



Ministry
of Justice

Criminal Injuries Compensation Scheme Review

Supplementary consultation 2022

June 2022

CP 688



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of Justice

Criminal Injuries Compensation Scheme Review

Supplementary consultation 2022

Presented to Parliament

by the Deputy Prime Minister, Lord Chancellor and Secretary of State
for Justice

by Command of Her Majesty

June 2022



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ISBN 978-1-5286-3193-8

E02721419 06/22

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of Her Majesty's Stationery Office

About this consultation

- To:** This consultation is aimed at the public, victims and survivors, victims' groups, academics and clinical experts. We also welcome views from professionals across criminal justice, health, welfare, local authorities and the charity sector.
- Duration:** From 09/06/22 to 05/08/22
- Enquiries (including requests for the paper in an alternative format) to:** Vulnerability Policy Unit
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- How to respond:** Please send your response by 5 August 2022 to:
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- Response paper:** A response to this consultation exercise is due to be published in Autumn 2022 at:
<https://consult.justice.gov.uk/>

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Foreword

The Criminal Injuries Compensation Scheme (the Scheme) exists to support all eligible victims of violent crime who have suffered the most serious injuries. To do this effectively and fairly the Scheme balances the consideration of individual applicants' needs within a universal and transparent set of rules and eligibility criteria. We know that overall it does this well and in 2020-21 payments to support the recovery of victims totalled more than £153 million.

We committed to review the Scheme as a whole, and the Terms of Reference outlined that it would examine whether the Scheme remains fit for purpose, reflects the changing nature of violent crime and effectively supports victims in their recovery.¹ Our review has focused on accessibility of compensation, and our ambition remains to make the Scheme simpler and easier for people to understand and to engage with. The proposals that we consulted on in the summer of 2020 intended to achieve this, whilst keeping to the primary principle that compensation under the Scheme is an important and public recognition of the suffering of victims who are seriously injured and of families who lose a loved one as a result of violent crime.

We received 96 responses from a range of organisations and individuals, and I would like to thank all those who took the time to send us their thoughts. We have carefully considered the representations that cut across all of the proposals and topics covered by the consultation.

However, before we can finalise the review we are inviting views on one of the eligibility rules in the Scheme; the so-called unspent convictions rule which prevents individuals who have committed serious illegal acts from benefitting from state-funded compensation. Changes were made to the rule in 2012, particularly the introduction of an exclusionary element, and concerns have been raised about their impact on some applicants. The Supreme Court determined in July 2021² that the rule is lawful and proportionate, and stated that the exclusionary approach is an acceptable one and has the advantage of leading to consistency and clarity. The Supreme Court also noted that the legislator is entitled to adopt a Scheme with clearly defined rules for determining entitlement to publicly-funded compensation. In a separate case³ decided shortly thereafter, the High Court found that we had not met a legitimate expectation on revision of the unspent

¹ Published December 2018, http://data.parliament.uk/DepositedPapers/Files/DEP2018-1283/terms_of_reference_CICS_Review.pdf

² A and B v Criminal Injuries Compensation Authority and another [2021] UKSC 27, paragraph 90, July 2021

³ R (Mitchell) v Secretary of State for Justice [2021] EWHC 2248 (Admin), August 2021

convictions rule as we did not ask a specific question on whether it should be revised in line with a recommendation made by the Independent Inquiry into Child Sexual Abuse in 2018.

We are therefore publishing this supplementary consultation to invite views on reform of the rule. Potential reforms are discussed and although no change remains an option, we are looking afresh at the rule as required by the High Court judgment.

Following this second consultation we look forward to sharing our conclusions and proposals about the scheme as a whole following our comprehensive review, so that through the Scheme victims can continue to access compensation to help them overcome their injuries and move on with their lives.

A handwritten signature in blue ink, reading "Tom Pursglove".

Tom Pursglove MP

Minister for Justice and Tackling Illegal Migration

Executive summary

1. In our 2020 consultation we re-affirmed that the core purpose of the Criminal Injuries Compensation Scheme (the Scheme) is to recognise, through compensation, the harm experienced by a victim injured as a result of violent crime. The Scheme is universal, and although each individual and each case will be different, it must work equally for all victims of violent crime. It is therefore vital that all applicants are subject to, and all applications are assessed against, the same eligibility criteria, requirements and injury tariffs. This ensures against creating a hierarchy of victims, and that decisions can be made in a consistent, fair and transparent way.
2. The consultation in 2020⁴ was informed by analysis of caseload data (approximately 75,000 claims received by the CICA between 1 January 2016 and 1 January 2019) which gave us a detailed picture of the operation of the Scheme and the impacts of different rules on victims of violent crime. We gained a clearer understanding of what injuries are the subject of claims, with the majority, 65%, being sustained from an assault with or without a weapon, and 25% were sexual injuries. We also learned more about why claims were unsuccessful: the primary reasons for rejection included that the injury was not in the tariff (29% of cases), no crime of violence (15%), failure to co-operate (15%), and unspent convictions (8%).
3. In developing our proposals for the consultation, we were guided by careful consideration of the following factors: simplicity and transparency; improved experience and outcomes for applicants; affordability and financial sustainability; operational implications; and whether changes can be fairly and consistently applied across the Scheme without having a disproportionate impact on any one group. These factors together with the evidence from the caseload analysis assisted us to determine, and discuss in the consultation, both changes to the Scheme that we put forward and why we were not proposing changes in some respects, including to the unspent convictions rule. Having analysed responses to the consultation and while we were considering our response there were two important judicial decisions; about the fairness and proportionality of the unspent convictions rule as amended in 2012, and about the way in which we considered reform of that rule within the public consultation.
4. The cross-government Victims Strategy published on 10 September 2018 set out a criminal justice system-wide response to improving the support offered to victims of crime. In it we committed to remove the pre-1979 same roof rule, which we did in 2019, and to complete a comprehensive review of the Scheme. In August last year the High Court declared that the terms of the Victims Strategy had created a legitimate

⁴ Criminal Injuries Compensation Scheme Review 2020 - Ministry of Justice - Citizen Space

expectation of consultation on revising the unspent convictions rule, and that we had not met that expectation as we did not ask a specific question on the matter. The order of the High Court requires that a further consultation take place on whether the rule should be revised in line with a recommendation made by the Independent Inquiry into Child Sexual Abuse (the Inquiry), and that a decision on changes to the rule should be taken after the consultation is complete.

