



Consultation response Domestic Abuse Act statutory guidance

Response by the Step Up Migrant Women Campaign
September 2021

About the Step Up Migrant Women Campaign

Step Up Migrant Women (SUMW) is a campaign 'by and for' migrant, Black and Minority Ethnic (BME) women led by the Latin American Women's Rights Service (LAWRS). The SUMW coalition is formed of more than 50 organisations that work and advocate to support migrant women to access protection from abuse.

This submission is endorsed by the Latin American Women's Rights Service (LAWRS), Southall Black Sisters (SBS), Middle Eastern Women and Society Organisation (MEWSO), Kurdish and Middle Eastern Women's Organisation (KMEWO), the East European Resource Centre (EERC), Safety4Sisters North West, Latin American Women's Aid (LAWA), IKWRO - Women's Rights Organisation, Al Hasaniya MWC and the Angelou Centre.

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Introduction

We welcome this second round of consultation of the draft domestic abuse statutory guidance. We recognise its importance in addressing the vulnerabilities that victims with insecure immigration status and those subjected to the No Recourse to Public Funds (NRPF) policy face accessing safety and support. Nevertheless, we are concerned about the lack of understanding of how immigration laws add to this vulnerability. And the limited knowledge of how immigration status is a risk factor for women falling out of their status. We are worried about the guidance endorsement of the NPCC guidance on information sharing of victims suspected to be immigration offenders overlooking the current review the Home Office is undertaking in this area.

Our response primarily focuses on "*Chapter 2, Understanding Domestic Abuse*", as it covers the intersectional considerations of the experiences of domestic abuse women from marginalised groups encounter. However, we consider that this intersectional lens should be extended and addressed throughout the whole guidance as in its current state fails to do.

Paragraphs 121 and 122

We disagree with the assertion that "*there are a range of support mechanisms in place for migrant victims of domestic abuse*"¹. Over the Domestic Abuse Bill debates, we presented a myriad of evidence on the gap of protection and the dire situation that victims subjected to immigration control and the NRPF policy experience when escaping abuse and seeking support. This bleak reality is acknowledged in the guidance and backed by evidence provided by Women's Aid and other charities. Therefore, an affirmation of the existence of a range of support seems far from reality. For that reason, we believe paragraph 121 is inaccurate and can result in statutory and non-statutory bodies wrongly referring victims to provisions not available for them, exposing them to harm further and delaying the urgency of accessing support to safeguard them.

Similarly, we worry that the guidance does not consider the difficulties in accessing the supporting mechanisms enlisted in paragraph 121. For instance, victims applying for a *change of NRPF conditions will need legal aid* due to the complexity

¹ Page 44.

of the process. And that accessing legal aid has become an enormous challenge for victims due to the decimation of this provision. Furthermore, the guidance must be clear that applying for these provisions might impact victims' routes to settlement.²

As frontline organisations supporting migrant women, we often encounter difficulties when advocating for the safety of victims with precarious legal status. In many cases, frontline professionals in statutory services argue not having any obligation to support them as they do not have access to public funds or regular status. We recommend the guidance to highlight throughout the entire guidance paragraph 81 that calls on statutory services providers to effectively treat victims as victims first and foremost and ensure that services are provided to victims without discrimination.³

Support for Migrant Victims Scheme

In paragraphs 121, 122 and 135, the Support for Migrant Victims Scheme is quoted as an avenue for victims with NRPF to access safe accommodation and "wrap around provisions". We strongly disagree with this statement as the support provided by the scheme is minimal, failing to cover the long term need of extremely vulnerable victims. We agree with Southall Black Sisters, the organisation leading the project, that the scheme is unfit for purpose. According to SBS' calculations, the scheme would only support around 500 women for three months, leaving many other vulnerable victims unprotected. Our empirical evidence shows that three months fall short in ensuring that women with complex cases, such as those with insecure immigration status in need of legal advice, are safe and ready to rebuild their lives. Similarly, due to the limited budget allocation to the scheme, critical interventions to support victims, such as psychotherapy and advocacy support, are not covered by the scheme, contrary to what paragraph 135 suggests. As a result, underfunded 'by and for' BME services are left responsible for providing those without any funding allocation offered.

