



## **Scottish Women's Rights Centre**

### ***Response to the Information Commissioner's Office (ICO) consultation on Victims of domestic abuse and third party tracing organisations***

**28<sup>th</sup> July 2023**

#### **Overview**

The Scottish Women's Rights Centre (SWRC) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research, and training to improve processes and systems, and to improve the outcomes for women who have experienced gender-based violence (GBV).

We recognise that people of any gender can be affected by abuse and violence (including domestic abuse). The SWRC specifically supports women aged 16 and over; thus, when we talk about survivors in this response, we will generally refer to women. Despite this, we are aware—and do acknowledge—that any person can be a victim of domestic abuse and third-party tracing practices.

#### **Question 1): What themes or concerns have you noted regarding the tracing of victims of abuse, if any? Can you provide particular anonymised examples of incidents of this nature?**

We are concerned with the ease with which tracing is utilised in the system. Within the current system, there are no significant safeguarding considerations or measures in place. There are no checks carried out on the person seeking to trace another, their relationship to that person and if there is any evidence or allegations of abuse are present. With no checks or verification carried out, this leaves survivors/victims vulnerable to being traced and found. This is a significant safety concern for survivors of domestic abuse and other types of gender based violence.

The risk of tracing or tracking tools without strong privacy protections has been previously mentioned during COVID 19 with risks of exacerbating domestic abuse and endangering survivors. In a joint whitepaper, risks were raised about tracing where staff could inadvertently leak contact details of survivors to perpetrators. This then raised concerns of tracing and tracking tools being turned into a “tool for abuse.”<sup>1</sup>

### Economic Abuse

We have also noted concerns between tracing and economic abuse. A high proportion of victims of abuse will suffer from economic abuse or associated financial hardship. As a result of this, those victims are likely to be present on various systems and databases tracing agents will have access to such as the DWP. Therefore, tracing information on a victim/survivor is more accessible than someone not linked into the system. This further increases the risk of victims/survivors being successfully traced<sup>2</sup>. As highlighted in the report from Scottish Women’s Aid, “*tech abuse is, without doubt, a tool for coercive control*”<sup>3</sup> used in many instances to monitor victims’ activities, including using location tracking apps and devices to record victim-survivors as well as monitoring their online activity.

The power imbalance inherent within abusive relationships raises further concern. Employing tracing agents or private investigators comes with a significant cost which further exemplifies the power imbalance. If a perpetrator is at a financial advantage to the victim/survivor, they may have additional access and opportunity to utilise tracing services. Therefore survivors/victims, do not have the sufficient resources to protect against tracing practices to keep their identity and location concealed.

### Tracing Agents and Private Investigators

We have questions over the ethic and equity of instructing Sheriff Officers and other tracing agents to use the personal data of defenders to locate them. There must be proper consideration and balance between ‘the rights of an individual seeking to locate a person and the specific reason behind this’ and ‘rights of the unlocated individuals’ privacy and data protection rights.’ However, where there is an ongoing court action, and the defender is wanted by the police, the tracing of an individual may clearly outweigh their right to privacy.

GDPR states that the tracing and tracking of an individual must only be done in pursuit of:

- Performance of a contract
- Legal requirements

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<sup>1</sup> <https://www.womensaid.org.uk/what-we-do/evidence-hub/evidence-briefings-impact-of-covid-19-on-survivors-and-services/>

<sup>2</sup> <https://www.scottishwomensrightscentre.org.uk/resources/Economic-Abuse-final.pdf>

<sup>3</sup> <https://www.womensaid.org.uk/wp-content/uploads/2022/10/4.-Technology-domestic-abuse-and-Covid-19-1.pdf>

- Vital interest
- Public interest
- Legitimate interest

The six key principles when processing someone's personal data for law enforcement purposes are: <sup>4</sup>

1. Processing of personal data for any of the law enforcement purposes must be lawful and fair.
2. The law enforcement purpose for which personal data is collected on any occasion must be specified, explicit and legitimate, and; Personal data collected must not be processed in a manner that is incompatible with the purpose for which it was originally collected.
3. Personal data processed for any of the law enforcement purposes must be adequate, relevant, and not excessive in relation to the purpose for which it is processed.
4. Personal data processed for any of the law enforcement purposes must be accurate and, where necessary, kept up to date, and; Every reasonable step must be taken to ensure that personal data that is inaccurate, having regard to the law enforcement purpose for which it is processed, is erased or rectified without delay.
5. Personal data processed for any of the law enforcement purposes must be kept for no longer than is necessary for the purpose for which it is processed.

Appropriate time limits must be established for the periodic review of the need for the continued storage of personal data for any of the law enforcement purposes.

6. Personal data processed for any of the law enforcement purposes must be processed in a manner that ensures appropriate security of the personal data, using appropriate technical or organisational measures (and, in this principle, "appropriate security" includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage).