5. Recommendation 5 of the Interim Report of the Inquiry⁵ proposed that the Scheme be revised to remove barriers faced by victims and survivors of child sexual abuse. The Inquiry Chair and Panel recommended changes to the unspent convictions rule, so that awards are not automatically rejected in circumstances where an applicant's criminal convictions are likely to be linked to their child sexual abuse, and that each case should be considered on its merits.
6. In the detailed work that we undertook to inform the 2020 consultation, we considered concerns raised about the challenges experienced by victims of recent and non-recent child sexual abuse in accessing compensation. In the consultation we described how through the review we had looked at whether existing eligibility rules, including the unspent convictions rule, have a disproportionately negative impact on victims of child sexual abuse.
7. Further to the order made by the High Court we are conducting this consultation on whether or not to revise the unspent convictions rule, inviting specific views on potential reforms such as that recommended by the Inquiry, alongside the option of no reform.

Our approach

8. As part of our review careful consideration was given to a range of potential reforms of the unspent convictions rule, including changes recommended by stakeholders, to address the issues raised about alleged unfairness and disproportionate impacts of the rule on some applicants. We expressly considered points raised and recommendations made by the former Victims' Commissioner for England and Wales Baroness Newlove in her report on compensation,⁶ took into account the early findings and recommendations of the Independent Inquiry into Child Sexual Abuse, and examined issues raised by Dame Vera Baird the Victims' Commissioner for England and Wales,⁷

⁵ Interim Report of the Independent Inquiry into Child Sexual Abuse, section 5.2, April 2018
<https://www.iicsa.org.uk/publications/inquiry/interim>

⁶ 'Compensation without Re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 - <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

⁷ Struggling for Justice: Entitlements and Experiences of Bereaved Families Following Homicide Abroad, October 2019 – <https://victimscommissioner.org.uk/published-reviews/struggling-for-justice-entitlements-and-experiences-of-bereaved-families-following-homicide-abroad/>

and in reports of the All-Party Parliamentary Group on Adult Survivors of Childhood Sexual Abuse.

9. After careful consideration, we did not propose making any change to the rule. However, respondents to the 2020 consultation restated a wide range of concerns about how the impact of the rule impacts on applicants with unspent convictions for offending that may have followed on from traumatic life experiences and events.
10. Undertaking this supplementary consultation allows for further discussion of reforms of the rule that we considered during the review before concluding that no change would be proposed. This includes the possibilities of introducing exemptions to the exclusionary part of the rule, amending the terms of the exclusionary part, or removing the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.
11. A fresh decision about whether to revise the rule, and if so how, will be made after careful consideration of all views and representations made by respondents both to this consultation which is specifically about the rule, and responses to the earlier consultation in 2020 that addressed it.

Introduction

12. This paper sets out for consultation potential changes to the Scheme's so-called 'unspent convictions' rule, which prevents individuals who have committed serious illegal acts from benefitting from state-funded compensation.
13. The consultation is aimed at those within England, Wales and Scotland, reflecting the geographic scope of the Scheme. We are particularly interested in hearing from victims and survivors; victims' groups, services and charities; academics; representatives from the legal sector and professionals from across the criminal justice system. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.
14. A Welsh language consultation paper will be available shortly at <https://consult.justice.gov.uk/digital-communications/cics-review-supplementary-consultation>
15. An Impact Assessment is attached. This indicates that victims of violent crime with unspent convictions and, where applicable, their qualifying relatives; those who represent or assist applicants including victims' charities and victims' services; CICA, MoJ, HMCTS and the Scottish Government are likely to be particularly affected by the potential reforms outlined in this consultation paper. Any changes to the rule would be likely to lead to additional costs to the CICA and HMCTS.
16. Comments on the Impact Assessment are very welcome.

Background to this consultation

17. The Scheme was previously reviewed in 2012, following which various changes were made including to the unspent convictions eligibility rule. Pursuant to the rule in the 2012 Scheme, an applicant is not eligible for compensation where they have an unspent conviction that has resulted in one or more of a number of specified custodial or community sentences. The rule is designed to prevent individuals who have committed serious illegal acts benefitting from state-funded compensation, to reflect the degree of harm done to others and the cost to society of offending behaviour.
18. In Schemes prior to 2012 the Criminal Injuries Compensation Authority (CICA) had discretion on a case-by-case basis to pay out awards for those with unspent convictions where there were exceptional reasons for an award not to be withheld or reduced. Discretion was retained in the current Scheme for some applicants with convictions where the sentence imposed was not one of those listed in Annex D, such as a discharge or financial penalty.
19. The cross-government Victims Strategy published on 10 September 2018 set out a criminal justice system-wide response to improving the support offered to victims of crime. In Chapter 1: “Overarching improvements to victims’ experience”, it was noted that the Scheme is one element of key legislation already in place to support victims, and that the challenge is to ensure that compensation keeps pace with the changing understanding of crime. It was acknowledged that the Independent Inquiry into Child Sexual Abuse (the Inquiry) had made a recommendation for changes to the rule for victims and survivors of sexual abuse.
20. In the Victims Strategy a commitment was made to review the Scheme. Specific issues to be considered in the review, including the unspent convictions rule, were set out in the Terms of Reference⁸ published in December 2018. The Terms of Reference also said that the review would take full account of the findings of the Inquiry.
21. The review was carried out and is summarised in the Criminal Injuries Compensation Scheme Review 2020⁹ consultation document. As noted in those paragraphs, the review was informed by a detailed analysis of approximately 75,000 claims received by the CICA between 1 January 2016 and 1 January 2019. The review took account of information and views of stakeholders and interested parties, and expressly considered the early findings of the Inquiry as well as reports of the Victims’ Commissioner for

⁸ Published December 2018, http://data.parliament.uk/DepositedPapers/Files/DEP2018-1283/terms_of_reference_CICS_Review.pdf

⁹ At paragraphs 7 to 16, Criminal Injuries Compensation Scheme Review 2020 - Ministry of Justice - Citizen Space

England and Wales and the All-Party Parliamentary Group on Adult Survivors of Childhood Sexual Abuse.

