



domestic  
abuse  
commissioner

## Government consultation on the Criminal Injuries Compensation Scheme Review: Supplementary Consultation 2022

### Role of the Domestic Abuse Commissioner

The Domestic Abuse Act establishes in law the Office of the Domestic Abuse Commissioner for the purpose of providing public leadership on domestic abuse issues and to play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales. The role of the Commissioner is to encourage good practice in preventing domestic abuse; identifying adult and child victims and survivors, as well as perpetrators of domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government.

As the Domestic Abuse Commissioner for England and Wales, I welcome the opportunity to feedback on Criminal Injuries Compensation Scheme Review: Supplementary Consultation and would be pleased to discuss the contents of this response further, if requested to do so.

### Scope of the response

As the Domestic Abuse Commissioner for England and Wales, my response is limited to the impact which the current framework has on victims and survivors of domestic abuse.

### Response to the consultation

**I am disappointed to see that the current proposals do not take in account the role domestic abuse may have played in contributing to, and in some cases forcing, a victim or survivor to offend. This means that victims and survivors would be further marginalised through the unspent conviction rule.**

The unspent convictions rule disproportionately impacts female victims and survivors of domestic abuse, as the majority of women who have received a custodial sentence or supervision order have experienced domestic abuse. At least 57% of women in prison and under community supervision being victims and survivors of domestic abuse.<sup>1</sup> Additionally, 63% of young women aged 16-24 serving sentences in the community have experienced rape or domestic abuse in an intimate partner

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<sup>1</sup> Williams, K. (2022) [Double Standard: Ending the unjust criminalisation of victims of violence against women and girls](#), Centre for Women's Justice, p.6

relationship.<sup>2</sup> This figure is likely to be higher due to the underreporting of domestic abuse and sexual abuse by victims and survivors.

Experiencing domestic abuse can be a significant contributory factor to offending or involvement in criminal activity. A study carried out by The Disabilities Trust of HMP/YOI Drake Hall revealed that 62% of women in custody had sustained a traumatic brain injury as a result of domestic abuse.<sup>3</sup> This is particularly concerning as the impact of trauma and victimisation on individuals can result in victims and survivors developing a range of cognitive behavioural and emotional difficulties, including antisocial behaviour, increased aggression, loss of memory and confusion.<sup>4</sup> The current rule, if maintained, would continue to prevent these individuals from being able to access compensation in the event that they were to be victims of crime in the future, despite the fact that they would have served their sentences. In doing so, victims and survivors of domestic abuse will continue to be victimised even where their criminalisation was related or driven by a complex traumatic experience.

The current framework also fails to account for coercive and controlling behaviour as a driver to offending and distinguish between victims and survivors who have been coerced into committing crimes and other classes of offenders. This is a concern which was raised by the Victims' Commissioner for England and Wales in response to the substantive consultation on the Criminal Injuries Compensation Scheme Review and which I reiterate in this submission.<sup>5</sup> Convictions under the law of joint enterprise frequently fail to take into account coercion and history of abuse within the relationship which may have driven the offending.<sup>6</sup> Research by the Prison Reform Trust and the Centre for Women's Justice has revealed that coercion can be a significant driver for offending for victims and survivors of domestic abuse, with survivors being forced to commit crimes on behalf of their partners, or support their drug use, due to fear of repercussions if they did not comply.<sup>7</sup> Issues with coercion are particularly prevalent with victims and survivors from black and minoritized backgrounds and religious groups, with survivors reporting being groomed or emotionally blackmailed into committing crimes, as well as survivors with disabilities and learning disabilities, who are more likely to experience coercion, control and abuse.<sup>8</sup> Consequently, the Unspent Conviction Rule serves to further marginalise vulnerable individuals from minoritized groups.

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<sup>2</sup> Ibid.

<sup>3</sup> The Disabilities Trust (2018) [Making the link: Female offending and brain injury](#)

<sup>4</sup> Williams, K. and Earle, J. (2017) [There's a reason we're in trouble: domestic abuse as a driver to women's offending, Prison Reform Trust](#), p.9; The Disabilities Trust (2018) [Making the link: Female offending and brain injury](#)

<sup>5</sup> Victims' Commissioner for England and Wales (2020) [Response to Criminal Injuries Compensation Scheme Review Consultation](#)

<sup>6</sup> Williams, K. (2022) [Double Standard: Ending the unjust criminalisation of victims of violence against women and girls](#), Centre for Women's Justice, p.25

<sup>7</sup> Williams, K. and Earle, J. (2017) [There's a reason we're in trouble: domestic abuse as a driver to women's offending, Prison Reform Trust](#), p.10

<sup>8</sup> Ibid.

The current framework disproportionately impacts black and minoritized individuals, due to their overrepresentation within the criminal justice system.<sup>9</sup> Given the proportion of female offenders who have experienced domestic abuse, it can be inferred that the Unspent Conviction Rule disproportionately discriminates against black and minoritized women who have experienced domestic abuse.<sup>10</sup> This acts contrary to the Public Sector Equality Duty to eliminate the discrimination and victimisation of individuals with protected characteristics, as well as the Government's Female Offender Strategy. With that in mind, the Unspent Conviction Rule should be reformed to take this into account.

I further echo the concerns raised by Unlocked in their response to the substantive consultation around the lack of consideration given to applicants who were victimised as children but make applications as adults – at which point they may have obtained a criminal record.<sup>11</sup> This is particularly salient in the context of children now being classed as victims of domestic abuse in the context of section 3 of the Domestic Abuse Act 2021, which establishes children as victims of domestic abuse..

A report by the Centre for Youth and Criminal Justice found that children in England with four or more Adverse Childhood Experiences “*were seven times more likely to have been a victim of violence in the past year, and were eight times more likely to have committed a violent act than those with no Adverse Childhood Experiences. In Wales these figures were more pronounced, as those who had experienced four or more Adverse Childhood Experiences were 14 times more likely to have been a victim of violence in the past year, and 15 times more likely to have been the perpetrator of a violent incident*”.<sup>12</sup> Further, recently published work by Dr Jade Levell found a strong correlation between young men who had experienced or witnessed domestic violence and abuse at home as children and their hypervisibility and overrepresentation in youth offending and risk management support services.<sup>13</sup> With consideration to the impact which experiencing domestic abuse at a young age can have on future criminality, as well as to recent legislative changes, it is submitted that the Unspent Conviction Rule should be reformed to exclude child victims and survivors of domestic abuse.

**Therefore, I strongly recommended that the Unspent Convictions Rule be amended to allow all victims and survivors of domestic abuse be exempted from the exclusionary part of the Unspent Convictions Rule.**

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Public Health England (2015) [Disability and domestic abuse: Risk, impacts and response](#); Stay Safe East (2021) [Domestic Abuse Bill Proposed Amendments: Disabled Survivors](#)

<sup>9</sup> Hopkins, K., Uhrig, N., et. al (2015) [Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015](#) Ministry of Justice

<sup>10</sup> Ministry of Justice (2018) [Female Offender Strategy](#), p.28

<sup>11</sup> Unlocked (2022) [Criminal injuries compensation](#)

<sup>12</sup> Vaswani, N. (2018) [Adverse Childhood Experiences in children at high risk of harm to others. A gendered perspective](#). Centre for Youth and Criminal Justice, p.4

<sup>13</sup> Dr. Levell, J. (2022) *Boys, Domestic Abuse and Gang Involvement: Violence at Home, violence on Road*, Bristol University Press