There are significant concerns regarding the access to information tracing agents can acquire about an individual, where they can locate information and what duties of care they uphold on the individuals they are tracing.

We know that tracing agents can use GPS vehicle tracking, surveillance monitoring, background checks, electronic surveillance, and technological forensics.

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<sup>4</sup> <https://ico.org.uk/for-organisations/guide-to-le-processing/principles/>

We are aware that specialist tracing agents have access to an extensive range of databases not available to the public and additional resources to gather information. The information on these databases can include significant and traceable personal data such as an individual's full name, date of birth, past or associated addresses, telephone numbers and email addresses. This places additional risk of victims/survivors' personal data being used to locate them or breach their safety.

At present in the UK, private investigators are unregulated and do not require to hold any type of licencing.<sup>5</sup> This poses great concerns for the methods used to locate individuals particularly victims/survivors of domestic abuse. Perpetrators may seek to find their location using such services which are not regulated or licenced and as such have access to information which the survivor does not know is readily available. This may put the survivor in danger as she may have gone to great lengths to keep her location hidden, but due to the information available to the tracing agent, her perpetrator may be able to gain details on her location.

### Other Means of Tracing and Tracking Victims

Although this consultation is predominantly focusing on tracing agents, perpetrators utilise other means of tracking victims and survivors through their phones, across social media networks and online activity which points to a wider problem where stronger protections in the form of policy and legislation need to be considered.

**Location data:** (information from the network or service about the location of a phone or other device) with the authority of the network, service, or value-added service provider, and only if: it is anonymous, or you have consent to use it for a value-added service. It is believed this does not generally include GPS-based location information from smartphones, tablets, or other devices as this type of data is created and collected independently of the network or service provider.<sup>6</sup>

**Geolocation data** is data taken from a user's device which indicates the geographical location of that device. The ability to ascertain or track the physical location of a child or survivor of gender-based violence is of particular concern. For any geolocation data you need to process to provide your core service, it is not appropriate to have a privacy setting. However, companies should offer control over whether and how personal data is used whenever they can. If geolocation data also meets the definition of location data as mentioned above, then there are specific PECR requirements which must be met.<sup>7</sup>

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<sup>5</sup> <https://www.lawscot.org.uk/members/member-benefits/professional-legal-services/association-of-british-investigators/>

<sup>6</sup> <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/communications-networks-and-services/location-data/>

<sup>7</sup> <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/childrens-information/childrens-code-guidance-and-resources/age-appropriate-design-a-code-of-practice-for-online-services/10-geolocation/?q=verify#:~:text=What%20do%20you%20mean%20by,connection%20with%20local%20wifi%20equipment.>

Advancements in technology mean that individuals can track someone using a mobile device using hidden software to monitor the victims' devices. With the growing use of location technology perpetrators are tracking victims' location more often and in increasingly varied ways.<sup>8</sup>

Survivors of abuse and all other users should be informed about how their location information will be used, disclosed, and shared in a transparent manner to allow them to safety plan to ensure that they are kept safe.<sup>9</sup> Most phone companies do ask for terms and conditions to be signed where they include when and how data is collected from the device but the information given is not clear or accessible.

### Stalking

We have seen incidents where survivors have been traced or tracked as a component of stalking behaviours. We often hear from survivors that this is used as an intimidation tactic.

We have heard from survivors of stalking that they have not known they are being traced and further being unaware of what access tracing agents or private investigators have to their personal data. This can be distressing when the survivor initially thought this information was concealed. All these factors can further add to the fear or alarm a survivor can feel and in turn, adds to safety concerns where the perpetrator has access to the survivors personal and contactable details.

### **Question 2): From your experience, what are the harms or impact on victims of abuse, having been tracked via tracing agents or private investigators?**

We know there is a significant emotional impact suffered by victims/survivors of abuse when they are tracked or via tracing agents or private investigators.

A survivor may be unaware that their perpetrator is able to track them using tracing agents, private investigators or by other means. Therefore, a victim/survivor may experience significant feelings of shock, distress, fear, and alarm if they find out the perpetrator may be able to locate them if they are being traced. They may also begin to have major concerns for their own safety as a result.

If a solicitor is tracing a victim/survivor for the purpose of court proceedings, the personal information traced, then becomes available within the court documentation. For the victim/survivor this will not only exacerbate feelings of being unsafe but may also jeopardise their physical safety as perpetrator would also have access to their personal information via the court documentation.

The potential harms of tracing are also heightened as survivors will not be told about the trace nor who has access to their personal details. The realisation of this occurrence can be a sudden shock since there is no prior notification given. This

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<sup>8</sup> Technology and its danger to domestic violence victims: how did he find me? - Brenda Baddam.