22. In the consultation document we published our findings and conclusions across the wide range of topics considered as part of the review, and also set out proposals for reform. For each of the areas where change was proposed, the document outlined the current position and identified the case for change.
23. There was a section (paragraphs 100-106) that addressed in some detail the issue of unspent convictions and the exclusionary rule in respect of such convictions. The current rule and how it operates was explained, some of the difficulties of introducing and administering discretion as proposed by the Inquiry and others were examined, and a rationale was given for retaining the rule unchanged. That rationale was based on the conclusion that it was not possible to commit to making any change to the rule without introducing significant potential discrimination and operational challenge. No suggestion for change was advanced, and there was therefore no proposal on which to invite views. However, recognising that people may still wish to comment on the parts of the Scheme not the subject of proposals, the consultation document provided an opportunity for consultees to express views on any aspect of the Scheme; Question 17 asked, "Do you have any further comments on the Scheme?". The consultation opened on 16 July 2020 and closed on 9 October 2020. More than a quarter of the responses to the consultation made representations in relation to the unspent convictions rule. Some submissions were contained in narrative responses and some were made under Question 17.
24. In July 2021, in an appeal following judicial review proceedings challenging the lawfulness of the rule, the Supreme Court determined that the legislator is entitled to adopt a scheme, the object of which is to allocate limited resources to victims as an expression of public sympathy, which operates by clearly defined rules. The Court found that the unspent convictions rule in the 2012 Scheme is fair and proportionate, and that it is appropriate to lay down rules which will disqualify some applicants as opposed to allowing a general discretion. However, in August 2021 in separate proceedings the High Court declared that the terms of the Victims Strategy had created a legitimate expectation of consultation on revising the rule, and that this expectation had been breached by not asking a specific question on the matter in the consultation.
25. To comply with the order of the High Court we are now undertaking a further consultation which is solely concerned with whether the unspent convictions rule should be revised, in line with the recommendation made by the Inquiry or in some other way. As noted by the Supreme Court it is for Government and Parliament to set the policy and rules for determining entitlement to publicly-funded compensation, and a decision on whether changes to the rule should be made will only be taken after the consultation is complete.

The unspent convictions rule: potential reforms

The rule and how it operates

26. Unspent convictions may result in an applicant's compensation award being reduced or withheld depending on the sentence that has been imposed for the offence committed. The current rule, as it is framed in the 2012 Scheme, provides that an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D; this is known as the exclusionary rule. The exclusionary rule also applies to unspent convictions where sentences equivalent to those listed in Annex D were imposed in countries outside of Great Britain, and to applicants convicted of an offence after an application for compensation is made but before it is finally determined.
27. Before the change in 2012, the Criminal Injuries Compensation Authority (CICA) had discretion on a case-by-case basis, to pay out awards for those with unspent convictions where there were exceptional reasons for an award not to be withheld or reduced. This discretion still exists in relation to unspent convictions that resulted in a sentence not specified in the exclusionary rule in the 2012 Scheme.
28. The Schemes prior to 2012 did not prescribe how discretion was to be applied and the 2012 Scheme does not do so either. The CICA uses a points system, detailed in published guides, to make sure the approach taken is consistent. Points are based on the type and length of sentence imposed, and the time between the date of sentence and application for compensation. The number of points determines what percentage of an award will be withheld, and ten or more points will lead to a nil award. The system of applying points to unspent convictions in order to establish the appropriate level of reduction is discretionary. In applications where the points suggest a refusal, it is open to decision-makers to consider a range of factors set out in guidance and decide to make awards or make reduced awards where there are exceptional reasons.
29. For the 2020 consultation we provided evidence of how the rule in the 2012 Scheme has affected claims. The 3-year caseload data set¹⁰ analysed as part of the review showed that in 8% of all rejected cases (approximately 3,500 out of 75,000 claims in the data set) the primary reason was that the applicant had an unspent conviction. From our analysis we learned that sexual injuries accounted for 25% of the resolved cases in the data set, and that of the cases rejected due to unspent convictions 12%

¹⁰ Approximately 75,000 claims received by the CICA between 1 January 2016 and 1 January 2019.

were sexual assault cases. It also identified that the rate of rejections under the unspent convictions rule was significantly lower in sexual assault claims than in other types of case at 2.5%, compared with 13.3% in cases involving assault with a weapon, 5.4% in physical assault cases, and 3.7% for “other crime types”.

Calls for reform of the rule

30. Since 2012 there have been varying calls for abolition of the rule or reform of it to re-introduce discretion. Sometimes the calls pertained to certain victim groups, such as victims of childhood sexual abuse,¹¹ other abuse, exploitation or coercive control,¹² while in others it was in connection with specific circumstances that may have surrounded the convictions, such as compulsion or childhood trauma. We summarised the key concerns of stakeholders about the rule and their calls for change at paragraph 103 of the 2020 consultation.
31. The recommendation of the Inquiry to revise the rule preceded the announcement of the review of the Scheme in the Victims’ Strategy and added to the body of stakeholders lobbying for reform which continued to grow and develop. The Inquiry published an interim report,¹³ which included a recommendation to revise the unspent convictions rule so that awards are not automatically rejected in circumstances where an applicant’s criminal conviction is likely to be linked to their child sexual abuse, and that each case be considered on its merits. The Government response to that report (published in December 2018) confirmed that the review announced in the Victims Strategy would consider how the Scheme can better serve victims of child sexual abuse and would explore the recommendation made by the Inquiry.
32. The recommendation was made ahead of the Inquiry’s detailed examination of the availability and accessibility of compensation and redress, under the Scheme and through other means, during its investigation into Accountability and Reparations; the Government is a core participant in this investigation strand and has endeavoured to assist the Inquiry through all of its stages. In public hearings (November 2018 to January 2019) the Inquiry heard from 40 witnesses, including Government officials, and it considered a wealth of information and evidence as it looked at where the experiences of and outcomes for victims of child sexual abuse may be made fairer and

¹¹ All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse report *Survivor’s experience of court and applying for compensation*, October 2019 - <https://www.appgsurvivorscsa.co.uk/court-compensation>

¹² Compensation without re-traumatisation: The Victims’ Commissioner’s Review into Criminal Injuries Compensation, January 2019 - <https://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

¹³ Interim Report of the Independent Inquiry into Child Sexual Abuse, section 5.2, April 2018 - <https://www.iicsa.org.uk/publications/inquiry/interim>

more effective. The Inquiry's investigation report in September 2019 included testimony from victims affected by the rule and other requirements of the Scheme, but made no further recommendations about the Scheme. The Inquiry is continuing to explore the potential for a redress scheme to offer accountability and reparation to victims and survivors of child sexual abuse.

