

Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender

The National Police Chiefs Council with the College of Policing has agreed to these revised guidelines being circulated to, and adopted by, Police Forces in England, Wales & Northern Ireland.

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These guidelines have been produced and approved by the NPCC Crime Operations Coordination Committee. Chief Constables' Council approved the document on the 23 April 2020. Guidelines produced by the NPCC should be used by chief officers to shape police responses to ensure that the general public experience consistent levels of service. The implementation of all guidance will require operational choices to be made at local level in order to achieve the appropriate police response. It will be updated and re-published as necessary.

Any queries relating to this document should be directed to either the author detailed above or the NPCC Business Support Office on 020 3276 3800



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1. Introduction

- 1.1 This policy sets out the approach that police officers and civilian staff (“officers”) should take with respect to sharing information with the Home Office where they suspect that a victim /witness of crime is also an immigration offender.
- 1.2 In this policy:
 - 1.2.1 “Victim” means an individual who reports to the police that they have been the victim of crime, or who the police otherwise suspect has been the victim of crime. This policy applies to victims of all crime types.
 - 1.2.2 “Witness” means an individual who reports to the police that they have witnessed a crime, or who otherwise offers the police information / evidence about a crime. This policy applies to witnesses of all crime types.
 - 1.2.3 “Immigration offender” means an individual in the UK who requires leave to enter or remain in the UK but does not have it, or who has breached the conditions attached to that leave, or who has committed a criminal offence relating to entering or remaining in the UK.
 - 1.2.4 “Home Office” means the Home Office and its departments that comprise the Border, Immigration and Citizenship System, including Home Office Immigration Enforcement.

2. Context

- 2.1 The role of the police includes protecting life and property, bringing offenders to justice, preventing the commission of offences, and preserving order. It also includes the enforcement of immigration law and assisting the Home Office in enforcement of immigration law.
- 2.2 The role of the Home Office includes administering the UK’s immigration system and the enforcement of immigration law. The Home Office is the lead organisation for immigration enforcement.
- 2.3 Sharing information on an individual may assist the police and Home Office in the discharge of their respective functions. There is a clear public interest in a joined up approach to upholding the law.
- 2.4 Failing to share information is likely to hamper the police and Home Office in the discharge of their respective functions. It may mean that the police are not given information held by the Home Office (and vice versa) which is relevant to an investigation or could identify an individual as vulnerable to harm and/or assist in taking measures to protect them from harm. It may also prevent the police and/or the Home Office from being able to act appropriately if they encounter an individual during parallel investigations.
- 2.5 Information has been presented suggesting that some individuals are deterred from reporting to the police that they have been the victim of crime by the fear that their details will be provided to the Home Office, which they fear will lead to immigration enforcement action being taken against them.
- 2.6 It is recognised that a victim’s immigration status may make them more vulnerable to perpetrators of crime. While this is not limited to crimes of domestic abuse, the College of

Policing's APP on Major Investigations and Public Protection (accessed 01.02.2020) states under "Domestic Abuse":

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

3. Victims with insecure immigration status

- 3.1 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.

- 3.2 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 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.

- 3.3 This policy is intended to set out what information will be shared by the police about victims / witnesses of crime with the Home Office and when.

The police are not able to give assurances about what action (if any) the Home Office will take once information about a victim/witness is shared. That is a matter for the Home Office, who will act in accordance with the law, including immigration legislation, which incorporates a number of safeguards.

4. Lawful basis for information sharing with the Home Office

- 4.1 The police are permitted, including by s.20 of the Immigration and Asylum Act 1999, to supply information, documents, or articles to the Home Office for use for immigration purposes.

- 4.2 The police also have common law powers to share information with other public bodies where it is in the public interest to do so in pursuit of the police's functions and functions of the body with whom the information is being shared. It is in the public interest for the police to share information about individuals suspected of being immigration offenders with the Home Office in pursuit of both bodies' functions, as set out above.

5. Police approaches to investigations where the victim/witness is suspected of immigration offences

5.1 When an individual reports to the police that they have been a victim/ witness of crime the focus of the police will always be:

5.1.1 To investigate the allegation the victim/witness has reported; and

5.1.2 To put in place such reasonable measures as are necessary to protect the victim / witness from harm.

5.2 Officers will not routinely search police databases for the purpose of establishing the immigration status of a victim/witness or routinely seek proof of their entitlement to reside in the UK.

5.3 There will however be situations where officers come to suspect that a victim/witness is an immigration offender. This situation might arise in a number of different ways, for instance:

5.3.1 A search on police databases undertaken for the purposes of the investigation of the allegation which the victim/witness has reported reveals that they are wanted for an immigration offence. This would often appear on the Police National Computer (PNC) through a marker issued by the Home Office Immigration Enforcement PNC Unit on the victim/witness' PNC record.

