



Older People's Access to Criminal Justice: A Literature Review

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Introduction

The role of the independent Older People's Commissioner for Wales is to protect and promote the rights of older people living in Wales. The Commissioner routinely scrutinises policies and practices with the potential to impact the rights of older people.

One of the Commissioner's priorities is to stop the abuse of older people in Wales. Research has shown that older people experience all the same kinds of abuse as those in younger age groups ¹. Indeed, some older people may be at increased risk of abuse because of feelings of loneliness and social isolation ². Feeling lonely is known to increase a person's vulnerability to abuse, and older people are more likely to live alone ³ and to be socially isolated ⁴.

Research shows that older people who experience abuse have often been poorly served in terms of both practitioner intervention and the provision of specialist support services. One area of ongoing concern has been that older people do not have equal access to criminal justice when experiencing abuse or neglect.

To address these inequalities, the Older People's Commissioner for Wales recognised the need to better understand the extent of the difficulties experienced by older people when seeking to access criminal justice, and to appreciate the barriers they commonly face. In 2019, academics from the Centre for Age, Gender and

Social Justice at Aberystwyth University were commissioned to review the existing research literature in this area. The aim of the literature review was to determine the extent of older people's access to criminal justice when experiencing abuse within Wales, and to highlight the barriers they face in securing criminal convictions.

The researchers were specifically tasked with exploring criminal justice responses to the abuse of older people in regulated NHS or care homes, with a focus upon police decision-making processes. For the purposes of the review, 'older people' were identified as those aged 60 years and over.

This paper summarises the main findings of the literature review.

Key Findings

The Current Research

It is important to recognise that current research in this area is limited. Most of the literature on the abuse and neglect of older people is focused either upon the prevalence of that abuse, or upon its consequences and impacts for the lives of older people. It is also the case that much of the existing research explores the abuse of older people within their own homes, rather than in hospitals or care homes^{5 6}. That is not to say, of course, that older people do not experience abuse and neglect in hospitals or care homes. In providing evidence to the House of Commons Select Committee in 2003, 'Action on Elder Abuse' stated that 21% of the calls to its helpline were related to the abuse of older people within care homes, and 4% of the calls to hospital settings⁷. It was suggested that the prevalence of abuse within such settings might, in fact, be much higher. It was argued, for example, that some older people might experience difficulty in reporting abuse in a care home or hospital setting because they are unable to access a telephone for a conversation in a quiet and confidential space. The 'Flynn Report' (2015) on the 'Operation Jasmine' enquiry evidenced the extreme end of abuse and neglect in care home settings in Wales⁸. The enquiry was set up to investigate the deaths of sixty-three older people in care homes in South East Wales.

It should be noted that research on the effectiveness of police decision-making processes in situations where older people are abused is very rare. It is also the case that the data gathered on crimes committed against older people is insubstantial. In 2019, a study was jointly undertaken by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS) and Her Majesty's Crown Prosecution Service (HMPCS): The resulting report (known as the 'Poor Relation' report) ⁹, refers to the limited data on crimes against older people in England and Wales. It states that published, police-recorded crime figures are not disaggregated by age and that crimes against older people are not highlighted or 'flagged' for further analysis.

Despite these limitations, however, the findings of the literature review offered important insights into the inequalities in older people's access to criminal justice when experiencing abuse or neglect. It also highlights some of the possible reasons for these inequalities.

Older People's Access to Criminal Justice

Criminal convictions are rarely brought against those who perpetrate abuse against older people. In 2018 the then Chief Prosecutor for Wales noted that of the 35,000 crimes prosecuted in Wales in the previous year, only 250 were crimes against older people ¹⁰. A similar picture emerges across the UK, as illustrated in a report published by the Commissioner for Older People for Northern Ireland (the COPNI report) ¹¹. This report states that older people were less likely to be victims of crime than those in other age groups. However, when older people *were* victims of crime, it was argued that there were factors which significantly increased their vulnerability. The report stated that the outcomes for older people who were victims of crime, were not favourable.

