

# **Commissioner for Victims and Witnesses**

*The poor relation – victims in the  
criminal justice system*

## **The poor relation – victims in the criminal justice system**

### **1. Summary**

This paper is an early assessment of the situation for victims and witnesses in the criminal justice system. I have in recent weeks travelled throughout the country and met many victims, witnesses, groups and organisations as well as many people who work in or who run the criminal justice system – the police, the Crown Prosecution Service (CPS), Probation, Victim Support, the Court Service and the judiciary.

It has been very heartening to find that there appears to be a universal acceptance that victims and witnesses are important to the system, and I have met many volunteers and staff who are outstanding in their determination to give victims and witnesses the best possible service.

And more broadly, victim and witness policy has developed significantly in the last 15 to 20 years, with many advancements aimed at improving their status in the criminal justice system.

However, while there are now services for victims, and the system is certainly not 'broken', it is simply not good enough. Despite all the changes in the system, and in spite of the range of initiatives, the raft of codes, charters, guidance notes and performance targets, it is simply wrong to say that 'victims are at the heart of the justice system'. They are not.

At virtually every step through the tangled processes of the criminal justice system, victims and witnesses remain a side-show compared to the 'interests of justice' – which largely means the processing of offenders through the system. They are the 'poor relation' when it comes to where the money is spent, where services are focused and how fairness and justice is being pursued. Sentencing policy has become so complicated that few victims or members of the public can understand it. There is no set of basic victims' rights, no right of review, or proper accountable complaints system. There is too much inconsistency in the delivery of help for victims and witnesses. And the changes that have been made in order to improve the situation do not add up to the sum of their parts.

Victims are often simply forgotten – subsumed into the administration of law – a conclusion reached by Sara Payne before me in her substantial report 'Redefining Justice'. But as citizens and as taxpayers there are two important reasons for helping victims:

Firstly, we have a moral responsibility to support them. The rule of law depends on a victim not seeking revenge or retribution themselves, but stepping aside for the state to prosecute the individual as an offence against the Crown. There is an obligation to repay that with an effective response on their behalf.

Secondly, by supporting someone to come forward, report a crime and give evidence in court, the victim is critical in helping to stop that offender targetting others.

So, particularly for serious and violent crimes, victims should be guaranteed help – to be supported through an often lengthy, convoluted and intimidating legal process and, subsequently, to overcome the impact of that crime or cope with the consequences of it.

The new Government has promised to '*provide greater support and protection for the victims of crime*'. In this austere financial climate, the reality of this is that the system needs to look again at the services it currently offers and decide whether they should continue to be available to all, when we know that 80% of victims do not want or need help<sup>i</sup>, while others are obviously in great need of help.

There are some immediate changes I would like to call for in the current way victims are treated. For example, it should not be considered acceptable that a child victim will have to sit alone or with a stranger while giving evidence to a court; or that it cannot be guaranteed that a mother will be able to read out in court how the murder of her son has affected her family; or that crown prosecutors are not required to meet with a victim or their family to explain how or why a defendant has been acquitted.

We rely on victims to have the courage to come forward and report crime, to do their duty and stand up in a court room and be a witness in a trial, to help the criminal justice system bring harmful and dangerous people to account. No one should take them for granted; the system should at the very least operate fairly and with understanding towards them – and offer the right type and level of support.

## **2. What is the position for victims and witnesses now?**

The priority and service given to victims by the criminal justice system has improved significantly in the last 15-20 years. There is a statutory victims' code of practice; the police now have family liaison officers in all murder and manslaughter cases; vulnerable and intimidated witnesses can have special measures to enable them to give their best evidence; there has been a concerted effort to get more witnesses into court through the creation of over 150 Witness Care Units; crown prosecutors are required to meet witnesses at court to explain the process, and to write to victims where their cases are to be dropped or the charges substantially altered. Over 700 independent

---

<sup>i</sup> See for example Ringham and Salisbury (2004) *Support for Victims of Crime: findings from the 2002/03 British Crime Survey*. Home Office online report 31/04

domestic violence advisers now support people suffering domestic abuse; there are facilities and support available for victims of sexual offences; and all victims can have their voice heard in court through victim personal statements. This adds up to real progress and is welcomed by many victims, their families and the organisations and interest groups that support them.

