seem to conflict with the strict considerations of proportionality and necessity that exist to protect people’s human rights.
5. Perhaps more importantly, these carve-outs appear to ignore the importance of legal duties and professional obligations – such as confidentiality and safeguarding duties – that are essential to protecting people’s dignity and privacy, fostering relationships of trust, and delivering high quality care, and which are also grounded in domestic¹⁰ and international law¹¹ and the Department for Education’s policy.¹² The imposition of a legal requirement on schools, health and social care bodies, and youth services to share (in some cases) confidential personal information – including individuals’ personal schooling and healthcare data - to the police is likely to have a corrosive impact on hard-fought and longstanding relationships of trust, and severely damage service provision. We have already seen the damaging consequences of such data-sharing in the context of Prevent¹³ and the Hostile Environment.¹⁴
6. We echo the statements of the National Data Guardian (NDG) that the case has not been made for why these additional powers are necessary, especially given their potentially wide-ranging harmful effects.¹⁵ The draft statutory guidance to the Bill’s explanation states that “[t]he new information sharing gateways for the purposes of the duty are not intended to replace [existing powers], but to provide powers to enable the sharing of relevant data where existing powers would not be sufficient”. At Committee Stage in the House of Commons, a

¹⁰ Section 1, Children’s Act 1989

¹¹ Article 3, Convention on the Rights of the Child.

¹² Department for Education, ‘Working Together to Safeguard Children’, 2018, <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

¹³ Open Society Justice Initiative, *Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education*, October 2016, <https://www.justiceinitiative.org/publications/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>

¹⁴ See for example J. Grierson, *Police told not to share immigration data of domestic abuse victims*, 17 December 2020, <https://www.theguardian.com/uk-news/2020/dec/17/police-told-not-to-share-immigration-data-of-domesticabuse-victims> and Z. Gardner, *Migrants deterred from healthcare during the COVID-19 pandemic*, JCWI, February 2021, <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=fa346f70-cb08-46c1-b366-9a1f192ff4f3>

¹⁵ Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser*, The Independent, 11 October 2021, available at: <https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html>; National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation’s bright vision for the future of health and care*, 4 October 2021, available at: <https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care>

Government Minister noted that one of the key reasons for clause 15 is that “information sharing between agencies is not always as full and as timely as we would like, because of concerns that they are not allowed to share information.”¹⁶ However, neither of these explanations is adequate or sufficient: the statutory guidance does not specifically note which existing powers are insufficient and why (nor provide a source evidencing this claim), and the Minister’s statement does not actually explain why new powers are necessary.

7. Indeed, as acknowledged by the Home Office in its draft statutory guidance on the serious violence duty,¹⁷ there already exist well-established information-sharing mechanisms to enable multi-agency working on issues such as domestic abuse,¹⁸ including Multi-Agency Risk Assessment Conference (MARAC) and Multi-Agency Safeguarding Hub (MASH) processes. There are also a wide range of existing statutory powers/duties to share information for specified purposes. For example, s.17 of the Crime and Disorder Act 1998 requires certain authorities, including local authorities, to have due regard to the need to prevent crime and disorder in their area. The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007/1830 made under the CDA 1998 set out the framework under which a strategy group shall arrange to share information between responsible authorities. **Importantly, these powers do not override established data protection obligations, the Human Rights Act, or the common law duty of confidentiality.**¹⁹
8. By contrast, Clauses 9, 15, 16, and 17 of the PCSC Bill have been drafted explicitly to override the professional safeguards around personal data that exist in order to safeguard people’s human rights. The qualifying language in these clauses – that allow for the data protection legislation to be read in line with the duty (rather than the duty read in line with the data protection legislation) – contradicts the Government’s repeated claims that “information can only be shared in accordance with data protection laws.”²⁰ Further, the broad drafting of the duty under clause 7 means that any information disclosure - whether that is about individuals’ health status, religious beliefs or political opinions and affiliations - could ostensibly be justified under the banner of ‘preventing and reducing serious violence’.²¹ Altogether, these provisions are likely to give rise to significant and severe breaches of individuals’ data rights under the General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018 and their right to a private life (protected under Article 8 ECHR).²²