5.3.2 Where in the course of investigating the allegation which the victim/witness has reported, they provide information, or information is otherwise obtained, suggesting that they are an immigration offender.

5.3.3 When a victim/witness is suspected by an officer of being an immigration offender, their status as a victim/witness does not change. The focus of the police will remain to investigate the allegation the victim/witness has reported and to put in place such reasonable measures as are necessary to protect the victim/witness from harm.

5.4 When a victim/witness is suspected by an officer of being an immigration offender, the police will share information about them with the Home Office. Officers share information with the Home Office for a number of purposes including:

5.4.1 To confirm or negate a suspicion that a victim/witness is an immigration offender;

5.4.2 To obtain advice from the Home Office, as the lead organisation for immigration enforcement, on what steps (if any) the police should take;

5.4.3 To obtain information that may assist in the police investigation of the allegation the victim/witness has reported;

5.4.4 To obtain information that may assist in identifying a victim/witness as vulnerable to harm and/or taking measures to protect them from harm;

5.4.5 To obtain the assistance of the Home Office in the police investigation / taking measures to protect a victim/witness from harm. For example, where it is suspected that the perpetrator in a domestic violence investigation is using the victim's immigration status as a way of maintaining control and further isolating the victim, officers may ask the Home Office to assist in resolving the victim's immigration status where possible;

5.4.6 To provide information that may assist the Home Office in the enforcement of immigration law, identifying a victim/witness as vulnerable to harm and/or taking measures to protect them from harm.

5.5 Officers must give careful consideration, on a case by case basis, to:

- What information to share with the Home Office;
- When to share information with the Home Office.

6. What information to share

6.1 The police will usually share the following “basic information” with the Home Office:

- victim/witness’ name;
- date of birth;
- current address and/or location;
- the type of crime that they have reported;
- and that they are suspected of being an immigration offender.

6.2 The police may also share “additional information” with the Home Office, for instance details of the allegation reported by the victim/witness including its nature and gravity, details of any protective measures the police have put in place, and information about the investigation and way in which the victim/witness is assisting the investigation.

This “additional information” may be relevant to the Home Office’s assessment of what relevant information it has to share with the police, whether to take any enforcement action if the individual is an immigration offender, the nature and timing of any such enforcement action, and any measures the Home Office may need to put in place to protect the victim/witness from harm.

6.3 In considering whether and to what extent to share “additional information”, officers should take a proportionate approach having regard to all the circumstances of the case and, in particular:

6.3.1 The views of the victim/witness with respect to sharing any “additional information” (which should be obtained before any “additional information” is shared save where it is impracticable to do so, but which views are not determinative);

6.3.2 The nature and gravity of the allegation reported by the victim/witness and the investigation into that allegation;

6.3.3 Any information provided by the Home Office about the victim/witness either on police databases or following the provision of “basic information”; and

6.3.4 The need to put in place measures to protect the victim/witness from harm.

7. When to share information

7.1 In considering when to share information on a victim/witness with the Home Office, officers should take a proportionate approach having regard to all the circumstances of the case.

- 7.2 In many cases, information should be shared with the Home Office without delay. In some cases, for instance where there is a need to put in place immediate measures to protect the victim/witness from harm, it may be necessary to delay sharing information with the Home Office. In those cases, information should be shared with the Home Office as soon as the reason for the delay no longer applies. The types of immediate measures that might be necessary to protect a victim/witness from harm will vary from case to case. Examples include the steps referred to in the College of Policing’s APP on Major Investigations and Public Protection under “Domestic Abuse”, “First Responders”, “Initiate support and protection for victims”.

8. Who to share information with

- 8.1 In most cases, information should be shared in the first instance with the Home Office Immigration Enforcement National Command and Control Unit which is a 24/7, year round SPOC for immigration inquiries.

9. Informing the victim/witness

- 9.1 Save where it is impracticable to do so, the victim/witness should be informed:
- 9.1.1 That it is intended to share information about them with the Home Office, what that information is and why it is being shared; and
 - 9.1.2 That information about them has been shared with the Home Office, what information has been shared and why it has been shared.

10. Record keeping

- 10.1 When information about a victim/witness is shared with the Home Office, a record should be kept setting out:
- 10.1.1 What information was shared;
 - 10.1.2 When the information was shared;
 - 10.1.3 With whom the information was shared;
 - 10.1.4 Why the information was shared.

11. Public Sector Equality Duty

- 11.1 Forces should ensure individual policies are formulated in accordance with the NPCC obligations under s.149 of the Equality Act 2010 (the public sector equality duty).
- 11.2 Reference to “spouse or civil partner” within the APP should now be read to include “unmarried or same sex partner”.