

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

### **PART 2, CHAPTER 1 (SERIOUS VIOLENCE DUTY)**

#### **December 2021**

Ahead of the Police, Crime, Sentencing and Courts ('PCSC') Bill's Report Stage in the House of Lords, our organisations from across the human rights, privacy and technology, criminal justice, public health, racial justice, and faith 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 England<sup>1</sup> 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.

**We oppose the enforcement-led approach of the serious violence duty, and continue to believe it will be fundamentally counterproductive to addressing the root causes of serious violence.**

**We strongly urge peers to take the final opportunity in the Bill's Report Stage in the House of Lords to support the following amendments to mitigate the duty's worst effects:**

- **Amendment 25 to prohibit the unrestricted sharing of personal information under the serious violence duty apart from in specified conditions with data protection safeguards, in the names of Baroness Meacher, Lord Paddick, and the Bishop of Manchester**
- **Amendments 11, 22, and 30 to remove the language qualifying the data protection legislation, in the names of Baroness Meacher, Lord Paddick, and the Bishop of Manchester**
- **Amendments 18 and 33 to reinstate the primacy of public bodies' statutory duties in the name of Lord Paddick**
- **Amendments 24, 32, and 34 to reinstate human rights, equalities, and data protection law, as well as duties of confidentiality and other restrictions on information disclosure, in respect of regulations made under the serious violence duty, in the name of Lord Paddick**

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<sup>1</sup> 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.

## AMENDMENTS

*Amendment 25 to prohibit sharing of personal information under the serious violence duty apart from in specified conditions with data protection safeguards, in the names of Baroness Meacher, Lord Paddick, and the Bishop of Manchester*

### Effect

1. This amendment will prohibit the sharing of personal information under the serious violence duty apart from in specified conditions with data protection safeguards, so as to remove the risk of individualised risk-profiling. As drafted, and as indicated in the draft statutory guidance, the serious violence duty could be used to target specific individuals<sup>2</sup> through such information as their interaction with different public bodies, i.e. people could be tracked and surveilled across all areas of their lives, particularly given the carve-outs from duties of confidentiality and other restrictions on information disclosure and the language appearing to ‘qualify’ the data protection legislation. 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 still allow anonymised information to be shared to inform evidence-based serious violence strategies/policies. Moreover, public bodies would still be able to share personal data in accordance with existing mechanisms and their corresponding safeguards.

### Briefing

2. Our starting point with this amendment is that the onerous information disclosure powers and obligations created by the serious violence duty make it enforcement-led. Clauses 9 and 15 establish powers on the part of a wide range of public bodies 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.** 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. Clauses 9 (4), 15 (3), and 16 (5) further provide that disclosures of information under the serious violence duty 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.

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<sup>2</sup> §50, 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf)

3. We are highly concerned that the creation of new auspices for the sharing of personal information under the serious violence duty – combined with the carve-outs from duties of confidentiality and other restrictions on information disclosure, and the language throughout the serious violence duty qualifying the data protection legislation – may give rise to concerning practices of individualised risk-profiling and in turn, punitive and counter-productive interventions. We envision that this will result in the further over-policing of marginalised communities and the entrenchment of racial disproportionality in the criminal justice system. **Our amendment seeks to ensure that only anonymised information is capable of being shared for the purpose of designing and implementing serious violence strategies. Existing data sharing mechanisms, along with their safeguards, would continue to exist for the purposes of sharing personal data.**
  
4. We note that the Government has recently tabled amendments seeking to prohibit disclosures of patient information and disclosures of personal information by health and social care authorities under the serious violence duty,<sup>3</sup> in response to concerns raised by the British Medical Association (BMA),<sup>4</sup> General Medical Council (GMC),<sup>5</sup> British Association of Counselling and Psychotherapy (BACP),<sup>6</sup> British Psychological Society (BPS),<sup>7</sup> the Royal College of Nursing,<sup>8</sup> National Data Guardian,<sup>9</sup> and health workers,<sup>10</sup> and amendments tabled by Baroness Brinton, Lord Patel, Lord Ribeiro, and Baroness Bennett of Manor Castle at committee stage in the House of Lords.<sup>11</sup> In particular, organisations in the medical sector raised the detrimental impact that the serious violence duty’s carve-outs from duties of confidentiality could have on people’s trust in and access to healthcare, with Medact noting that the duty could “exacerbate racialised health inequalities by undermining access to healthcare for groups already vulnerable to institutional mistrust.”<sup>12</sup> **We welcome the**