33. In addition to a range of other reports and representations from stakeholders about the rule that came both before and after the Inquiry's recommendation, we also have the benefit of responses to the consultation. A quarter of the respondents raised the unspent convictions rule either within the course of their general submissions or responses to other questions within the consultation, and/or specifically in response to Question 17 which asked, "Do you have any further comments on the Scheme?". The responses demonstrated the breadth of concerns about how the rule impacts on applicants, re-affirming and developing our understanding of the range of people it affects.
34. Amongst the responses, respondents supportive of reform called for either abolition of the rule or a return to discretion in some form, citing the alleged disproportionate impact of the rule on victims of abuse, exploitation, trafficking and other forms of coercive behaviour, as well as the cyclical effect of trauma resulting from being a victim of crime, and the use of coping mechanisms such as alcohol and drug dependency, on future criminal activity.
35. Arguments were also raised as to the alleged lack of proportionality with respect to the rule, from its failure to differentiate between those victims of serious crimes with unspent convictions for minor offences, and those who have been victims of minor crimes but have unspent convictions for serious crimes which they have committed themselves.
36. Many respondents specifically referred to correlations between victims of childhood sexual abuse and future criminal offending, with some highlighting that the rule disproportionately affects victims of sexual violence who are disproportionately women and girls. A number of respondents referred to a correlation between victims of crime who have sustained head and brain injuries and subsequent criminal offending. Several respondents raised the lack of discretion and capacity to consider mitigating circumstances with respect to victims of trafficking and modern slavery. The impact of the rule on victims who had committed offences due to mental health issues was also raised by some.

Potential reform of the unspent convictions rule

37. At the time of the review and 2020 consultation the Court of Appeal, in the case that was subsequently considered by the Supreme Court,¹⁴ had found that the ‘unspent convictions’ rule as amended in 2012 was lawful and that the rationale underlying it was also legally sound. The judgment also rejected the notion that vulnerability which leads to later offending should require any kind of special exemption from the rule, on the basis that the criminal justice system includes a number of measures to allow any vulnerability of victims to be taken into account at the time of prosecution and sentencing.
38. Proceeding from a position that the rule itself was lawful enabled us to focus on the concerns raised and calls for reform, and to look carefully at information and data to help us understand the type and scale of impacts it was having on claims. The concerns about the rule principally relate to the exclusionary part introduced in 2012. We do not have evidence or data about how the rule operated before the change in 2012, nor of how the discretion worked and the impact that it had on claims. However, the expectation in 2012 was that fewer claims would result in a payment or full payment being made as a result of the exclusion introduced.¹⁵
39. Whilst the evidence we had (described in paragraph 29 above) did not seem to support the contentions of stakeholders that the rule was adversely and disproportionately impacting some applicants, we understand that this is an emotive subject and cause for concern to those supporting and representing particular groups of victims. As part of our review careful consideration was given to a range of potential reforms, including changes recommended by stakeholders, to address the issues raised. These are discussed below and included:
- introducing exemptions to the exclusionary part of the rule, such as by reference to specified classes of victims, so that not all claims are automatically rejected on the basis of a specified unspent conviction;
 - amending the terms of the exclusionary part of the rule by reference to the type of conviction included, to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction;
 - removing the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.
40. In considering potential reforms to all aspects of the Scheme, we judged it necessary and important to remain true to the key principles on which it was founded: that it is a universal Scheme that exists to support all eligible victims of violent crime who have

¹⁴ R (A and B) v CICA [2018] 1 WLR 5361, July 2018

¹⁵ Getting it right for victims and witnesses, Consultation Paper CP3/2012, January 2012, paragraph 208

suffered the most serious injuries, and that compensation is an important and public recognition of their suffering. These principles have helped ensure the long-term sustainability of the Scheme. Consistent with other eligibility rules and requirements, the current unspent convictions rule, including the exclusionary part, applies equally to all victims of violent crime applying to the Scheme.

41. In the impact assessment published with this consultation, we have assessed the impact of no change and of three approaches to reform the rule. For introducing exemptions to or amending the terms of the exclusionary part of the rule we have assessed the impacts of examples of changes that might be made. Further to the discussion that follows we invite views on each approach and on how the reforms could be operationalised.

No change to the exclusionary part of the rule

42. The aim of the rule is to limit eligibility for compensation, to reflect the degree of harm done to others and the cost to society of offending behaviour. It achieves this through a graduated approach to withholding or reducing awards based on the seriousness of the conviction, the circumstances of the offender and the applicable mitigation, all factors which would have been taken into account in the proceedings leading to the conviction and sentencing decision. The Supreme Court has determined¹⁶ that it is appropriate to lay down rules as to the seriousness of offences which will disqualify possible claimants as opposed to allowing a general discretion to be applied in individual cases by claims officers. The Court said that the chosen approach has the considerable advantages of clarity and consistency.
43. We previously concluded that making any change to the rule would undermine the core principle that the Scheme is universal and works equally for all victims of violent crime, and would introduce potential discrimination if some applicants with unspent convictions were to be treated differently to others. We were also concerned that introducing discretion was likely to bring additional complexity to the decision-making process and operational challenges in acquiring information and evidence to support judgements being made. This would in turn increase the time it takes for decisions on eligibility to be made, with the potential to negatively affect all applicants. For these reasons no change remains an option.

Question 1: What are your views about the exclusionary part of the rule being retained unchanged?

