

<p style="text-align: center;"><b>Review of the</b></p> <p style="text-align: center;"><b>Criminal Justice (Spent Convictions &amp; Certain Disclosures) Act 2016</b></p> <p style="text-align: center;"><b>Submission by the Traveller Visibility Group, Cork</b></p> <p style="text-align: center;"><b>to the Department of Justice, <i>November 2020</i></b></p>
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The Traveller Visibility Group Cork welcomes this opportunity to contribute to the review of the above act, undertaken by the Department of Justice.

### **Travellers & the Criminal Justice System**

Travellers are more likely to come to the attention of the Criminal Justice system than the majority population. Travellers make up 22% of the female prisoner population and 10% of the male prisoner population, though Travellers are less than 1% of the overall population of Ireland. This problem has been well documented over the years.

[https://www.iprt.ie/site/assets/files/6339/iprt\\_travellers\\_report\\_web.pdf](https://www.iprt.ie/site/assets/files/6339/iprt_travellers_report_web.pdf) (2014)

<https://www.ssgt.ie/wp-content/uploads/2017/11/TPI-Ethnic-Identifiers-in-Irish-Prisons-Book.pdf> (2017)

<https://www.irishtimes.com/news/social-affairs/disproportionate-number-of-travellers-in-prison-population-1.3263524>\*

There is no evidence, that Travellers are any more likely to commit crimes than the wider population, especially when issues of marginalisation and disadvantage are being considered. Travellers are more prominent within the Criminal Justice system, due to a bias against Travellers within the system (including an `unconscious bias`).

### **TVG Support of Proposed Amendments to Spent Conviction Legislation**

TVG supports the intent of the proposed Private Members Bill (2018) by Senator Lynn Ruane to amend the 2016 Act, namely :

- Increase in the length of time of a conviction received, which can be considered for the purpose of a `spent conviction`
- Increasing the number of convictions, which can be considered for the purpose of a `spent conviction`
- Shortening the rehabilitative period from 7 years, and developing a framework of proportionality, after which a conviction can be considered as a `spent`

conviction`, and where less serious offences would become spent sooner than more serious offences

- Recognising the specific rehabilitative needs of young people, and making additional allowances for young people within the Criminal Justice System, in terms of when a conviction can be considered as a `spent conviction`

## **Wider Considerations**

TVG has no specific legal expertise to add to the proposed legislation, other than expressing our support in general. However we wish to take this opportunity to highlight a number of issues related to the issue of convictions (+ outstanding charges) providing a barrier to Travellers accessing services, from our direct experience in Cork. This may be relevant to be incorporated into legislation, or it may be relevant in the roll-out of policy and an implementation framework, following the adoption of new legislation.

The reality of Traveller ethnicity was formally recognised by the Irish State in 2016. Following this momentous reversal of state policy, it is incumbent on the state to give effect to this throughout subsequent legislation, policy and practice. The Public Sector Duty under the Irish Human Rights and Equality Commission Act 2014 also requires government departments and other state bodies to undertake de-facto Human Rights & Equality Impact Assessments (HREIA). We request the Department of Justice to undertake a HREIA on this legislation, its impacts, its roll-out and how any potentially negative HRE impacts can be ameliorated. Is there scope for an element of discretion within a clear framework of application to counteract negative bias and alleviate negative unconscious bias discriminating members of minority groups like Travellers?

## **TVG Experience of the Impact of Convictions Regarding Housing Allocations**

Working with Travellers and advocating on Travellers behalf on accommodation issues is one of the key activities of the TVG. Working in this area, supporting Traveller housing applicants, we encounter difficulties regarding past convictions on a very frequent basis.