<sup>3</sup> See pgs. 7-9 of the Running list of all amendments on report tabled up to and including 2 December 2021, available here: <https://bills.parliament.uk/publications/44037/documents/1086>

<sup>4</sup> BMA, *Police, Crime, Sentencing and Courts Bill – House of Lords: Committee stage*, October 2021, available at: <https://www.bma.org.uk/media/4705/bma-briefing-on-police-crime-sentencing-and-courts-bill-hol-cttee-stage-oct21.pdf>

<sup>5</sup> Lintern, S., *Concern police will be able to ‘strong-arm’ NHS to hand over patient data under new plans*, 17 October 2021, available at: <https://www.independent.co.uk/news/health/police-nhs-patient-data-bill-b1938998.html>

<sup>6</sup> BACP, *We join BPS in calling for changes to draft crime Bill*, 20 October 2021, available at: <https://www.bacp.co.uk/news/news-from-bacp/2021/20-october-we-join-bps-in-calling-for-changes-to-draft-legislation/#>

<sup>7</sup> British Psychological Society, *Police, Crime, Sentencing, and Courts Bill Briefing*, 20 October 2021, available at: <https://www.bps.org.uk/news-and-policy/police-crime-sentencing-and-courts-bill-briefing>

<sup>8</sup> Sharma, R., *What teachers and nurses think about their new legal duty to spot youth crime*, 1 April 2019, available at: <https://inews.co.uk/news/teachers-nurses-legal-duty-spot-youth-crime-home-office-275397>

<sup>9</sup> 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>

<sup>10</sup> 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/>; also see: Aked, H., Blell, M., Cheung-Judge, R., Kaner, E., Kulasabanathan, K., Palmer, C., van den Berghe, C., and Wondrack, J., (2021). *The public health case against the policing bill*, London: Medact. Available at: <https://stat.medact.org/uploads/2021/11/The-public-health-case-against-the-policing-bill-web.pdf>

<sup>11</sup> Lord Patel, Hansard, HL, Vol. 851 col.553, 25 October 2021: “Doctors regard patient confidentiality as a fundamental ethical duty, upholding the trust that lies at the heart of the doctor-patient relationship... The police having the ability to gain identifiable—I stress “identifiable”—patient information from health bodies without setting out clear reasons, which should be limited by statute, is fundamentally wrong.”

<sup>12</sup> Aked, H., Blell, M., Cheung-Judge, R., Kaner, E., Kulasabanathan, K., Palmer, C., van den Berghe, C., and Wondrack, J., (2021). *The public health case against the policing bill*, London: Medact. Available at: <https://stat.medact.org/uploads/2021/11/The-public-health-case-against-the-policing-bill-web.pdf>

See also this testimony from one of Revolving Door’s New Generation Campaigners, Stefan, about the impact that the Bill will have on racialised and minoritised communities: <https://twitter.com/RevDoors/status/1463447307236646918>

Government's acknowledgement that the sharing of personal health data is simply not necessary for system-wide strategies to tackle serious violence. We maintain that no personal information should be capable of being shared under the duty, given the deleterious impact such sharing could have on individuals, not least the potential for risk-profiling and erosion of trust in public services. There also already exist powers – with certain safeguards – for sharing information in particular circumstances, including for the prevention of crime.

5. 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 personal 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, and in the absence of crucial safeguards of duties of confidentiality and restrictions on information disclosure that exist to protect people's personal information, dignity and privacy, foster relationships of trust, and deliver high quality care.** Our concerns about the carve-outs from duties of confidentiality, including in the context of the sharing of personal information, are as follows:

- **The general overriding provisions erode important human rights safeguards:** 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 rights.
- **The duty will have a corrosive impact on hard-fought and longstanding relationships of trust and damage access to vital services:** More than 650 frontline health, youth, social, and education workers, as well as former police advisors, chiefs, and frontline officers,<sup>13</sup> have written to the Home Secretary expressing their concerns about how the serious violence duty may impact their relationships with the people they work with, with devastating consequences. At an APPG on Race and Community event on the impact of the PCSC Bill on racialised and minoritised young people, one speaker stated the serious violence duty is likely to stop people from seeking help by eroding relationships of trust and creating the conditions for more enforcement-led approaches: **"The relationship would be strained because when you don't have trust within the relationship, any sort of scratch or hair or tingling sensation, will immediately give you a knee jerk reaction. Stop and search will be that knee jerk reaction. Sharing information will."**<sup>14</sup>

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See also 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>

<sup>13</sup> ITV, *Policing bill 'disproportionately impacts black men' and 'exacerbates violence', ex-chiefs warn*, 25 October 2021, available at: <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-ex-chiefs-warn>

<sup>14</sup> Impact of the PCSC Bill on racialised and minoritised young people, APPG on Race and Community event, 24 November 2021.