¹⁶ A and B v Criminal Injuries Compensation Authority and another [2021] UKSC 27, paragraph 90, July 2021

Introduce exemptions to the exclusionary part of the rule

44. The recommendation of the Inquiry in 2018 was one of the first proposals for change to be made to the rule that would be applicable to claims made by a specific group of applicants, namely victims of childhood sexual abuse. The Inquiry called for the rule to be revised to allow for consideration in individual cases of whether there was some causative link between what the applicant had been a victim of as a child and the criminal offending that they themselves perpetrated. The All-Party Parliamentary Group for Adult Survivors of Childhood Sexual Abuse went further in 2019,¹⁷ calling for the unspent convictions rule to be abolished for survivors of child sexual abuse. Some respondents to the 2020 consultation called for it not to be applied to victims of sexual violence or child sexual abuse.
45. In 2019 the then Victims' Commissioner for England and Wales continued the theme of proposing change to enable consideration of causal links in criminalising victims which would apply to certain applicant groups.¹⁸ It was recommended that there should be greater discretion in the rule to enable consideration of the impact on the applicant of child sexual abuse and exploitation and child criminal exploitation, as well as other crimes involving coercive control. Three quarters of respondents who addressed the rule in responses to the 2020 consultation reiterated the impact of the exclusionary rule on victims of exploitation, trafficking and abuse, and called for a return to discretion in some form. It was argued that the Scheme should recognise that the trauma of abuse and exploitation and of adverse childhood experiences can lead to offending.
46. As noted in the 2020 consultation, other stakeholders had pointed to the fact that the exclusionary part of the rule did not allow for differentiation between people who had been forced to offend and those who had more agency over their actions, such that the rule may have a disproportionate impact on victims of trafficking or sexual exploitation. Others had highlighted (including in responses to the 2020 consultation) that the rule did not allow for account to be taken of personality changes caused by brain injury.
47. An important consideration is how to operationalise any exemption to the rule, and to ensure consistency of decision-making. The recommendation of the Inquiry did not go so far as to expressly consider whether the courts will have already taken background issues into account when sentencing offenders, or what evidence sources may be available to the CICA in order to exercise discretion effectively, potentially after considerable passage of time. In order for the CICA to establish any causal links between the exploitation or abuse that the applicant had suffered and the offence they

¹⁷ Survivor's experience of court and applying for compensation report, October 2019 - <https://www.appgsurvivorscsa.co.uk/court-compensation>

¹⁸ Compensation without re-traumatisation: The Victims' Commissioner's Review into Criminal Injuries Compensation, January 2019 – <http://victimscommissioner.org.uk/published-reviews/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

committed, or to demonstrate that an applicant was compelled to offend, it would need to acquire detailed evidence and information from the applicant as well as from the police and other agencies. Seeking this information would potentially cause upset and distress to applicants, and would inevitably delay the decision-making process for everyone applying to the Scheme. Depending on how the exemptions are framed, exercising discretion in the ways suggested would also require the CICA's decision-makers to make complex and quasi-judicial judgements, including about cause and effect as well as about matters that will have already been taken into account by a court when imposing the sentence for the convictions that are unspent. This raises the risk of inconsistency which may in turn lead to reviews and appeals of decisions.

48. The concerns could be addressed through introduction of discretion only for certain victim groups or for convictions incurred under specific circumstances. This could be achieved by carving out exemptions to the existing exclusionary rule, which currently applies in the same way to all victims of violent crime applying to the Scheme. Based on what we know from the data set about applications for sexual assault and the number refused due to the rule, the number of applicants who would benefit from a specific exemption such as that proposed by the Inquiry would be limited. This should be balanced against the risk that an approach which provides special exemption for some, but not all, vulnerabilities which lead to later offending may create unfairness and discrimination. This is because applicants with unspent convictions that do not fall within the exemptions or do not benefit from the discretion could argue that they were being treated less favourably than those who do. It is also possible that an approach which introduces discretion for some would also potentially bring applicants who have committed serious and undesirable offences into eligibility, unless specific offences were explicitly excluded as part of the exemption.

Question 2: What are your views on the recommendation of the Independent Inquiry into Child Sexual Abuse that the unspent convictions rule be revised so that awards are not automatically rejected in circumstances where an applicant's criminal conviction is likely to be linked to their child sexual abuse, and that each case be considered on its merits?

Question 3: Do you consider that exemptions should be considered only for some applicants? If so, what should the basis of the exemptions be and when should discretion be available?

Question 4: What are your views about any exemptions and guidance on exercising discretion being set out in the Scheme?

Amend the terms of the exclusionary part of the rule

49. The exclusionary part of the rule in the 2012 Scheme precludes applicants who have an unspent conviction for which a community or custodial sentence was imposed from

receiving a compensation payment. One potential reform would be to change the parameters of the exclusion, such as by removing non-custodial sentences. We were not able to assess the potential effect and impact of such a change as our caseload dataset does not record the type of sentence that caused a claim to be rejected due to an unspent conviction.

50. In 2012 when the exclusionary part of the rule was first introduced, the Government's favoured proposal had been to exclude all applicants with an unspent conviction. Having reviewed consultation responses and considered again the proportionality of that approach, the exclusion was drawn more narrowly, but Government asserted its strong belief that any applicant who has an unspent conviction which resulted in a custodial sentence or community order should not be able to benefit from the Scheme under any circumstances.¹⁹ This rationale is reflected in the graduated approach to withholding or reducing awards in the 2012 Scheme which is based on the seriousness of unspent convictions as reflected by the sentence imposed. The seriousness of an offence is determined by looking at the harm caused or intended to be caused, and the blameworthiness (culpability) of the offender. The sentence imposed will always depend on the facts of the individual case, and the thresholds ensure that community and, in particular, custodial sentences are reserved for the most serious offences.
51. Removing some unspent convictions from the exclusion would render them subject to the provision in the Scheme²⁰ under which an award will be withheld or reduced unless there are exceptional reasons not to. The Scheme does not prescribe how the discretion should be exercised, nor what should or should not be taken into consideration. The CICA uses a points system to assess the extent to which an unspent conviction may count in terms of an award being made or reduced. The system is based on the type and/or length of the sentence imposed and the time between the date of the sentence and date on which an application for compensation is received. Prior to the 2012 Scheme this system was applied to all unspent convictions, and from commencement of the 2012 Scheme to those unspent convictions not specified in the exclusionary part of the rule.

Question 5: What are your views on amending the exclusionary part of the rule to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction?

Question 6: What are your views about guidance on exercising discretion being set out in the Scheme?