National Referral Mechanism

² For example, if the application for change of NRPF conditions of victims on a 5-year route to settlement is accepted, they will be moved on to the 10-year route to settlement.

<https://www.gov.uk/government/publications/application-for-change-of-conditions-of-leave-to-allow-access-to-public-funds-if-your-circumstances-change>

³ Paragraph 81.

We are concerned about the government's persistence to suggest the National Referral Mechanism (NRM) is an adequate pathway to safeguard victims of domestic abuse. We opposed this option while the Domestic Abuse Bill was scrutinised at the House of Commons in June 2020. The unsuitability of the NRM to ensure victims of domestic abuse are protected has also been raised by the Domestic Abuse, Anti-Slavery and Victims Commissioners of England and Wales⁴. While there might be some women who experience domestic abuse and modern slavery, there are significant differences in the nature of both crimes. The support mechanisms must be designed to respond to the particular needs of victims of domestic abuse and other forms of VAWG, which the NRM is not suited to do. It's essential that the guidance in paragraphs 133 and 163 to 166 clarifies these differences to prevent victims from being wrongly referred to a mechanism that is not suitable for them and that in the long term could re-traumatise them while jeopardising their possibilities to regularise their legal status.

Paragraph 124

We totally reject paragraph 124 statement of women on spouse visas and eligible to the DDVC to be the only group of victims having the legitimate expectation of settlement into the UK. A common barrier faced by migrant women subjected to abuse is the lack of understanding of the system, which is worsened by language barriers and the complexity of the UK immigration rules. Our evidence shows that perpetrators misled women to join them in the UK on visitor and other forms of temporary visas. Perpetrators tell women that they will marry them and apply for a spouse visa to regularise their status once they come to the UK. However, once arriving and after an escalation of abuse, which in many cases results in women overstaying their permits, perpetrators refuse to regularise their and children's legal statuses. During the scrutiny of the Domestic Abuse Bill, the issue of legitimate expectations was widely explored and debated by the Step Up Migrant Women campaign and the organisations leading amendments to ensure protection for migrant victims.

We are concerned that by arguing that women on spouse visas are the only group of women who have a legitimate expectation of settling in the UK, the guidance fails to draw into the complexity of the immigration system or on any of the

⁴ <https://www.antislaverycommissioner.co.uk/media/1432/iasc-letter-to-victoria-atkins-mp-june-2020.pdf>

alternative routes for settlement for migrant survivors of abuse. We are concerned that the idea of legitimate expectation to settle tied to spouse visas will foster the provision of not qualified and illegal immigration advice by frontline professionals from statutory services.

Furthermore, it overlooks the tactics that perpetrators use to exploit women's status to keep control over them while abusing them. Moreover, it risks statutory service frontline professionals denying support to women on the assumption that they do not have legitimate expectations of settlement and forcing women to get back to their home countries even when it is unsafe for them to do so. We have encountered cases of women exposed to high levels of abuse and trauma being pressured to opt for voluntary returns. In addition, these voluntary returns are offered without assessing the risks that returning to their countries of origin might have for very vulnerable victims, such as further and increased abuse, so-called honour-based abuse and murder.

Likewise, in cases when women with children are forced to leave the UK, frontline professionals might be exposing these children to further harm by being separated from their mothers and being left in the care of perpetrators of abuse. We worry that leaving children in the care of perpetrators because of their mother's immigration status creates a two-tier system of children, those protected from abusers and those who are not. This situation will contradict the Domestic Abuse Act in prioritising the safety of children who are now recognised as victims in their own right.

For these reasons, we urge the removal of the legitimate expectation of settlement from paragraph 124 and provide case studies in which women might be in the UK on different permits or having lost their status resulting from the violence they have been subjected to. Otherwise, it risks women and children being denied support and therefore being exposed to further harm based on not having spouse visas or no status at all.

Case Study

Provided by LAWRS

Lorena* met her perpetrator in 2014 when they started to live together back in Latin America. A year later, they had a child. In 2019, the family moved to the UK. He convinced her that she and their child could come to the UK on a visitor visa, and once in the country, he would make an immigration application to regularise their status. Lorena came then with the expectation of settling in the UK with her family. However, once in the country, he successfully applied to regularise his status but refused to make an immigration application for Lorena and their child, resulting in them becoming overstayers.