- In the context of the fight against Violence Against Women and Girls (VAWG), we echo the concerns of more than 20 VAWG organisations that the serious violence duty’s police-led approach risks widening the existing inequalities that minoritised and migrant survivors of domestic abuse and sexual violence already face, by introducing an additional barrier for groups that are already disproportionately at risk of gender-based violence from accessing support.<sup>15</sup> As acknowledged by the Government in past strategies on VAWG, the statutory sector plays a crucial role in identifying and supporting victims and survivors – it is likely that expanded data-sharing under the duty will erode relationships of trust between survivors and victims and social workers and other statutory service providers.<sup>16</sup> In eroding relationships of trust, the serious violence duty in turn risks making it more difficult to identify survivors and victims of violence, with a disproportionate impact on minoritized and migrant survivors of domestic abuse. It is already the case that even where abuse tragically escalates to domestic homicides, minoritised survivors are less likely to have been known to agencies and receiving formal support than ‘white victims’.<sup>17</sup> One significant reason for this is data-sharing between public services, immigration enforcement, and the police, which deters survivors from reporting abuse for legitimate fear of being themselves arrested, detained, and deported; indeed, research by the Latin American Women’s Rights Service found that in the context of data-sharing agreements between the police and Home Office, this had the effect of some survivors feeling more fearful of the police than those abusing them.<sup>18</sup> **We echo the concerns voiced by organisations in the VAWG sector that similar effects may manifest as a result of the serious violence duty.**
- In response to concerns voiced by peers during Committee stage in the House of Lords over the potential requirement on individual frontline workers (in this case, in the healthcare context), a Government minister said: “the information-sharing provisions under the serious violence duty do not place any mandatory requirements directly on GPs, doctors or other practitioners to disclose information that they hold”. Nonetheless, we echo the concern voiced by Lord Paddick that even if approaches cannot be made to individual practitioners, if “[i]f the result was the same—that confidential medical [and other] information about individuals was divulged—that is not much of a

<sup>15</sup> Joint briefing for House of Lords ahead of Report Stage of the Police, Crime, Sentencing and Courts Bill: Serious Violence Duty and Serious Violence Reduction Orders, December 2021, <https://rightsofwomen.org.uk/wp-content/uploads/2021/12/Joint-VAWG-sector-briefing-on-SVD-and-SVROs-for-HoL-ahead-of-report-stage-Dec-2021-1.pdf>

<sup>16</sup> “We know that abused women use health care services more than non-abused women and they identify health care workers as the professionals they would be most likely to speak to about their experience.” Pg. 21, HM Government, *Ending violence against women and girls 2016-2020: Strategy refresh*, March 2019, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/783596/VAWG\\_Strategy\\_Refresh\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783596/VAWG_Strategy_Refresh_Web_Accessible.pdf)

<sup>17</sup> Home-Office [funded research](#) by the NPCC and the College of Policing into domestic homicides and suicides during the pandemic found that “BAME victims” were less likely to be previously known to other agencies (42% compared with 58% of White victims): <https://cdn.prgloo.com/media/02d412c416154010b5ceba8f8965030.pdf>

<sup>18</sup> <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-full-version-updated.pdf>

reassurance.” We note that the Minister was unable to respond to this in detail at the debate.<sup>19</sup>

- **There are existing powers to share information, including personal information:** As acknowledged by the Home Office in its draft statutory guidance on the serious violence duty,<sup>20</sup> there already exist well-established information-sharing mechanisms – including mechanisms to share personal information – to enable multi-agency working on issues such as domestic abuse,<sup>21</sup> 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 – including personal 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.**<sup>22</sup>
- **The Government has repeatedly failed to justify why new powers and obligations of information disclosure – with such extensive carve-outs from duties of confidentiality and other restrictions, alongside language appearing to ‘qualify’ data protection legislation – including for personal information, are necessary:** Throughout the Bill’s passage through Parliament, the Government has merely repeated what it has stated in the draft statutory guidance to the Bill, which is 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*”.<sup>23</sup> This is both an insufficient explanation for the policy, as well as contradictory: in one breath, the Government is simultaneously stating that the new powers do not intend to replace the old powers, but also that the new powers – in their circumvention of safeguards – will enable public bodies to do what they have not been able to do before. **This is particularly concerning in the context of personal information, which attracts greater safeguards under existing data protection legislation.**

