

## **Appendix 1**

### **Chief Constable's Council Paper: Information Exchange regarding Victims of Crime with No Leave to Remain**

# Chief Constables' Council

## Information Exchange regarding Victims of Crime with No Leave to Remain

3 October 2018/Agenda Item: Regional

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<b>Author:</b>	CC Shaun Sawyer & ACC Jeremy Burton
<b>Force/Organisation:</b>	Devon and Cornwall Constabulary and Surrey-Sussex Police
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### 1. INTRODUCTION

- 1.1. This paper seeks to achieve a national position regarding the exchange of information with Immigration Enforcement (IE) about victims or witnesses to a crime who identify, or are identified to police during the course of enquiries as suspected of being in the UK illegally or without leave to remain. It seeks to reinforce the principle that they are safeguarded and protected and that both police and immigration enforcement are able to manage their response to the individual appropriately.
- 1.2. The paper refers to victims and witnesses of all types of crime, not exclusively modern slavery.

### 2. BACKGROUND

- 2.1. In late 2017, the media reported instances of victims attending police stations to report serious offences who were subsequently identified as not having the right to remain or to enter the UK, resulting in immigration offences detention. This resulted in a joint letter in December 2017 to forces from CC Cooke, CC Bailey, and CC Sawyer on behalf of their respective portfolios, outlining similar principles to those within #4 below.
- 2.2. Follow up enquiries by the NPCC OIC & MS portfolio did not identify other cases in which the same circumstances arose, but did identify that the approach to sharing information with Immigration



Enforcement was inconsistent across forces, potentially leading to different responses to and support afforded to victims.

- 2.3. This issue is of heightened interest post-Windrush with police forces receiving FOI enquiries regarding their information exchange with Immigration Enforcement which highlight the potentially inconsistent response. The Equality and Human Rights Commission has requested updated information from the NPCC Lead including information about the circumstances in which PNC checks are carried out on victims of crime in order to enable them to discharge their statutory duties under the Equalities Act 2006.
- 2.4. The police service generally has clear processes to follow in relation to processing and developing information about victims and offenders when a crime is reported, and recognises the importance of safeguarding and signposting wider support for both victims and suspects.
- 2.5. The issue of a person reporting a crime who transpires to be in the UK without leave to remain is one of those more complex areas where our response needs to be more considered, as inappropriate action or inaction could lead to that individual being exposed to exploitation or vulnerability.
- 2.6. During an investigation, there will be a number of reasons why an investigator will research information relating to a victim, including but not limited to checks against local and national police databases. For example, PNC holds valuable information on police and court disposals, warnings around mental health, use of weapons and any other identified potential dangers that will assist in assessing risk to the victim, the public, and to the law enforcement and other services responding to or engaged with the person.
- 2.7. Although PNC may identify some people as not having leave to remain in the UK, this system is not the definitive source of that information. Neither is all intelligence held by Immigration Enforcement automatically identified within police systems including PNC.
- 2.8. A position where information is not shared with Immigration Enforcement would prevent Immigration Enforcement from being able to act appropriately if they encounter victims of serious crime during their parallel investigations. It would also prevent the police investigation from being sighted on information held by Immigration Enforcement which may identify the victim as vulnerable to exploitation or wider harm, including through exploitation by organised crime groups.
- 2.9. Immigration Enforcement can assist in contextual safeguarding activity, protecting and supporting victims. They are able to provide information and advice about the victim's position and the options open to them. This does not need to come with enforcement action. There are numerous examples of Immigration Enforcement accessing support for vulnerable people, including involvement in the "No Second Night" rough sleeper's scheme and in providing out of hours capability to house asylum seekers.
- 2.10. Immigration Enforcements position in these circumstances appears rarely be to request an immediate detention. The portfolio has identified some circumstances where officers made the decision to arrest an individual counter to Immigration Enforcements advice, with Immigration Enforcement subsequently releasing them.
- 2.11. Where it is determined that someone is suspected to be illegal immigrant (e.g. they self-declare or as the result of information identified within the investigation / the context in which they are encountered, officers strongly suspect) it is wholly appropriate that the officer in the case should contact Immigration Enforcement at the appropriate juncture, whilst ensuring they are also treated as a victim.

### **3. DEVELOPMENT OF THE PROPOSAL**

#### **3.1. Stakeholder engagement**

- 3.1.1 Development of the position at #4 has involved shared drafts with a number of forces, scrutiny through Devon & Cornwall's Ethics Committee (which includes Independent Advisory Group members), and consultation with other NPCC Portfolios including EDHT, Vulnerability, and NCOCC Committee members. Immigration Enforcement are sighted and have helped to shape this position.
- 3.1.2 People from a wide range of nationalities (including, for example, Australia, Canada and the United States) may be in the UK illegally or without leave to remain. The position in Appendix A applies therefore to all foreign nationals and the position is intended to avoid situations of discrimination which may arise under the current mixed practices.
- 3.1.3 It is recommended that Forces agree position #4 and amend their local policies, advice and guidance to officers to reflect this.

### **3.2. APPROVAL OF THE COORDINATION COMMITTEE**

- 3.2.1. The approach within this paper has been supported by the Crime Operations Coordination Committee on the 6 September 2018.

### **3.3. STATEMENT/DETAILS OF COST OR RESOURCE IMPLICATIONS**

- 3.3.1. Cost and resource implications are limited to the review and updating of local policies.

## **4. PROPOSED POSITION**

- 4.1. In the circumstances where a person reporting a crime is also identified, potentially, as a person without leave to remain or to enter the UK, the fundamental principle **must** be for the police to first and foremost treat them as a victim.
- 4.2. It is accepted that investigators may carry out PNC or any other intelligence checks on a victim, for a range of reasons including to carry out a risk assessment to inform action to protect the victims, the public, or law enforcement / other responding agencies safety. Intelligence research may be necessary in order to further the investigation, for example where it is unclear who the victim is and who is the perpetrator.
- 4.3. A PNC check must not be carried out solely to establish if the victim has breached immigration legislation.
- 4.4. Where police are investigating a crime, and during that investigation, whether on the initial report or subsequently, it becomes apparent that the victim is also suspected of being an illegal immigrant, it is wholly appropriate that the officer in the case should contact Immigration Enforcement at the appropriate juncture, whilst ensuring they are also treated as a victim. The police will share that information with Immigration Enforcement, but will not take any enforcement action in relation to any suspected immigration breaches.
- 4.5. The Police will share information to ensure effective safeguarding, identify potential exploitation and vulnerabilities, and allow other law enforcement agencies to manage their response to victims.
- 4.6. It is for the officer to decide if there are other circumstances that merit the detention and arrest of the person initially encountered as a victim, for example where they pose an immediate risk of harm to others.
- 4.7. On occasions, when police are called to incidents, it will not be clear whether individuals are victims or offenders. In these situations, where police have identified individuals as suspected illegal immigrants, they will treat them as victims first, taking the above advice in 4.1 above until it becomes clear that they are not a victim.

## 5. DECISIONS REQUIRED

5.1. To support the papers position and note the request to review local policies in light of this.

**Name** CC Shaun Sawyer

**Title** Chief Constable

**Lead Area** Modern Slavery and Organised Immigration Crime