¹⁶ Column 254, Police, Crime, Sentencing and Courts Bill (Sixth sitting)

¹⁷ Home Office, *Serious Violence Duty: Preventing and reducing serious violence - Draft Guidance for responsible authorities*, May 2021, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf

¹⁸ For example, see:

<https://www.walthamforest.gov.uk/sites/default/files/marac%20information%20sharing%20agreement.pdf>;

<https://www.bournemouth.gov.uk/communityliving/CrimeDisorder/DomesticAbuse/marac/marac-docs/personal-information-sharing-agreement.pdf>

¹⁹ Other statutory duties include those under the Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 (Regulation 5) made under the Act; Section 82 of the National Health Service Act 2006; Sections 13Z3 and 14Z23 NHS Act 2006 Restrictions; s.27 and s.47 of the Children Act 1989; s.10 and s.11 of the Children Act 2004; s.175 of the Education Act 2002.

²⁰ Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser*, The Independent, 11 October 2021, available at: <https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html>;

²¹ These are subject to a higher degree of protection under both the Data Protection Act 2018 (DPA) and the ECHR.

²² This is particularly important in light of the British Government’s recent announcements regarding developments in policy on data protection, such as its commitment to “championing international flows of data”: See Department for

9. The potential impact of these provisions' carve-outs from data-protection law for people's privacy and dignity warrants a strong case for why they are necessary and why existing powers are insufficient. Such a case has not been made.
10. It is worth noting that the "multiple and serious breaches of data protection laws" described by the Information Commissioner's Office (ICO) in its investigation into the Met Police's Gangs Matrix, had serious consequences for individuals listed on it. While the ICO said the breaches led to "damage and distress", Amnesty International described cases of people on the Matrix, many of whom were not suspected of any serious crime, receiving eviction notices or losing college places. In one devastating case a 14-year-old was shot and killed in 2017 after his details were mistakenly shared by Newham Council. Newham was subsequently fined £140,000 over this serious data breach.²³ Furthermore, in terms of the inherent racial discrimination within the Matrix databases, the ICO also concluded that a fundamental flaw of the system was "[t]he absence of a Equality Impact Assessment that would enable MPS to show it had considered in this context the issues of discrimination or equality of opportunity."²⁴
11. The Met Police's Gangs Matrix remains under review after the ICO ordered the force to rectify its breaches of data protection laws. This ongoing scrutiny notwithstanding,²⁵ the serious violence duty in the PCSC Bill in many ways makes lawful the very same breaches the Met was criticised for and which led to multiple serious harms. **Given the similar harms that could result from the implementation of these provisions, we strongly urge parliamentarians to support the above amendments in the name of Baroness Meacher and Lord Paddick to remove the data-sharing provisions of Part 2, Chapter 1.**

Amendments to reinstate public bodies' statutory duties

Clause 7

In the names of Baroness Meacher and Lord Paddick

Page 9, line 25, at end insert—

“(13) A specified authority is not subject to a duty in subsections (1) to (3) if or to the extent that compliance with the duty—

- (a) would be incompatible with any other duty of the authority imposed by an enactment, or
- (b) would otherwise have an adverse effect on the exercise of the authority's functions.

(14) In determining whether subsection (12) applies to an authority, the cumulative effect of complying with duties under this section must be taken into account.”