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<sup>19</sup> Lord Paddick, Hansard, HL, Vol. 851 col. 564, 25 October 2021

<sup>20</sup> 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf)

<sup>21</sup> 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>

<sup>22</sup> 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.

<sup>23</sup> Column 254, Police, Crime, Sentencing and Courts Bill (Sixth sitting) and Home Office, *Serious Violence Duty: Preventing and reducing serious violence - Draft Guidance for responsible authorities*, May 2021

6. 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 circles<sup>24</sup> - 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.”<sup>25</sup>
7. **We are concerned that the collection, retention, and use of data about individuals will be heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the ‘gang’,<sup>26</sup> contrary to the right to non-discrimination<sup>27</sup> and the public sector equality duty.<sup>28</sup>** The failings of the London Metropolitan Police Service’s (MPS) Gangs Matrix are instructive in this regard. 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 purportedly responsible for serious youth violence are black.<sup>29,30</sup> 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.”*

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<sup>24</sup> Liberty, ‘Policing By Machine’, 1 February 2019, <https://www.libertyhumanrights.org.uk/issue/policing-by-machine>

<sup>25</sup> HC Deb 5 July 2021, Vol 698, Col 563

<sup>26</sup> Patrick Williams, ‘Being Matrixed: The (over)policing of gang suspects in London’, August 2018, [https://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

<sup>27</sup> Article 14, European Convention on Human Rights.

<sup>28</sup> Section 149, Equality Act 2010.

<sup>29</sup> 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>.

<sup>30</sup> 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>

8. **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 and racialised risk profiling.** In the context of the Bill, we are highly concerned that data collected under the serious violence duty may be used to support the making of Serious Violence Reduction Orders,<sup>31</sup> 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.
  
9. **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.<sup>32</sup> 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.”<sup>33</sup> 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,<sup>34</sup> **we are concerned that the serious violence duty in the PCSC Bill in many ways makes lawful the very same breaches the Met was criticised for, with potentially devastating consequences for individuals.**
  
10. **The inclusion of victims of serious violence within the definition of people who are involved in serious violence exacerbates our concerns regarding individualised risk-profiling.** We recognise that the intention of this provision is to ensure that victims of violence are recognised and given adequate support. However, we believe that the enforcement-led nature of the duty will further the surveillance, criminalisation, and punishment of victims of violence, deter them from accessing vital services, and even lead them to being targeted with criminal justice-focused, rather than more appropriate, support-based, interventions. More broadly, we believe that serious violence is a problem with complex roots, and that the distinction between perpetrator and victim – particularly in the case of children and young people – is rarely clear cut. The Gangs Matrix provides an instructive example of how the combination of an enforcement-led approach with a failure to distinguish victims of serious violence as requiring specific safeguarding, protection from over-policing, and/or differing

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<sup>31</sup> See our coalition’s joint briefing on Part 10, Chapter 1 (Serious Violence Reduction Orders), PCSC Bill, <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>

<sup>32</sup> 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>

<sup>33</sup> 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/>

<sup>34</sup> 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>

support needs, can result in devastating consequences for people, including children,<sup>35</sup> who are most in need of support. As noted by Amnesty International UK in its 2018 report, at least 40% of the people listed on the Gangs Matrix had no record of involvement in any violence offence; yet data-sharing between the police and other agencies without adequate data protections safeguards meant that a stigmatising ‘red flag’ followed people not only in their interactions with the police, but also other service providers including housing and education authorities and job centres. In one case, a young person lost his place in college after they found out the police had him listed as gang-involved; in another, a family received a letter threatening eviction if their son didn’t cease his involvement with ‘gangs’, only to have to inform the police that their son had been dead for more than a year. In a particularly harrowing example, 14-year-old Corey Junior Davis was shot dead in Forest Gate in September 2017 after his details from the Gangs Matrix were mistakenly shared by Newham Council. Newham was subsequently fined £140,000 by the ICO over this serious data breach.<sup>36</sup>