<sup>9</sup> Technology, stalking and domestic violence victims – Cindy Southworth and Sarah Tucker.

further poses a risk to victim/survivor safety as they are unable to utilise any safety planning to keep themselves and their families safe before any information is released.<sup>10</sup>

Where someone has safety concerns for themselves or others due to their location, they may feel the need to move location to feel safe. We have real practice examples of this happening for a victim/survivor. This then leads to social and financial consequences which could result in feelings of isolation. A significant economic burden may also arise due to the financial implications of relocation.

A process to overcome this, would be having transparency and notification to victims/survivors that tracing is being carried out on them, for what specific purpose and they should also be made aware of who exactly will have access to this information, prior to the information being shared. This will allow victims/survivors to plan ahead and ensure they have their own mechanisms in place to keep themselves safe.

**Question 3): Have you noted an increase in the tracing of victims of abuse year on year? Can you provide numbers on applicable concerns raised?**

We are unable to answer this question.

**Question 4): Are there any specific tracing organisations you have received numerous complaints about or have concerns over? If so, please provide details.**

We are unable to answer this question.

**Question 5): Have you had any calls or reason to engage with tracing organisations directly? If so, please provide details.**

We do have a need to trace perpetrators in court actions and specifically in court actions regarding children where the perpetrator has removed or retained the child and the victim/survivor requires to trace the perpetrator to track the location of the child.

We also use tracing in court actions when seeking protective orders where the defender's whereabouts is unknown, and we are required to show the court that we sought to locate the defender.

Although there are concerns about individuals' ability to trace victims/survivors, there is a need to balance the benefits of being able to trace perpetrators in urgent situations.

We submit that measures should be in place to ensure that urgent tracing can be conducted whilst ensuring the safety and wellbeing of those being traced. For example, if tracing were done through permission of the court, it would allow the court to regulate the personal data and accept submissions from victims/survivors as to why they do not want their personal data shared. This would then allow the court

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<sup>10</sup> <https://womensaid.scot/tips-for-staying-safe/>

to decide and only share traced information where it is safe and secure to do so. It would further prevent any individual from having full access to employ a tracing agent on someone else without any context given or safety measures adhered to, and risk assessed.

Furthermore, a victim/survivor could be notified when they are being traced to allow them to put in place safety measures and make representations to the court to allow them to deal with the tracing data and give the survivor some autonomy in the process. This would allow victims/survivors an opportunity to make representations to the court when the tracing presents a safety concern due the perpetrators past actions. The process should be accessible and easy to complete with the survivor's safety concerns considered a top priority along with the need for tracing to occur and the required details sought. There is the opportunity for the court to retain the location information without having this made available to the perpetrator in certain circumstances.

Balance or distinction is required between the protection of victims/survivors and the need for tracing and tracking individuals particularly for court actions as mentioned above. For example, in child contact cases where child abduction has occurred, the urgency needed to trace the child and perpetrator is a priority for the child's safety and being able to carry out such a trace with efficiency is key. However, there must also be safeguards in place to protect individuals who have survived domestic abuse and for whom their location data remaining private is of upmost priority.

**Practice Example:** We instructed sheriff officers to trace a defender for a Non-Harassment Order as the defender's location was unknown. However, there were constraints on such tracing as Police Scotland had already been unable to locate him for some time and then the Sheriff's Officers were also unable to locate him. We were required to produce evidence to the court that we had attempted to trace the defender to allow us to proceed with the court action for our client's safety and protection.

**Question 6): Have you seen any trends with your frontline staff needing to signpost to the ICO or other services in response to enquiries concerning the use of tracing agents or private investigators?**

We have not seen any particular increase in needing to signpost to the ICO or other services in response to enquiries regarding tracing agents or private investigators. However, we are aware that this is a big concern for service users. This is often mentioned by our service users as a concern in relation to keeping themselves safe and when considering their safety planning.

In child contact orders, often the perpetrator will ask the court for the address of the victim/survivor to be known. So, allowing a victim/survivor the opportunity to put safeguards in place is extremely important. The victim/survivor can request that their address be kept confidential from the perpetrator.

We often signpost to Citizens Advice Bureau or the ICO for advice and information for survivors on data sharing and protection.

We are aware of service users having been in contact with the ICO due to data breaches of their personal data. From experience and working with such service users, the ICO is an important avenue for individuals when their data appears to

have been leaked or misused etc. However, further signposting and resources would be beneficial in terms of next steps following acknowledgement of a breach.

The ICO could increase the efficiency of their services by having resources such as a find a solicitor page whereby solicitors who are willing and able to take on cases involving data breaches are listed and can be contacted. This would limit a lot of anxiety and stress surrounding the current method of finding a solicitor for these types of cases as the resource would only include solicitors who would be willing to aid on data breaches rather than having to contact many solicitors who do not have any experience in the area.

**Question 7): Have you engaged with any governing bodies regarding the tracing of victims of domestic? If so, which bodies have you engaged with? Have you received any outcomes or progression? Please provide details.**

We are unable to answer this question.