¹⁹ Getting it right for victims and witnesses: the Government response, July 2012, paragraph 180

²⁰ Paragraph 4 of Annex D of the 2012 Scheme

Remove the exclusionary part of the rule

52. The most straightforward reform would be to return to a rule that allows, in all cases, a discretion as to whether and to what extent to reduce compensation in the case of an applicant with unspent criminal convictions. This would be achieved by removing the exclusionary part of the rule introduced in the 2012 Scheme and returning to the position that all unspent convictions would be subject to the discretionary provision that an award would be withheld or reduced unless there were exceptional reasons not to.
53. This is an option that was considered during the review. It was however concluded that to go down this route would require Government to reverse the principles and rationale that underpin the exclusion established in 2012. Careful consideration was given to the impact that the exclusion had had on claims, including whether and to what extent it had worked as intended and expected, and to the potential financial consequences of returning to a fully discretionary rule. The conclusion reached at the time was that the exclusionary part of the rule was the right approach to take to reflect the costs to society and the state from serious offending.
54. As noted above (at paragraph 28), the Scheme does not prescribe how the discretion should be exercised, nor what should or should not be taken into consideration; the CICA uses a points system to make decisions alongside guidance it has developed. We considered two approaches as regards framing the discretion to be applied to all unspent convictions if the exclusion was removed; to leave discretion at large or alternatively to circumscribe the way in which discretion should be operated.
55. Under the 2008 Scheme discretion was left at large in that nothing was set out within the Scheme. The CICA adopted a policy describing the approach that would generally be taken, in the form of a points score. While the approach is contained in guides to Schemes issued by the CICA²¹ it does not provide details of what will or will not be taken into account, and what weight to attach to specific factors in determining whether an award should be reduced or withheld due to unspent convictions. The breadth of the discretion means that consistency in decision-making at first instance and on review by the CICA cannot be ensured, and the approach taken by the CICA does not bind Tribunals dealing with appeals which may take a wider range of factors into account. The downsides include delay and uncertainty for applicants, and additional costs for CICA in managing cases to a final conclusion.
56. An alternative and more transparent method, and one which would promote fairness and consistency in decision-making, would be to define the approach to be taken within the Scheme. The points system used by the CICA for the 2008 Scheme is a potential

²¹ For example see paragraph 15 and Appendix 5 of the external guide to the 2008 Scheme - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717272/criminal-injuries-compensation-scheme-2008-eng.pdf.

model; it would set out the starting point as regards how convictions will be treated based on the sentence imposed. Additionally, consideration could be given to stating what can and cannot be taken into account in terms of 'exceptional reasons' not to reduce or withhold an award, and to making clear where the evidential burden lies and to whom it falls.

57. This would provide certainty, benefitting applicants by helping them understand how the system will work, and helping CICA decision-makers to make fair and robust decisions that are less susceptible to reviews and appeals.

Question 7: What are your views about removing the exclusionary part of the rule?

Question 8: What are your views about defining in the Scheme how discretion should be exercised?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

The unspent convictions rule

- 1. What are your views about the exclusionary part of the rule being retained unchanged?**
- 2. What are your views on the recommendation of the Independent Inquiry into Child Sexual Abuse that the unspent convictions rule be revised so that awards are not automatically rejected in circumstances where an applicant's criminal conviction is likely to be linked to their child sexual abuse, and that each case be considered on its merits?**
- 3. Do you consider that exemptions should be considered only for some applicants? If so, what should the basis of the exemptions be and when should discretion be available?**
- 4. What are your views about any exemption and guidance on exercising discretion being set out in the Scheme?**
- 5. What are your views on amending the exclusionary part of the rule to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction?**
- 6. What are your views about guidance on exercising discretion being set out in the Scheme?**
- 7. What are your views about removing the exclusionary part of the rule?**
- 8. What are your views about defining in the Scheme how discretion should be exercised?**

Equalities

- 9. Do you agree that we have correctly identified the range and extent of the equalities impacts for no change and each of the potential reforms set out in this consultation (Annex A)? Please give reasons and supply evidence of further equalities impacts as appropriate.**

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 5 August 2022 to:

Vulnerability Policy Unit
Victims and Vulnerability Policy Directorate
Ministry of Justice
7th Floor
102 Petty France
London SW1H 9AJ
Email: cics-review@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from cics-review@justice.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in Autumn 2022. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the Department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the Department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if Department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A: Equalities Statement

Introduction

1. Under the Criminal Injuries Compensation Scheme (the Scheme) unspent convictions may result in an applicant's compensation award being reduced or withheld. The current rule in the 2012 Scheme provides that an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of Annex D of the Scheme. Before the rule was changed in 2012, the Criminal Injuries Compensation Authority (CICA) had discretion to pay out awards for those with unspent convictions where there were exceptional reasons for an award not to be withheld or reduced. This discretion still exists in relation to unspent convictions which are not specified in the exclusionary rule in the 2012 Scheme.
2. In 2020, the Ministry of Justice published the Criminal Injuries Compensation Scheme Review consultation, in which the current unspent convictions rule and how it operates were explained and the difficulties of reforming it were examined. A rationale was given for retaining the rule unchanged, based on the conclusion that it was not possible to commit to making any change without introducing significant potential discrimination and operational challenge.
3. In August 2021 the High Court declared that the terms of the Victims Strategy (published in 2018) had created a legitimate expectation of consultation on revising the unspent convictions rule. The court ordered that a further consultation take place on whether the rule should be revised in line with a recommendation made by the Independent Inquiry into Child Sexual Abuse (IICSA), that awards are not automatically rejected in circumstances where an applicant's criminal convictions are likely to be linked to their child sexual abuse.

Policy potential reforms summary

4. In addition to making no change to the rule, the potential policy reforms we are considering in this consultation are laid out below. For the purposes of demonstrating possible equalities impacts we have provided an illustrative example for the potential reforms of introducing exemptions or amending the terms of the rule.
 - **No change to the exclusionary part of the rule, so that claims will continue to be automatically rejected on the basis of a specified unspent conviction.**

- **Introducing exemptions by reference to a specified class of victim to the exclusionary part of the rule, so that not all claims are automatically rejected on the basis of a specified unspent conviction.** For example, revise the rule²² so that claims for compensation by victims of child sexual abuse who have unspent convictions are not automatically excluded, and make new provision to enable consideration of whether to withhold or reduce an award if there was a causative link between what the applicant had been a victim of as a child and the criminal offending that they themselves perpetrated.
- **Amending the terms of the exclusionary part of the rule by reference to the type of conviction included, to reduce the number of claims that would be automatically rejected on the basis of a specified unspent conviction.** For example, remove community orders/youth rehabilitation orders²³ (paragraphs 3(e) and (f) in Annex D) from the exclusionary part of the rule. This would reduce the number of cases automatically excluded and leave them to be considered under paragraph 4 of Annex D (award will be withheld/reduced unless there are exceptional circumstances not to withhold or reduce them).
- **Removing the exclusionary part of the rule, so that no claims would be automatically rejected on the basis of a specified unspent conviction.** This would allow CICA, in all cases, discretion as to whether and to what extent to reduce compensation in the case of an applicant with unspent criminal convictions.