In this initial scan of the criminal justice system's treatment of victims and witnesses I have concentrated mainly on that part of the system that aims to bring criminal cases to court. That means I have focussed on the smaller proportion of victims of more serious crime, those who have suffered greater harm. In doing so, however, I do not minimise the importance of getting the appropriate level of care and support for those victims whose cases will never proceed to court because there is no chance of successful prosecution or because the system is administering justice through different channels.

### ***A patchwork of services***

In reality, being a victim and/or witness can still mean entering a complicated, haphazard and often frightening system with no guarantee of help. When you report a crime to the police, your details *may* be referred to Victim Support; if this happens you *may* receive a telephone call from the Victim Care Unit in Victim Support, and in some cases you *may* be visited by a Victim Support volunteer; if your case gets as far as being charged, you will *most likely* be contacted by phone or letter by a CPS/police run Witness Care Unit, although you *may* continue to be supported by a specialist police officer as well if the crime is very serious.

The Witness Care Unit *may* carry out a needs assessment to assess if you need help with attending court; they will *probably* put you in touch with Victim Support's Witness Service to show you around the court before you have to attend for real; on the appointed court day (which the Witness Care Unit has hopefully informed you about) you *may* meet the CPS prosecutor if they have the time, a Witness Service volunteer, the court usher and the court level witness liaison officer *may* also be there. If the perpetrator is sentenced for a violent or sexual crime and sent to prison for over 12 months, the Witness Care Unit *may* ask you if you want the probation service's Victim Liaison Officer to keep you informed about when they are coming out of prison – which they will *usually* then do.

And an indication of what this might mean to a witness is that they *may* receive over 30 letters as they navigate this process. But equally, they may not.

A recent inspection of victim and witness services within the criminal justice system<sup>ii</sup> found a “*tendency to layer new commitments and initiatives on top of existing ones without any review and rationalisation. We found staff involved in supporting victims and witnesses are struggling to keep up with these and for victims and witnesses it can be hard to find out what they are entitled to. There is an urgent need for rationalisation and simplification*”.

---

<sup>ii</sup> Criminal Justice Joint Inspection (2009) *Report of a Joint Thematic Review of Victims and Witness Experiences in the Criminal Justice System*. HMCPSI, HMICA, HMIC.

There is not an obvious absence of help in the system and individual services may provide a good level of contact and support, but it is also highly discretionary and haphazard. Even with the best of intentions, the scope for faultlines in the system are self-evident – with some victims getting more than adequate support while others may get very little or no help at all.

***Universal services or targeting to those who really need help?***

Nearly every victim of crime wants the system to deliver justice for their individual case. The vast majority of victims, however, – around 80% – say they don't want additional help from that system. And among those that do, the majority just want information about their case. However, with very few exceptions, there is no targeting of support for those with the most needs – some people in desperate need get no help, while help and support are offered to those who do not require it.

Victim Support contacts most victims of crime (with certain exceptions) with a phonecall to assess the need for support – which can mean valuable time spent on very minor crimes where a victim is unlikely to feel in need of assistance. This represents thousands of phone calls where an avoidable and unnecessary cost is being borne from within funding given to Victim Support.

The police are required to keep victims of crime updated about various stages of their case but, again, this is not based on the seriousness of the crime. The same attention is given to updating a victim who may not be interested, for example, after having a lawnmower stolen, as to a victim of a more serious offence such as assault.

Similarly, Witness Care Units aim to let all victims know about the outcome of their case (if their case gets as far as court), but again this is not based on seriousness, such as an urgent need to give the outcome when someone charged with a violent offence is not convicted. Similarly, letters go out from the CPS to explain charges being dropped or reduced, but no more attention is necessarily given to letters to those victims who, it could be anticipated, may be left reeling by such news.

The probation service is the part of the system that liaises with victims of sexual or violent offenders, where the offender has been imprisoned for twelve months or more. But there are no guarantees that victims will be informed about the service in order to 'opt in' to it – and again there is no prioritising of victims who might need more urgent information.

With few exceptions then, the service you get is not determined by the seriousness of the crime or the vulnerability of the victim; in essence, it is not determined by need. So while the victims of a stolen lawnmower may get up to three phone calls from Victim Support, victims of child sex abuse often have to join lengthy waiting lists for counselling, long term help for bereaved families is barely recognised, and there are only 40 independent sexual violence advisers throughout the entire country for victims of sexual crime.