Digital, Culture, Media and Sport, International data transfers: building trust, delivering growth and firing up innovation, 26 August 2021, available at: <https://www.gov.uk/government/publications/uk-approach-to-international-data-transfers/international-data-transfers-building-trust-delivering-growth-and-firing-up-innovation>

²³ Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database', May 2018, <https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>

²⁴ Information Commissioner's Office, *ICO finds Metropolitan Police Service's Gangs Matrix breached data protection laws*, 16 November 2018, available at: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/>

²⁵ MOPAC, *Review of the MPS Gangs Violence Matrix – Update*, 3 February 2021, available at: <https://www.london.gov.uk/mopac-publications-0/review-mps-gangs-violence-matrix-update>

Clause 14

In the names of Baroness Meacher and Lord Paddick

Page 14, line 9, delete subclause 9 from Clause 14

~~(9) Subsection (7) or (8) does not apply in relation to the duty of a relevant authority to collaborate with a specified authority under subsection (3) to the extent that it relates to—~~

~~(a) the exercise by the specified authority of its function under subsection (3)(a) or (b) of section 7 of identifying the kinds or causes of serious violence in an area or its function of preparing a strategy under subsection (3)(c) of that section, or~~

~~(b) the exercise by the specified authority of its function under subsection (3)(a) or (b) of section 8 of identifying the kinds or causes of serious violence in an area or its function of preparing a strategy under subsection (3)(c) of that section.~~

Effect

As drafted, clauses 7 and 14 (9) enable obligations under the serious violence duty to potentially ‘trump’ the other statutory duties that specified authorities have, for example, those imposed by safeguarding duties, data protection law, and the Human Rights Act. These amendments will ensure that public bodies are only obligated to comply with the serious violence duty to the extent it does not conflict with its other statutory duties.

Briefing

1. The wide range of public bodies included under the serious violence duty have different institutional goals and statutory duties. These duties are crucial to their functioning. One area where statutory and professional duties are particularly crucial is that of healthcare. Health professionals – who routinely collect data as part of the care they provide - have particular professional and ethical duties and obligations to their patients, including the duty of confidence. As drafted, the serious violence duty could give rise to fears on the part of such professionals that their patients’ data could be collected and used in ways that their patients and service users more generally might not expect, and thereby cause them to change the way they collect and store patients’ health and care records, with knock-on effects for the effective functioning of healthcare service provision.²⁶ As mentioned above, the knowledge that their sensitive health and care data could be shared with the police as a matter of legal obligation might also deter people from accessing healthcare, given the context of past sensitive data handling by the NHS and broader structural inequalities.²⁷
2. In the education context, The Children’s Society (TCS) has raised the issue that the first concern for schools is to safeguard children from harm, yet the serious violence duty as drafted inserts a “securitised view” into the classroom. As noted by TCS, “This duty as it

²⁶ National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation’s bright vision for the future of health and care*, 4 October 2021, available at: <https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care>

²⁷ Mulrine, S., Blell, M., and Murtagh, M., *Beyond trust: Amplifying unheard voices on concerns about harm resulting from health data-sharing*, Medicine Access @ Point of Care, 1 October 2021, available at: <https://journals.sagepub.com/doi/full/10.1177/23992026211048421>

stands could undermine relationships children have with adult professionals in their lives, particularly education staff, eroding trust by creating a situation in which children feel they have nobody to turn to and confide in, for risk that this information will be disclosed to police and used against them.”²⁸

3. There is an exemption within the serious violence duty in respect of educational, prison and youth custody authorities, such that such authorities will not be subject to obligations under the serious violence duty (including those of information disclosure) if or to the extent that compliance with the duty would be incompatible with any other duty of the authority; would otherwise have an adverse effect on the exercise of the authority’s functions; would be disproportionate to the need to prevent and reduce serious violence in the area to which the duty relates; or would mean that the authority incurred unreasonable costs (clause 14 (7)). In determining whether this exception applies, the cumulative effect of compliance with the duty must be taken into account (clause 14 (8)). This is ostensibly in recognition of the differing institutional functions and missions that such authorities have as compared to other public bodies, including the police.
4. It is unclear why other specified authorities – including health bodies, social care bodies, youth services and others – are not subject to this exemption, given that, for example, health bodies (CCGs and Health Boards) also have very different objectives to the police. **We urge parliamentarians to support these amendments, which will reinstate the statutory duties of specified authorities, such that public bodies will not be required to comply with the serious violence duty (including information disclosure obligations) if and to the extent that they conflict.**

