



Defendants as victims: A scoping review of vulnerability, victimhood and safeguards from charge to conviction

Key points

- Defendants who are victims of crime are not a minority in the criminal justice system. However, their status as a defendant tends to trump their victim status once they enter the system.
- When it comes to the trial stage, victims are classified into binary and reductive categories: 'responsible' victim or 'helpless' victim, risking injustice to people who offend due to complex dynamics of abuse.
- Defendants who are victims should receive additional safeguards that recognise the barriers they face in defending themselves and support their needs as victims.
- Where victimisation is directly linked to offending, legal defences and sentencing principles should reflect a defendant's reduced culpability.



Summary

This project developed a scoping review of legal, socio-legal and criminological research on vulnerability, victimhood, and the rights of suspects and defendants who are also victims of crime from arrest through to charge, conviction and sentencing.

It identifies key barriers to recognising suspects and defendants as victims of crime through each stage of the criminal justice system. The project also identifies priority areas for reform and future research.



Background

Defendants who are victims of crime and vulnerable defendants are unlikely to be a minority in the criminal justice system. There is clear and consistent evidence that histories of victimisation, addiction and mental ill-health are highly prevalent amongst suspects, defendants and convicted offenders in England and Wales.

Research demonstrates that vulnerable defendants are not offered the same protections as vulnerable non-defendant witnesses in criminal trials. Existing protections for vulnerable defendants seek to enable them to give their best evidence, placing their wider support or welfare needs secondary.

To date, little consideration has been given to the barriers that defendants who are victims of crime face in obtaining the safeguards, special measures and supports that are available to non-defendant victim witnesses. Current legal research on suspects or defendants who are victims tends to focus on specific groups, such as victims of domestic abuse, and on the adequacy of defences, and few studies examine cross-cutting issues. This project therefore considered these areas of law to identify barriers that are common to groups of suspects or defendants who are victims.

What we did

We undertook a thorough review of both published and unpublished research to examine the barriers faced by suspects or defendants who are victims of crime in the criminal justice system. The review focused on three case studies:

1. Victims of domestic abuse who offend due to their abuse;
2. Victims of modern slavery or human trafficking who are recruited into county lines gangs and offend due to their exploitation;
3. A comparative analysis of the safeguards and special measures available to suspects and defendants who are defined as 'vulnerable' and the provision made for victims of crime who are witnesses.

Through these case studies, the project aimed to answer two key research questions:

1. How do histories of victimisation and other vulnerabilities affect suspects and defendants in their ability to mount an adequate defence?
2. Are current procedural protections and support mechanisms effective in addressing these challenges or likely to exacerbate them further?

We also considered the views expressed by stakeholders in consultation meetings. The consultation involved a mixture of legal practitioners, academics and third sector organisations.

Key findings

Our three case studies demonstrate that suspects and defendants who are victims of crime face significant barriers to accessing support and ensuring that their victimisation is considered by criminal justice processes.

Domestic abuse

After domestic abuse incidents, women are disproportionately likely to be arrested. Beyond such incidents, police and prosecutors hesitate to recognise the relevance of domestic abuse to offending, and their understanding of coercive and controlling behaviour is often limited. Even if correctly identified as such, victims of domestic abuse – including those who offend due to coercion or pressure from their abusers and those who use violent resistance against their abusers – struggle to ‘fit’ their experiences within the narrow scope of existing defences, including duress and self-defence. The partial defences of loss of control and diminished responsibility are ill-suited to victims who kill their abusive partners. Loss of control continues to be modelled on a male response to anger or fear, and diminished responsibility tends to pathologize victims’ responses to abuse.

County lines

Police officers are unsure when to classify members of county lines as victims, notably if they have ‘willingly’ joined (e.g., to secure their own drug supply). A referral to the National Referral Mechanism for identifying victims of modern slavery and trafficking may therefore come too late or not at all. Even if a referral is made promptly, a positive decision by the Single Competent Authority that a person is a victim of modern slavery or trafficking does not automatically halt prosecution. Young and vulnerable members of county lines can struggle to fit their cases within existing defences, including the more specific statutory defence under section 45 of the Modern Slavery Act (MSA) 2015, whose purpose is to address circumstances of exploitation. The impact of the section 45 defence is limited by a stringent definition of compulsion and a long list of excluded offences, including many that one may reasonably expect victims to engage in due to exploitation.

Status, safeguards and special measures

Safeguards and special measures provided for those who are identified as ‘vulnerable’ rarely recognise the challenges faced by suspects or defendants who are also victims. At the investigation stage, custody interviews do not need to be conducted by a specially trained officer; Achieving Best Evidence guidance does not cover suspects; referrals to Liaison & Diversion services are not mandatory; and suspects have no right to an intermediary. Appropriate adults, if called at all, are expected to perform a demanding set of tasks (often without training), do not enjoy legal privilege, and can be removed if deemed ‘unreasonably obstructive’. At the trial stage, vulnerable defendants who give evidence are excluded from the statutory special measures scheme. While some measures (with variable eligibility thresholds) are provided in case law and in the Criminal Procedure Rules, they are less known and less used, and expert opinions on whether they are necessary can be set aside. Defendants with communication needs can apply for a HM Courts & Tribunals Service (HMCTS)-approved intermediary, but an appointment for the duration of the trial will be extremely rare. Intimidated defendants remain largely unprotected.



Next steps

The research identified several priority areas for reforms to law and policy, and recommendations for future research.

Priority areas for reform:

- Improving training for police, prosecutors, defence lawyers, and/or judges in recognising and responding to evidence that a suspect or defendant has been subject to domestic abuse, modern slavery or trafficking or is otherwise vulnerable.
- Making greater efforts to divert victims from prosecution and modifying key defences to better accommodate victims who offend.
- Harmonising the criminal justice process and the processes for identifying victims of modern slavery or trafficking.
- Improving the appropriate adult safeguard and introducing a definition of innate and situational vulnerability that applies equally to victims, suspects and defendants.
- Giving defendants access to the same safeguards and special measures that vulnerable and intimidated victims or witnesses are entitled to.
- Amending section 78 of the Police and Criminal Evidence Act 1984 to stipulate that evidence obtained in violation of Code requirements protecting a suspect's fundamental rights is presumed 'unfair'.
- Reversing criminal legal aid cuts to increase defence capacities.

Recommendations for future research:

Further cross-cutting research is needed to establish the commonalities and differences in the challenges faced by the broad range of suspects or defendants who are victims of crime.

During this research, the following groups were identified as warranting further investigation:

- Adults and children who are trafficked or coerced into sex work, who later become involved in trafficking or coercing others into sex work.
- Victims of modern slavery and trafficking who have been brought into the country from abroad and who may be prosecuted for immigration offences.

Future research should examine whether there is a case for extending the reform proposals examined in this report to all defendants and suspects who are victims and, if so, how.

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For further information

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