### 3. Victims – the poor relation

At various points the criminal justice system articulates its fairness to offenders. A reasonable amount of money is put into the processing, the management, the rehabilitation and the punishment of offenders. There is an aspiration that offenders should have an ‘end-to-end service’, a paid and professionalised workforce, and a legal system and legal aid budget that provides legal representation and rightly attempts to prevent innocent people being wrongly found guilty or unjustly punished.

It is, of course, not a perfect system, but its aspirations are right and correctly founded upon the principles of justice. Without seeking to undermine these fundamental principles, there are, in contrast, inequities in the way the criminal justice system treats victims.

A relatively small amount of money goes into what the system offers victims and witnesses – around £270m a year – of which the lion’s share is either for the criminal injuries compensation fund (£201m) or the national grant to Victim Support (£45m). Throughout the system, designed to catch and then process offenders, there is no dedicated person to provide support for victims from start to finish. Not only to explain what might be happening, but more importantly to advocate for them within that system and perhaps to challenge that system on their behalf. In fact, the victim of crime becomes known as a ‘witness’ during court proceedings – and I would argue they are often little more than bystanders whilst the wheels of justice turn.

#### ***After a trial***

Being a victim in an unbalanced system does not end on conviction or after an acquittal; the wheels of justice continue to turn and again victims are often an afterthought. There are around 2,000 appeals per year against sentence, of which 75% are successful and around 500 appeals against conviction, of which 43% are successful<sup>iii</sup>. Yet there is no requirement for even the prosecution, let alone victims or their families, to be informed about an application for leave to appeal. I have met victims’ families who read about an offender’s appeal in a newspaper.

Where a defendant is acquitted following a trial, there remains a victim or a bereaved family who should be able, at the very least, to discuss with the CPS lawyers and the police why, in their view, the acquittal may have occurred and what if any legal or investigative avenues remain available. I met one bereaved mother who was refused a meeting with the CPS prosecutor after the defendant in her daughter’s murder trial was acquitted. The Criminal Cases Review Commission rightly exists to ensure that we mitigate against miscarriages of justice for defendants. It is worth noting that if hundreds of cases are found to have got it wrong first time in the

---

<sup>iii</sup> *Judicial and Court Statistics 2008*. Ministry of Justice London: Stationery Office.

*prosecution's* favour then there are likely to be at least similar numbers where it was adjudged wrongly in favour of the *defence*. It is arguable that the Criminal Cases Review Commission could consider whether it has a role in possible miscarriage of justice cases on behalf of victims or their families.

And once a defendant is convicted, it appears that despite the fact victims and their families are in some cases left carrying an unimaginable burden for the rest of their lives, the support to them, which has been patchy to this point, then drops off almost completely.

Parole hearings consider whether or not to release offenders back into the community. They do this based on assessments of a prisoner's level of risk – a decision reached through an inquisitorial process weighing up the pros and cons. For victims, the early release of the person convicted of serious harm against them, and the conditions that might be imposed upon his/her liberty, can be issues of great concern. And yet the system does not make it easy for them or their families to have their voice heard in the weighing of the evidence. The parole hearing will be held in a prison, often miles away from the victim's home, yet they are not guaranteed any practical help to get there, or emotional support to deal with such an intimidating or frightening experience. Indeed they are not even necessarily allowed to take who they want into the hearing (one woman whose daughter was murdered and whose body was never recovered was initially not allowed to have her husband with her) or to have their statement read out unchallenged.

There are two further areas where the 'poor relation' argument is particularly compelling – in relation to child witnesses and bereaved families.

### ***Child witnesses***

Court cases where the defendant is a child are quite rightly heard in youth courts where proceedings are more informal and closed to the public. Magistrates have special training and the media are restricted from reporting what takes place.

Child victims of an adult offender have to give their evidence in an adult court as it is the age of the *defendant* who determines at which court the proceedings are to be conducted. There will be a public gallery, and media will be present. Under 17s are considered to be vulnerable victims and 'special measures' will, for example, allow their testimony to be videotaped in order to mitigate the intimidating environment of the courtroom. The limitations of such measures however, such as the defendant still being able to see them on screen being cross-examined, may not be made clear to child victims until the day of the trial.

In serious crimes where young defendants do appear in the adult crown court there is proper recognition given to how daunting this may be for a child and special directions are set down to make the process less intimidating. There are no similar practice directions for child victims. In fact where child victims are referenced in guidance it seems, perhaps unintentionally, to make it more difficult for them. For example, the practice direction 'Support for Witnesses

Giving Evidence by Live Television Link' states that "*The witness supporter should be completely independent of the witness and his or her family*"<sup>iv</sup>.