The Current Legislation

Whilst the 'abuse of older people' does not constitute a standalone crime, the existing law allows for the conviction of many behaviours that would constitute the abuse of an older person. The full range of offenses under the general criminal law

of England and Wales would apply to situations where an older person suffers ill-treatment or neglect (deliberate ill-treatment or restraint could constitute different forms of assault under statute and common law, for example). There are also several specific offenses relating to carers or care providers. For example, the Mental Health Act (1983) makes it an offence for a staff member or manager within a care home to 'ill-treat' or wilfully neglect a person who is receiving treatment for a mental disorder. Likewise, the Mental Capacity Act (2005) makes it an offence for a carer to ill-treat a person who lacks capacity.

Recent changes in legislation arguably increase the chances of bringing criminal convictions against those who abuse or neglect older people. It is claimed, for example, that the 'Corporate Manslaughter and Corporate Homicide Act' in 2008, has reduced the challenges of holding companies accountable for breaches in a duty of care. Good practice guidelines have also been published, to strengthen the work of organisations and front-line staff. The Code of Practice for Victims of Crime in England and Wales (The 'Victims' Code')¹², highlights the critical importance of early police involvement in crimes against older people. It also makes clear that some older people who are victims of crime might be particularly vulnerable and may therefore need specialist support as they engage with criminal justice processes. The Code provides examples of these "special measures", which might include an older person having access to a registered intermediary for police interviews and court hearings. Registered intermediaries are communication specialists; they support vulnerable witnesses to give evidence to the police or to the courts in criminal trials.

The Barriers to Older People Accessing Criminal Justice

Despite these developments, however, there are still inequalities in older people's access to criminal justice. The literature review highlighted some of the reasons for older people's lack of access to criminal justice. There are concerns that the recommendations embedded within good practice are not consistently followed and that investigations are not always timely¹³. When investigations are delayed, there is a risk of vital evidence being lost. There are also occasions where older people

are not appropriately referred to specialist support services like registered intermediaries ¹⁴.

One theme within the literature that helps explain older people's low levels of access to criminal justice, is the issue of 'practitioner mindsets'. It is argued that many practitioners view and deal with abuse differently when it is perpetrated against an older person. Criminal justice interventions are rightly common in situations where younger people experience abuse. In contrast, the abuse of older people tends to be dealt with through health and welfare agencies, rather than through criminal justice systems ¹⁵. In 2010, John Williams stated that this 'welfarist approach' had decriminalised the abuse of older people. Whilst he acknowledged that not every case of abuse against an older person should be prosecuted, he nevertheless argued that there should be an 'appropriate' and 'proportionate' response from the police¹⁶. In a study concerned with older people's access to civil or criminal justice for protection from domestic abuse, A. Clarke et al. found that practitioners did not discuss criminal or civil justice options with two-thirds of older victims ¹⁷. The Flynn Report stated that it was largely unknown whether criminal offenses were considered in connection with the Operation Jasmine investigation, or whether interventions were undertaken purely through safeguarding procedures ¹⁸

Conclusions

The findings of the literature review evidence older people's low levels of access to criminal justice when experiencing abuse and neglect. They also highlight the possible reasons for these inequalities. On the positive side, existing research helps us to understand what needs to change if we are to ensure that older people have equal access to criminal justice. It is clear, for example, that some older people have additional vulnerabilities and that these must be considered when they engage with criminal justice agencies. It is important that when appropriate, older people are given access to specialist support such as registered intermediaries, to support them as they navigate the criminal justice system. These 'special measures' are vital if we are to ensure that criminal convictions are appropriately brought against those who abuse and neglect older people

It is problematic when practitioners from across disciplines, view the abuse of older people as somehow different from the abuse experienced by those in younger age groups. Conceptualising abuse in welfare terms (with a focus, perhaps, on carer stress) gives rise to different practitioner interventions, which often fail to consider an older person's right to access criminal justice. The findings of this literature review make clear that practitioners and organisations should reflect upon and challenge their ideas around the abuse of older people (its possible causes and dynamics). Professional training should highlight the current inequalities in older people's access to criminal justice. It should also raise awareness of the importance of practitioners considering criminal justice responses when working with older people who experience abuse and neglect.