Evidence and analysis

Criminal Injuries Compensation Scheme (the Scheme) caseload data

5. Caseload data held by the CICA is the main data source used for understanding how the Scheme is working. The dataset used for our review of the Scheme covers approximately 75,000 claims received by the CICA over three years (between 1 January 2016 and 1 January 2019). The claims included in the dataset may fall into any one of the categories below:
 - i. **Decided** – The CICA has made a decision on the application, however this has yet to be offered to the claimant.
 - ii. **On offer** – The CICA has made a decision on the application and has offered this to the claimant, but the claimant is yet to accept or reject it.
 - iii. **Resolved** – The CICA has made a decision on the application, it has been offered to the claimant and the claimant has accepted.

²² Paragraph 3 in Annex D of the Scheme

²³ Paragraphs 3(e) and (f) in Annex D of the Scheme

6. Each case record contains information on age, sex and ethnicity. This has been combined with information on crime type, injury type and awards made, allowing analysis in relation to those three protected characteristics.

Limitations of the Scheme caseload data

7. The dataset is limited to cases in the three categories described above, so unresolved cases are not included in any analysis. Not including unresolved cases poses a risk: by assuming that the demographic breakdown of unresolved cases resembles the resolved cases we do not account for any possible systemic delays to resolving cases from certain protected groups. If this were the case, the analysed data would underrepresent the claims from those groups which may distort some estimated impacts upon them.
8. The Scheme caseload data does not contain information about several protected characteristics, so we are unable to assess how any policy change would have impacted the claims over the above-mentioned period in relation to:
 - disability
 - sexual orientation
 - religion / belief
 - pregnancy / maternity
 - gender reassignment
 - marriage / civil partnership
9. Any considerations of impacts, either positive or negative, upon the protected characteristic groups for whom we do have data must be caveated. Whilst the rate and category of claims received by the CICA has not seen a great deal of variation year to year over the period covered, we cannot predict the demographics of future claimants and victims of violent crime with certainty. The dataset itself is not fully finalised and some figures may be subject to change.
10. We have also used data from other sources in order to consider our equality obligations.
11. We will update our equality considerations in light of the responses to the consultation.

Equality duties

12. This document records the analysis undertaken by the Ministry of Justice to fulfil the requirements of the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. This requires the department to pay due regard to the need to:

- **eliminate unlawful discrimination** - direct discrimination, indirect discrimination, discrimination arising from disability, and harassment, victimisation and any other conduct prohibited by the Act
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it
- **foster good relations** between people who share a protected characteristic and those who do not share it

13. The protected characteristics which have been considered are:

- age
- disability
- sex
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sexual orientation
- marriage and civil partnership (but only in respect of the first aim of the Equality Duty)

Equalities considerations

Direct discrimination

14. We do not believe that no change or the potential reforms within the consultation would be directly discriminatory within the meaning of the Equality Act, or would result in people being treated less favourably due to any protected characteristic.

Indirect discrimination

15. We believe that individuals with some protected characteristics may be affected by no change or the potential reforms more broadly due to representation of certain protected groups within types of offenders and victims of the range of violent crimes that are in scope for compensation under the Scheme. However, we do not think this would amount to unlawful discrimination for the purposes of the Equality Act 2010.

16. No change and each potential reform are considered in further detail below. For the purposes of demonstrating possible equalities impacts we have used the examples outlined in the Policy potential reforms summary section of this statement, where appropriate.

No change to the exclusionary part of the rule

17. The exclusionary part of the rule provides that an applicant is not eligible for compensation where they have an unspent conviction for an offence that has resulted in one of the custodial or community sentences listed in paragraph 3 of the Scheme. It is more likely to impact men and boys, who are more likely both to be victims of violent crime and hold unspent convictions than women and girls. In 2019, 27% of convicted offenders were female with only 9% of this number being sentenced to custody or a community order.²⁴ In comparison, in the same year, 22% of male offenders were sentenced to a custody or community order.²⁵ Further, according to the Crime Survey of England and Wales, in the year ending March 2020 men (2%) were more likely to be victims of violent crime than women (1.3%).²⁶ The probability of a higher impact of the current rule on men is further strengthened by the fact that men make up the greater number of recipients of compensation under the Scheme.
18. The rule may also have a greater impact on younger adults, who in 2020 were more likely to be sentenced by way of a community order or custodial sentence than older age groups.²⁷ In addition, the Crime Survey of England and Wales estimates that in the year ending March 2020 adults aged 16 to 24 years were more likely to be victims of violence (3.6%) than those in older age groups.²⁸ Whilst we are not able to draw any firm conclusions from this data, we know from the CICA data set that those between the ages of 20-29 at the date of the incident accounted for 36% of refusals for unspent convictions, and those aged 30-39 a further 27%.
19. The rule may also have a slightly greater impact on those from black or mixed ethnic groups who are disproportionately sentenced for indictable offences²⁹ and therefore may be more likely than the general population to have unspent convictions. However, it should be noted that the population of interest here is not all those with unspent convictions, but rather those with unspent convictions who are also victims of violent crime. We have no data on this category and so are not able to draw firm conclusions.
20. Respondents to the 2020 consultation highlighted a potential disproportionate impact of the rule on women whose abuse is linked to their offending, for example through coercion as a result of sexual exploitation or trafficking, or a change in behaviour due to trauma from sexual assault. Some respondents cited 'The Criminal Injuries Compensation Scheme and Sexual Offences: Research Briefing' which stated that 'it is widely accepted that the trauma linked to one's sexual victimisation may trigger their

²⁴ MoJ (2020), Statistics on Women and the Criminal Justice System 2019

²⁵ MoJ (2020), Statistics on Women and the Criminal Justice System 2019

²⁶ ONS (2021) The nature of violent crime in England and Wales: Year ending March 2020

²⁷ MoJ (2021) Criminal Justice System Statistics publication: Outcomes by Offence 2010 to 2020

²⁸ ONS (2021) The nature of violent crime in England and Wales: Year ending March 2020 e

²⁹ MoJ (2021) Statistics on Ethnicity and the Criminal Justice System 2020

involvement in criminal activity e.g. substance abuse'.³⁰ We know that in the year ending March 2020 women and girls were disproportionately more likely than males to be victims of all types sexual assault,³¹ and are more frequently the victims of child sexual exploitation.³² However, the population of interest here are those with unspent convictions who are victims of specific types of abuse, for which we have no data, so we cannot be certain about the impact of the current rule.