It is of course right that no-one should be able to sway a victim's testimony, but that does need to be balanced with the emotional needs of a child going through such an ordeal. Research by NSPCC<sup>v</sup> found that child witnesses did not always get the help they needed or were entitled to and that, for many, giving evidence was a traumatic experience.

### ***Bereaved families***

There are many examples where the system does not give a good enough service to families bereaved by crime.

This is illustrated from the outset in the way the rules around post mortems work. Currently, bereaved families often have to wait weeks, months or occasionally longer before they are able to bury their loved ones. A post-mortem is carried out in the first instance by the 'state' for the coroner, but there are no time limits for any further post-mortems requested by the defence. In fact in one case there were a further six post mortems; one for each defendant. This seems completely unnecessary. In Northern Ireland a maximum of two post-mortems are permitted and must take place within a week of the first post-mortem so bodies can be released quickly for burial.

Murder and manslaughter are extraordinary events; often with long-lasting subsequent effects for families such as family breakdown, mental and physical health problems, an inability to work and sometimes the loss of their home. This may mean that a bereaved family need services and support for years to come. Although there has been recognition of this and an attempt to start to provide the types of specialist support that can help those families, through the introduction of the new Homicide Service run by Victim Support, there is more thinking to be done. For example, a more rounded set of interventions that need to be available recognising, in particular, the unique and valuable role that voluntary groups set up by families bereaved by crime can play.

## **4. Victims are without rights**

### ***Statutory code for victims***

One of the most significant developments in the position of victims within the criminal justice system has been the creation of a statutory code of practice for victims of crime. These are entitlements to service standards to be met by different parts of the criminal justice system; the police, Witness Care Units, the CPS, courts, probation and youth offending teams. It was intended as a means of embedding victims' rights and place within the system. However, whilst well-intentioned, in practice its impact is curtailed by its shortcomings.

---

<sup>iv</sup> Ministry of Justice (2010) *Consolidated Criminal Justice Practice Direction*. Part III.29

<sup>v</sup> Plotnikoff and Woolfson (2004) *In their own words: The experiences of 50 young witnesses in criminal proceedings*. NSPCC.

These are, in fact, not rights or entitlements that can be enforced. For example, if you are not kept informed about what is happening in your case, you can ask the agency at fault to update you but there is no enforcement available if they fail to do so – and whether agencies actually live up to their promises is rarely measured.

If the code of practice were well-known to victims and the general public, perhaps victims would be more demanding of its entitlements. However, public awareness of the code is very low, as is awareness among victims<sup>vi</sup>. This is a missed opportunity.

There are two examples where it is clear that victims' entitlements are not concrete and clear enough – 'special measures' and 'victim personal statements'. Although they are both extremely welcome developments, lobbied for by victims and victims groups, in their execution they fall short of expectations.

### ***Special measures***

The Youth Justice and Criminal Evidence Act 1999 provided for a range of 'special measures' to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. It now includes measures such as video-recorded evidence-in-chief, live link into the court room from a room outside, and the ability to give evidence behind screens or with the use of an intermediary.

The execution of special measures is, however, fractured – and as a consequence the witness is often left feeling let down. These measures are discretionary; no matter what the situation, someone must apply to the judge to decide if the witness can have them or not. In addition, it seems that they are everyone's obligation but no-one's responsibility. The police, the CPS, the Witness Care Unit, court staff or the voluntary Witness Service all have a role to play, but the situation still arises where a vulnerable witness can arrive on the day of a trial with absolutely no certainty how, or with what protection, they are going to give their evidence.

### ***Victim personal statement***

Any victim of crime can make a victim personal statement describing the impact the crime has had on them. It is intended to be taken by the police at the time of the crime and can be updated at any time by a victim. Many victims and staff across the criminal justice system have spoken about how powerful a tool they are, giving the crime committed some real meaning to those hearing the case. Victims have an opportunity to explain to the court and to defendants the effect the crime has had upon them.

Only 43% of victims are offered the opportunity to make a victim personal statement<sup>vii</sup>. This may be connected to the fact that neither the police nor the CPS will always make clear to victims the purpose of the statement – leaving

---

<sup>vi</sup> Ipsos MORI (2009) Omnibus Survey

<sup>vii</sup> Ministry of Justice, *Witness and Victim Experience Survey* (WAVES) data, 12 months to December 2009.

victims in turn unclear as to its use or benefits. However, of those who did make a statement, 69% felt that the views in it were taken into account by a court; potentially a big plus for a victim's sense of fairness in the system.