Cork City Council allocates standard housing through a computerised system, called Choice Based Letting (CBL), where approved housing applicants `bid` against one another for limited social housing available (with the housing on offer, changing weekly). The subsequent process of selecting `bidders` for potential offers of housing, is secret. The TVG does not know if it involves an electronic or a manual selection (or a combination of both). Nor is there any transparency on how various factors which should be taken into account under City Council's Housing Allocation

Scheme (homelessness, overcrowding, medical conditions, years on the list, Traveller status, etc.), are taken onboard, or how they interact with one another. Years on the housing list seems to be one of the key factors, if not the key determining factor. Medical conditions should be a key deciding factor, but when the TVG supported a Traveller housing applicant in a successful Equal Status complaint to the Workplace Relations Commission against Cork City Council on the issue of housing allocation, we learnt that medical information submitted had not been considered. Nor did the Council have qualified staff to consider the medical information submitted.

In any case, if or when a housing applicant/family does get selected for consideration of a letting, the applicant gets invited for an interview with Housing officials. One of the key issues explored here, is the issue of previous convictions and/or outstanding charges, concerning all members of the applying household. A particular emphasis is put on any convictions within the last five years. The interview is followed by a subsequent request for a garda report on the household members. Housing officials pay particular attention to, whether conviction(s) are declared during the interview, or if it becomes only apparent, when the subsequent garda report on the household is received. (The garda report is shared between the gardai and City Council, but not the housing applicant. City Council has resisted releasing garda reports on applicant's housing files under FOI, certainly until the recently.)

In considering the letting, there is meant to be a consideration of the relevance of the conviction(s) vis-a-vis a letting, as well as the seriousness of the offence(s), but City Council has confirmed, that there is no framework for considering same. The system is discretionary, but there is no transparency if discretion is applied, or not, or whether discretion is applied in an appropriate manner, or in a discriminatory manner.

The TVG has supported a number of housing applicants over the years regarding this, but we cannot see much use of discretion. On the contrary, we seem to be observing a pretty standard application on this matter : any conviction in the last five years is considered relevant. If a conviction is disclosed at interview, it will lead to a one year deferral from the housing list; if a conviction is not disclosed at interview, it is considered the information was knowingly withheld, and it will lead to a two year deferral from the housing list.

From the outside it seems as if deferrals are simply used as a management tool to manage the social housing available for letting/housing list. The need for social housing is clearly outstripping the available supply by a number of multiples (houses on offer on CBL in Cork City usually receive between 500 – 1000 `bids` from applicants). Deferring applicants from consideration due to convictions in the past 5 years, is a simplistic way of managing this `over-demand` and `under-supply` to some degree.

## **Interface Between Local Authority Housing Allocations & (Spent) Convictions**

As can be seen from the above there is a clear interface the management of housing applications, housing files and housing allocations, and the issue of convictions. Convictions within the last five years limit the chances of housing applicants to be accommodated due to a policy of one-year or two-year deferrals by Cork City Council.

We understand the proposed legislative change, will enable individuals (including housing applicants) not to declare convictions, as they are considered to be `spent convictions`. This pre-supposes a clear understanding by a housing applicant (potentially vulnerable, living chaotic lives, possibly homeless) which convictions can be considered spent, and which cannot – or a degree of expert advice on the matter. In the instance of a housing applicant considered for a housing offer, this also involves the formal request of a written garda report, and possible further verbal contacts between gardai and housing officials regarding convictions and possible outstanding charges of the applicant and other household members.

In this context, the reliance on self-declaration alone is clearly insufficient to give effect to the intent of the proposed legislation : that spent convictions should be irrelevant to future considerations of the person involved.

## **Mandatory Framework on Dealing with Convictions**

So in addition to improved legislation widening the scope of spent convictions, **there is a need for a strong framework directing authorities how they treat housing applicants/service users/`customers` vis-a-vis convictions (whether `spent` or `unspent`) and charges. Such a framework also needs to take account of the relevance of any conviction/charges. Adherence to this framework needs to be mandatory. This is not to remove discretion completely, but to establish an acceptable minimum standard**, to protect against conscious or unconscious bias, as well potential matters of convenience (e.g. use deferrals over convictions as a method to manage a limited supply of available social housing). Discretion should remain in place to deal with individual cases on compassionate grounds.

We believe that an outline framework, as proposed here, would go some way to meet the Public Sector Duty of the Department of Justice, as well as other state agencies and bodies it is applicable to.