Over the following months, her perpetrator exerted multiple forms of domestic abuse against her and her child, including physical, emotional, financial and economic abuse. He often used her irregular status to control further and coerce her. He threatened her with separation from her child and getting her deported. Her perpetrator often told her that if she reported him to the police, they would not believe her and remove her because of her legal status and not speaking English. He would say that none would support her and that her only option was to spend the rest of her life trapped in abuse.

*Not her real name.

Paragraph 125

Paragraph 125 addresses the legitimate fears of immigration enforcement that victims have to approach the police to report their perpetrators. We are disturbed that the guidance refers professionals to consult the National Police Chief's Council (NPCC) guidance: *Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender* to brief their interventions. We find the inclusion of the NPCC guidance problematic for two main reasons. Firstly, the NPCC 2020 is, in essence, a policy of prioritising immigration control over the safety and access to justice of survivors of often grave crimes, such as domestic abuse. The enforcement of such policy prevents the vast majority of migrant victims of domestic abuse, sexual violence, and other crimes from reporting to the police.

Moreover, classifying victims of crime as *immigration offenders* allows and perpetuates these abuse cycles and prevents victims and survivors from accessing justice. It concerns us that although the NPCC guidance recognises that immigration status might make victims more vulnerable to abuse, it does not offer direction or establish pathways to best practice. Such as the police referring victims to specialist ‘by and for’ BME services rather than with Immigration Enforcement.

Secondly, we find the inclusion of the NPCC guidance questionable as currently, a review of the legal framework and policies underpinning data-sharing between the police and the Home Office is taking place with the participation of the specialist VAWG sector. We worry that by incorporating this guidance into the statutory framework, the Home Office sets a precedent for their position in the area before the before mentioned review concludes. Furthermore, it preempts the position they will take in informing the Code of Practice relating to data processing for immigration purposes placed on a statutory footing in the Domestic Abuse Act.⁵

Overall, paragraph 125 is concerning. It does not consider any of the key findings from the independent investigation held as part of the first police super-complaint filed by Southall Black Sisters and Liberty. Amongst crucial takeaways from the report, the independent bodies concluded: “*that sharing information on victims of domestic abuse with Immigration Enforcement does not constitute safeguarding*”⁶. In addition, it states that harm is caused not only to victims of domestic abuse but the public interest as perpetrators act with impunity, remain unpunished and continue to be a threat to the public free to abuse other victims.

We recommend that paragraph 125 is removed and its place frontline professionals in statutory services are advised to work alongside specialist ‘by and for’ service providers which are the best suited to support women experiencing enhanced forms of domestic abuse owing to their insecure legal status. As the super-complaint report recommended, these organisations can advocate on victims behalf with the Home Office and Immigration enforcement.⁷

⁵ Clause 82 <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf page 17.

⁷ *Ibid*, page 15.

Paragraph 135

This paragraph, as aforementioned, talks about the *Support for Migrant Victims scheme*, which, as we previously mentioned, fails to provide sustainable support for women experiencing highly complex cases of domestic abuse linked to their immigration status. As part of this paragraph, the guidance states that after working with 24 organisations from the VAWG sector, including LAWRS and the Step Up Migrant Women coalition, the Home Office published the *Migrant victims of domestic abuse review findings*. We find this statement highly misleading as we have raised our great disappointment in the Review alongside many other organisations. In September 2020, LAWRS and Southall Black Sisters, wrote and published a detailed response to this Review⁸. We argued that its findings showed a lack of meaningful engagement with the evidence submitted by key specialist organisations during the process, resulting in inaccurate results, poor and misleading analysis, and conclusions.

A year after submitting our concerns to the Home Office, still have not been formally acknowledged or responded to our counterarguments. For this reason, we disagree with the suggestion that the VAWG sector concurred with the Review that later was used to justify the need for a pilot project in the form of the Support for Migrant Victims Scheme.

⁸ Migrant Victims of Domestic Abuse Review Findings. A response by Southall Black Sisters and Latin American Women's Rights Service, (September, 2020).
<https://drive.google.com/file/d/16dMZwV8bWZ56viyhA0icKuxlhbVAHlzu/view>