However, even if the victim or their family does make a statement, it cannot be guaranteed that they will have them read out in open court. As with most aspects of the system, the victim has no control or say over this process.

### **Complaints**

As a victim of crime you can complain to any one of the various agencies that you are unhappy about the service you have received. But it is not always straightforward. If you are unhappy about delays in your case coming to trial, do you complain to the CPS, the police or the courts? Who is responsible? If you are not given special measures when you are a vulnerable or intimidated witness, is that the fault of the police for not identifying you as vulnerable, the fault of the Witness Care Unit for not picking it up in their needs assessment, the CPS for not applying to the court for them, the courts who are responsible for actually providing them, or the judge who denies them to you?

If you are not satisfied with the agency response, there is access to the Parliamentary Ombudsmen on matters relating to the code of practice for victims of crime. To do that you need to apply through your member of parliament. The Ombudsman has considered complaints concerning the code since 2006, dealing so far with 58 complaints, of which only two were investigated, the others failing to qualify because they fell outside the Ombudsman remit or outside the correct process. Only one complaint has been upheld since 2006. Nobody I have spoken to has suggested that the system is so good that victims have no need to complain. Rather, the system makes it extremely difficult to complain and, put bluntly, if you are a victim there is a sense that it would prefer not to hear from you.

Compare this with the Prison and Probation Ombudsman. The ombudsman service is publicised widely, and last year received over 4,000 complaints<sup>viii</sup>, suggesting perhaps that offenders are more able to exercise their rights as they are more aware of them.

## **5. System reform**

### **Sentencing**

A great source of frustration among victims is sentencing. Sentencing policy has become so complicated that few victims or members of the public can understand it. Sentences handed down by courts are not transparent, can create false expectations, or even a feeling in victims that they have been deceived by the court. The terms used to describe sentences are misleading – a sentence called 'life' we know does not mean life, and an indeterminate sentence for public protection, known as an IPP, is at best difficult to understand – and does not appear to mean life either. One victim liaison

---

<sup>viii</sup> Prisons and Probation Ombudsman (2010) *Annual Report 2009-2010*

officer told me that in all the cases referred to them post-conviction, there was not a single case where a victim had understood the sentence given.

### ***Unclogging the system***

Many people I have spoken to within the criminal justice system said their capacity to do better for victims and witnesses was limited by case overload. I was told time and time again that there are simply too many cases going through the crown court which could be dealt with in the magistrates court; that there were too few incentives for defendants to plead guilty early in the process, leading to cases clogging up the system; and that problems with an old court estate restricted the improvement of witness facilities.

Unclogging the system would undoubtedly lead to a better service for victims and witnesses, and remove the excuses for continued progress in their treatment. But the solutions are rarely considered with victims in mind.

For example, a response to improving court efficiency has led to the practice of listing two or three cases to take place at the same time, on the basis that one of them will go ahead. That can leave victims and witnesses who have not only gathered the courage to come and give evidence at court, but who have taken time off work, arranged the child care, travelled to the court, arriving only to be told it's not happening today. A witness may well decide not to turn up again next time.

The Justice Secretary has announced plans to close down underused courts. Witnesses could undoubtedly provide a list of the courts which are just not fit for purpose, where the facilities are poor or where they must run the gauntlet of offenders' families and supporters to get to their allocated waiting area. Again the system needs to reform with their views and experiences in mind.

I am convinced that radical action is needed to release some capacity into the system, and will support action to achieve this, but with the victim's experience being central.

## **6. What next?**

Major progress has been made in recognising, understanding and supporting the status and position of victims and witnesses. However, as this initial critique shows, there is still a good way to go. These are challenging times but they are also times of reform and fresh thinking and I strongly believe that there are great benefits to be won for justice and for the criminal justice system if we always embed the interests of victims and witnesses in reforms.

For my part I will work with victims, witnesses, the Government, across the criminal justice system and service providers to move forward on all of the areas and issues that this report has highlighted. The most immediate priorities being ensuring that the best service possible is developed for the victims and witnesses who need it most and bringing about any changes needed to achieve that, consideration being given to the current investment that is made into services for victims and being sure that it is being spent and

targeted to the greatest need. In addition the time is right for me to look at the position for child witnesses and to also consider the position of families bereaved through murder and manslaughter.

20 July 2010