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The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner is taking action to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner is working for a Wales where older people are valued, rights are upheld and no-one is left behind.

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- ¹ Older People's Commissioner for Wales. 2021. Support Services for Older People Experiencing Abuse in Wales. Available at: [Support Services for Older People Experiencing Abuse in Wales.pdf \(olderpeople.wales\)](#)
- ² Mysyuk, Y., Westendorp, R.G.J. and Lindenberg, J. 2016. How Older Persons explain why they become victims of abuse. *Age and Ageing* (45), pp. 695-702.
- ³ ONS (2020). People living alone aged 65 years and over, by specific age group and sex, UK 1996-2019. Available at: [People living alone aged 65 years old and over, by specific age group and sex, UK, 1996 to 2019 - Office for National Statistics \(ons.gov.uk\)](#)
- ⁴ NHS (2018). Loneliness in Older People. Available at: [Loneliness in older people - NHS \(www.nhs.uk\)](#) {Accessed: 13/08/21}.
- ⁵ Brogden, M. and Nijhar, P. 2000. *Crime, Abuse and the Elderly*. Willian Publishing.
- ⁶ Penhale, B. 2008. Elder Abuse in the UK. *Journal of Adult Abuse and Neglect*. 20(2), pp. 151-168.
- ⁷ Action on Elder Abuse. 2003. Memorandum to the UK Parliament Select Committee. Available at: <https://publications.parliament.uk/pa/cm200304/cmselect/cmhealth/111/111.pdf>
- ⁸ Flynn, M. 2015. In search of accountability – a review of the neglect of older people living in care homes investigated as Operation Jasmine (2015). Available at: [in-search-of-accountability-a-review-of-the-neglect-of-older-people-living-in-care-homes-operation-jasmine_1.pdf \(gov.wales\)](#)
- ⁹ HMCPSI and CPS. 2019. The Poor Relation: The Police and Crime Prosecution Service's Response to Crimes against Older People. Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/crimes-against-older-people.pdf>
- ¹⁰ Rees, J. BBC. 2019. Prosecutor wants more convictions for crimes against the elderly. Available at: [Prosecutor wants more convictions for crimes against elderly - BBC News](#)
- ¹¹ COPNI, 2019. Crime and Justice: The Experience of Older People in Northern Ireland. Available at: [206567-online-a4-crime-report-56p.pdf \(copni.org\)](#)
- ¹² MoJ. 2020. The Code of Practice for Victims of Crime in England and Wales. Available at: [. MoJ Victims Code 2020 \(publishing.service.gov.uk\)](#)
- ¹³ HMCPSI and CPS. 2019. The Poor Relation: The Police and Crime Prosecution Service's Response to Crimes against Older People. Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/crimes-against-older-people.pdf>
- ¹⁴ MoJ. 2020. The Code of Practice for Victims of Crime in England and Wales. Available at: [. MoJ Victims Code 2020 \(publishing.service.gov.uk\)](#)
- ¹⁵ Brogden, M. and Nijhar, P. 2000. *Crime, Abuse and the Elderly*. Willian Publishing.
- ¹⁶ Williams, J. 2012. Elder Abuse: Criminological Perspective. In Brookman, F., Maguire, M., Pierpoint, H. and Bennet, T. *Handbook on Crime*. Dawson Books.
- ¹⁷ Clarke, A., Williams, J. and Wydall, S. 2016. Access to justice for victims / survivors of elder abuse: A qualitative study'. *Social Policy and Society* 15(2), pp. 201-220.
- ¹⁸ Flynn, M. 2015. In search of accountability – a review of the neglect of older people living in care homes investigated as Operation Jasmine (2015). Available at: [in-search-of-accountability-a-review-of-the-neglect-of-older-people-living-in-care-homes-operation-jasmine_1.pdf \(gov.wales\)](#)