21. Finally, respondents to the 2020 consultation also highlighted the correlation between victims of crime who have sustained head and brain injuries, or suffer from mental health issues, and subsequent criminal offending. We know that in the year ending March 2019 2.5% of disabled adults (a person who has a physical or mental health condition or illness that has lasted or is expected to last 12 months or more) experienced personal violence, compared with 1.7% of all adults aged 16 or over.³³ However, the population of interest here is not all those with unspent convictions, but rather those with unspent convictions who are also victims of violent crime so we cannot be certain of the impacts of the rule.

Introducing exemptions to the exclusionary part of the rule

22. The example provided is to revise the rule so that claims by victims of child sexual abuse (for compensation for injury from the abuse they suffered) who have unspent convictions are not automatically excluded. This is likely to benefit women and girls most as they are more often victims of child sexual abuse. The Crime Survey of England and Wales estimated that in the year ending March 2019 women were around three times as likely as men to have experienced sexual abuse before the age of 16 years (11.5% compared with 3.5%).³⁴ Some research suggests underreporting of child sexual abuse by boys and men. For example, in their national research Male Survivors Partnership concluded that 20% of men sampled took over 31 years to disclose being sexually abused.³⁵
23. Many respondents to the consultation specifically referred to correlations between victims of childhood sexual abuse and future criminal offending, with some highlighting that the rule disproportionately affects victims of sexual violence who are mostly women and girls. However, the population of interest here are those with unspent

³⁰ Smith, Olivia, Ellen Daly, and Charlotte Herriott. 2019. "The Criminal Injuries Compensation Scheme and Sexual Offences: Research Briefing"

³¹ ONS (2021) Sexual offences victim characteristics, England and Wales: year ending March 2020

³² IICSA (2022), Child Sexual Abuse in Organised Networks Investigation Report

³³ ONS (2019) Disability and crime, UK: 2019

³⁴ ONS (2020) Child sexual abuse in England and Wales: year ending March 2019

³⁵ <https://malesurvivor.co.uk/>

convictions who are victims of child sexual abuse, for which we have no data, so we cannot be certain about the impact of this example on this group.

24. This proposal may also benefit victims with disabilities as research suggests that they may be disproportionately impacted by child sexual abuse. A literature review by the Independent Inquiry into Child Sexual Abuse (IICSA) considering abuse in residential schools states that there is ‘a consensus that disabled children are at a greater risk of sexual abuse than their non-disabled peers’.³⁶

Amending the terms of the exclusionary part of the rule

25. The example provided, to remove community orders/youth rehabilitation orders (community sentences) from the exclusionary part of the rule, is likely to benefit men and boys. Overall, in 2019 male offenders received a higher proportion (9%) of community sentences than female offenders (5%).³⁷ However, women still remain less likely to receive a sentencing outcome that would result in an unspent conviction.
26. This proposal may have some benefit to black and mixed ethnic groups who are disproportionately sentenced for indictable offences (10% and 4%), when compared to the proportion of these groups in the general population (3% and 2%).³⁸ They therefore may be more likely to hold unspent convictions for community sentences.
27. Younger adults may also benefit from this proposal as they are more likely to hold unspent convictions for community sentences, with offenders from 18 to 49 years old receiving a higher proportion of community sentences than older adults in 2020.³⁹

Remove the exclusionary part of the rule

28. As indicated above in the analysis for ‘no change’, the exclusionary part of the rule may impact a number of groups more heavily, who may therefore also be likely to benefit from its removal when applying to the Scheme. This includes males and younger adults who are more likely to both be victims of violent crime and to be sentenced to custody or a community orders; those from black and mixed ethnic groups who are disproportionately sentenced for indictable offences; and disabled adults who are more likely to be a victims of personal violence. However, for all these groups, the population of interest is those with unspent convictions who are also victims of violent crime, for which we have no data, so we cannot be certain of the impacts of the rule or its removal.

³⁶ IICSA (2018), Child sexual abuse in residential schools: A literature review

³⁷ MoJ (2020), Statistics on Women and the Criminal Justice System 2019

³⁸ MoJ (2021) Statistics on Ethnicity and the Criminal Justice System 2020

³⁹ MoJ (2021) Criminal Justice System Statistics publication: Outcomes by Offence 2010 to 2020s

29. As above, some respondents to the 2020 consultation highlighted a potential disproportionate impact of the rule on women whose sexual abuse is linked to their offending. We know that women and girls are more likely to be victims of all types of sexual assault. However, we have no data for the specific population of interest - those with unspent convictions who are victims of specific types of abuse.

Harassment and victimisation

30. We do not consider there to be a risk of harassment or victimisation as a result of these examples of potential reforms.

Disability and the duty to make reasonable adjustments

31. As stated above, in respect of the example potential reform to introduce exemptions to the exclusionary part of the rule, this may benefit those with disabilities as research suggests that this group may be disproportionately impacted by child sexual abuse.

32. The example potential policy reform to remove the exclusionary part of the rule may also benefit those with disabilities. Respondents to the consultation highlighted a potential correlation between victims of crime who have sustained brain injuries, or suffer from mental health issues, and subsequent criminal offending. In the year ending March 2019, those with disabilities were also more likely to have experienced personal violence, compared with all adults aged 16 or over.⁴⁰

33. It remains important to make reasonable adjustments for disabled victims to ensure appropriate support is given.

Advancing equality of opportunity

34. Consideration has been given to how these example potential reforms impact on the duty to advance equality of opportunity by meeting the needs of victims who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

35. We believe the examples outlined may advance equality of opportunity for certain protected characteristics. For example, revising the rule so that claims by victims of child sexual abuse who have unspent convictions are not automatically excluded may benefit women and girls and those with disabilities as research suggests they are more often victims of child sexual abuse.

⁴⁰ ONS (2019) Disability and crime, UK: 2019

Fostering good relations

36. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the potential policy reform examples.

Decision making

37. We do not consider that no change or the potential policy reform examples outlined above are likely to result in unlawful discrimination. However, we will consider the equalities impacts of no change and of the potential policy reforms as part of the process to decide whether or not to make a change to the rule following this consultation.

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978-1-5286-3193-8