11. **Ultimately, 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’. In her briefing to the Government on the serious violence duty, the Domestic Abuse Commissioner urged the Government to clarify that “the data of individuals is only shared on *an anonymous basis* to strategically inform prevention strategies”.<sup>37</sup>
12. Fundamentally, we believe that the potential for the serious violence duty to circumvent duties of confidentiality (and other restrictions on information disclosure) and to be used to share personal data in the absence of strong safeguards for individuals’ data is likely to exacerbate alienation, isolation, and exclusion – the very root causes of serious violence. **For these reasons, we strongly urge parliamentarians to support this amendment to prohibit the sharing of personal information under the serious violence duty apart from in specified conditions with data protection safeguards, so as to remove the risk of individualised risk-profiling.**

***Amendments 11, 22, and 30 to remove the language ‘qualifying’ the data protection legislation, in the names of Baroness Meacher, Lord Paddick, and the Bishop of Manchester***

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<sup>35</sup> “One of the stated purposes of the GVM is to safeguard vulnerable children at risk of exploitation. It is impossible to see how this can be achieved where victims and perpetrators are not clearly defined in the GVM” – JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (February 2021), p.36, <https://files.justice.org.uk/wp-content/uploads/2021/02/23104938/JUSTICE-Tackling-Racial-Injustice-Children-and-the-Youth-Justice-System.pdf>

<sup>36</sup> 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>

<sup>37</sup> Domestic Abuse Commissioner for England and Wales Briefing: Policing, Crime, Sentencing and Courts Bill House of Lords Second Reading, 14 September 2021, available at: <https://domesticabusecommissioner.uk/wp-content/uploads/2021/09/2109-Lords-2nd-Reading-Stage-PCSC-Bill-2021-FINAL-1-2.pdf>

## Effect

13. These amendments will remove the language within the serious violence duty that appear to ‘qualify’ the data protection legislation, such that in determining whether a disclosure of information under the serious violence duty would contravene the data protection legislation, the powers conferred by the serious violence duty are to be “taken into account”.

## Briefing

14. **The language throughout the duty that effectively qualifies the data protection legislation exacerbates our concerns about the data disclosure provisions.** Ostensibly an attempt to reinstate data protection legislation, these purported ‘safeguards’ are confusingly drafted, with the effect that existing data protection legislation is to be read in line with the serious violence duty, 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).”

15. 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 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). **We strongly urge parliamentarians to support these amendments to remove the language appearing to ‘qualify’ the data protection legislation.**

***Amendments 18 and 33 to reinstate the primacy of public bodies’ existing statutory duties, in the name of Lord Paddick***

## Effect

16. 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

17. 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. 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 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.”<sup>38</sup>

18. There is a partial safeguard 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.
19. It is unclear why other specified authorities – including local councils, youth services, and others – are not subject to this safeguard. **We urge parliamentarians to support these amendments to 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.**

*Amendments 24, 32, and 34 to reinstate human rights, equalities, and data protection law, as well as duties of confidentiality and other restrictions on information disclosure, in respect of regulations made under the serious violence duty, in the name of Lord Paddick*

#### Briefing

20. These amendments will require that any regulations published by the Secretary of State authorising information disclosure - and in turn, the disclosures themselves - must comply with the Human Rights Act 1998, the Equality Act 2010, the Data Protection Act 2018, and the Investigatory Powers Act 2018. It will remove the provisions’ explicit carve-outs from duties of confidentiality and other restrictions on information disclosure. It will also require the publication of an Equality Impact Assessment (EIA) and a Data Protection Impact Assessment (DPIA), alongside any guidance and codes of practice, prior to the publication of any regulations under the serious violence duty.

#### Effect

21. As noted above, we are concerned that the serious violence duty will drastically expand the surveillance, criminalisation, and punishment of already over-policed and marginalised communities. These amendments will re-instate the safeguards provided by human rights, equalities and data protection legislation, and existing duties of confidentiality and other restrictions on information disclosure, in respect of regulations made and information disclosures authorised under the serious violence duty. It will also require the publication of an EIA and DPIA to consider the equalities and data rights impacts of any regulations

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<sup>38</sup> The Children’s Society, *Committee stage briefing on the PCSC Bill*, May 2021.

published under the duty, as well as any guidance and codes of practice under the duty, prior to the publication of any regulations.

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