Amendment to ensure depersonalisation of data and prevent individualised risk-profiling

Clause 16

In the name of Baroness Meacher and Lord Paddick

Page 16, line 5, at end insert—

“(A1) Information provided in accordance with this Chapter—

- (a) shall be depersonalised information, unless (subject to paragraph (b)) the identification of an individual is necessary or appropriate in order to enable the crime and disorder committee to properly exercise its powers; and
- (b) shall not include information that would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authorities, whether acting together or individually, or of the co-operating persons or bodies.

(A2) Information is ‘depersonalised’ for the purposes of subsection A1(a) if it does not constitute personal data within the meaning of the data protection legislation.”

Effect

As drafted, and as indicated in the draft statutory guidance, the serious violence duty could be used to target specific individuals²⁹ through such information as their interaction with different public

²⁸ The Children’s Society, *Committee stage briefing on the PCSC Bill*, May 2021.

²⁹ §50, Home Office, *Serious Violence Duty: Preventing and reducing serious violence - Draft Guidance for responsible authorities*, May 2021, available at:

bodies, i.e. people could be tracked and surveilled across all areas of their lives. This will easily give rise to individualised risk profiling and targeting, which, in the case of the Metropolitan Police Service's Gangs Matrix, was shown to have deleterious impacts on people's ability to access housing, education, and other vital services. This amendment will require any information collected under the serious violence duty to be depersonalised and anonymised such that individuals cannot be targeted.

Briefing

1. As citizens, we engage with a wide range of public bodies in our day to day lives – whether that is our school, GP practice, mental health provider, or local council. Under the provisions in Part 2, Chapter 1, our interactions with different public bodies would effectively become data points that can be shared and used by other agencies (including the police) to glean information and potentially to make decisions about us – without our knowledge or consent.
2. The mere act of 'labelling' an individual – whether as an extremist, a gang member, or a future criminal – can be profoundly stigmatising, and leave people feeling isolated and marginalised. Considered in the context of Part 2, Chapter 1, where information is being shared in pursuit of a police-led approach to preventing and reducing serious violence, it is foreseeable that such sharing will result in the creation of individual risk profiles, that is, predictions about individuals' propensity to engage in certain forms of behaviour prior to them actually doing anything. The rising use of automated risk profiling and predictive policing tools, which rely on profiling to allocate risk and ultimately inform public policy decisions, may exacerbate this dynamic, with significant consequences for labelled individuals, their families, and their social circles³⁰ - not to mention for the presumption of innocence that undergirds the criminal law. As noted by Sarah Jones MP in Report Stage in the House of Commons, "the [serious violence] duty risks becoming an intelligence-gathering exercise with potentially ominous consequences."³¹
3. The failings of the London Metropolitan Police Service's (MPS) Gangs Matrix are instructive in this regard. It is well-established that the policing of serious violence is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the 'gang'.³² The stark statistics on the Gangs Matrix, revealed in a report published in 2018 by Amnesty International, lay bare the over-identification of people of colour as gang affiliated – at the time of publication 72 per cent of individuals on the MPS's Gangs Matrix were black, yet the MPS's own figures show that just 27 per cent of those responsible for serious youth violence are black.³³³⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf

³⁰ Liberty, 'Policing By Machine', 1 February 2019, <https://www.libertyhumanrights.org.uk/issue/policing-by-machine>

³¹ HC Deb 5 July 2021, Vol 698, Col 563

³² Patrick Williams, 'Being Matrixed: The (over)policing of gang suspects in London', August 2018, https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

³³ Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database', May 2018, <https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>.

³⁴ The West Midlands Police Ethics Committee has raised concerns that active proposals using crime data to identify young 'violent offenders' in school catchment areas would create "risks of stigmatising and labelling children, areas, schools or neighbourhoods)." (published February 2021) <https://www.westmidlands-pcc.gov.uk/archive/ethics-committee-february-2020/> See also: Documents ref 14122020 - EC - Agenda Item 3c - Analysis of school catchment areas and violence – proposal and 14122020 - EC - Minutes Advice For background see article: <https://www.birminghammail.co.uk/news/midlands-news/fears-over-police-plan-identify-20193614>

4. Worryingly, in spite of the well-documented nature of the harms of the Gangs Matrix – which remains under review – the Government’s draft statutory guidance on the serious violence duty explicitly refers to the possibility that data collected under its auspices could be used to inform similar flawed practices:

“There may be instances where information pertaining to individuals (including personal data) needs to be shared, for example if the police wish to discuss within the partnership a local gang matrix that would be difficult to assess in abstract, and where this form of data sharing would support the need to prevent and reduce serious violence locally.”

5. The persistence of stereotypical assumptions as regards to people who may be involved in serious violence practically ensures that data collected, processed, and deployed in pursuit of this duty will be imbued with prejudice, contrary to the right to non-discrimination³⁵ and the public sector equality duty.³⁶ We are highly concerned that the serious violence duty is likely to not only replicate but to fortify – through providing explicit carve-outs from essential data protection safeguards and restrictions on disclosure designed to protect people’s privacy and dignity – the worst harms of the Gangs Matrix, by creating new powers of surveillance that may give rise to individualised risk profiling. We are also concerned that data collected under the serious violence duty may be used to support the making of Serious Violence Reduction Orders (created by Part 10, Chapter of the Bill),³⁷ an oppressive new order that will drastically expand the use of suspicionless stop and search and further entrench racial disproportionality in the criminal justice system.
6. As above, the case has not been made as to why the serious violence duty requires the sharing of individualised information. By analogy, in the healthcare context, there are existing powers that allow for the sharing of anonymous healthcare information for system wide planning. The Health and Social Care Bill (currently going through Parliament) creates a duty on health and social care organisations: ‘whereby a health or social care body may require another health or social care body to provide information, other than personal information, that relates only to its activities in connection with the provision of health services or adult social care in England’. There are limited exceptions where health and care professionals can set aside the obligation of confidence on a case-by-case basis, but this is only in cases where there is an overriding public interest in preventing serious harm to the individual or a third party (for doctors, the exception to the duty of confidentiality is recognised by the General Medical Council (GMC)³⁸). The Government has failed to justify why the police need new and wide-ranging powers under the proposed serious violence duty in the PCSC Bill to demand

³⁵ Article 14, European Convention on Human Rights.

³⁶ Section 149, Equality Act 2010.

³⁷ See our coalition’s joint briefing on Part 10, Chapter 1 (Serious Violence Reduction Orders), <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Joint-Briefing-on-Part-2-and-10-PCSC-Bill-for-2R-HoL-Liberty-StopWatch-Amnesty-Fair-Trials-Big-Brother-Watch-Defend-Digit.pdf>

³⁸ General Medical Council, *Confidentiality: good practice in handling patient information*, January 2017, available at: <https://www.gmc-uk.org/-/media/documents/gmc-guidance-for-doctors---confidentiality-good-practice-in-handling-patient-information----70080105.pdf?la=en&hash=08E96AC70CEE25912CE2EA98E5AA3303EADB5D88>

public bodies hand over confidential personal information – including health and care information – for the purposes of planning to prevent and reduce serious violence in an area.

5. Not only has the case not been made for the need for the serious violence duty to allow for the sharing of information about specified individuals, especially given the existence of legislative provisions that already allow for such data sharing to occur under specified circumstances and with the benefit of certain safeguards, they are likely to be ineffective and may actually be counterproductive in terms of exacerbating alienation, isolation, and exclusion - the root causes of serious violence. **We urge parliamentarians to support these amendments, which will ensure that only depersonalised information can be shared as part of the serious violence duty, to prevent individualised risk-profiling and surveillance.**

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