

The Poor Relation – victims in the criminal justice system

RSA, London. 20th July 2010.

Introduction

Good evening, welcome – thank you to all of you who have made it here this evening to hear me talk about my first impressions on the treatment of victims and witnesses in the Criminal Justice System after my first couple of months into the job.

It is a privilege to have been appointed as the first Commissioner for Victims and Witnesses – a privilege yes, but also a daunting task and one which makes me feel very humbled when I speak to those brave people who I am now tasked to represent.

Before I begin, I'd like to pay tribute to the many volunteers and staff who are working to support victims of crime – whether or not those victims are currently in the criminal justice system or not.

I'd also like to thank those people – victims themselves, volunteers, probation officers, barristers, judges, police officers, crown prosecutors, victim support staff, and victims groups - who have given up their time to offer me their views on, and experiences of, the criminal justice system. I intend to make it a key part of my job to go on listening so I can be an informed and effective voice for victims and witnesses.

And I want to put on record that every person I've spoken to so far did understand the importance of victims and witnesses and their status in the justice system. And everybody also agreed that despite the significant progress made in recent years, we aren't yet getting it right.

Victimhood

So, let's start by taking a step back. All of us suffer knocks in life, most people in this audience have suffered knocks in life; all sorts of things that can set us

back. Being a victim of crime for most of us is one of those knocks. It does not define us and we can rely on family, friends, neighbours and the community around us to help us through it.

Most of the time that works and it is the right response. Let's not try to fix something that doesn't need repair. It is not for government to be providing a service for anyone and everyone who experiences a knock in life. We don't want to be encouraging 'victim-hood'.

Over 80% of crime victims say they do not want help and among those that do, what they want is mostly information about their case.

But for others – victims of rape or serious assault, the bereaved family of someone who has been murdered– crime can become a life changing experience which we don't expect people to overcome. At least not without the kind of help and support that shows a real understanding of the impact of that crime and the recognition of their situation as victims.

So there are inherent tensions in how we think about victims of crime. We don't want to turn everyone into a victim. But we must not and cannot afford to miss those who may be vulnerable and need help no matter what the crime is; nor those who suffer the life changing tragedies who we should not expect to pick themselves up and get on with life.

Why help victims?

There are hard headed reasons for supporting victims - as citizens and as taxpayers.

Firstly, as a civilised society, we do not condone or indeed allow retribution - an eye for an eye. The rule of law depends on a victim not seeking revenge themselves; by reporting a crime to the police, the victim steps aside and the state steps in to prosecute the suspect for an offence against the Crown.

That is the 'deal' between the state and the citizen, which underpins our justice system. And in return for the state taking responsibility we need to repay the victims with an effective response on their behalf.

Secondly, particularly in more serious crimes, there is a public protection imperative. We know that perpetrators of violence, domestic abusers and child sex abusers do not stop at one victim. They will go and do it again to someone else. When a victim bears witness in court it means stopping the violent man seeking out another vulnerable woman, the sexual abuser or the violent thug or the bully picking on the next victim. We should support that victim because many will find it incredibly hard to fulfil that responsibility as a witness. But society needs and asks them to do so.

So in asking them to do that, we need to get some things right:

- To give them some **certainty** or some guarantees about what they can expect; confidence that there will be protection against intimidation; that they will definitely be kept informed; and that help and practical support is easily accessible to them from start to finish.
- And secondly to **acknowledge** that this a crime that has happened to a real person and therefore that individual will want to be involved in what happens, how it happens, and almost as much as any defendant, they have a huge interest in what happens in any trial or any proceedings.

The maybe service.....

But instead of a system of guarantees, what victims and witnesses actually get is a **maybe** system:

In reality, being a victim and/or witness can still mean entering a complicated and haphazard system with no guarantees.

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 Victim Support, and *may* be visited by a Victim Support volunteer; if your case gets as far as being charged, you will *most likely* be contacted 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 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 *sometimes* do.

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

The sideshow in proceedings

Because what happens when a crime gets reported is that an administrative process is kicked off, which starts the cogs running and then the wheels of the system of justice start to turn. And at that stage the system takes over, the professionals step in – the police, the prosecutors, the courts, the judges, probation – to 'deal' with the offence and the offender.

If you go to court, you cease to be the 'victim of the crime', but a 'witness in the proceedings' which unfold. We think of a 'witness' as a bystander in the street who saw an incident, but four in ten witnesses in court are the actual victims of the crime - the woman who has been raped, the householder who is

burgled, the young man beaten up on his way home or the child who has been abused.

The solicitor and barrister who prosecute the defendant are actually acting for the Crown; so the victim will not be instructing them, the victim will not have an advocate to get across the experience, they will not see a defendant's statement in advance; they will not get to see the proceedings because it could 'prejudice their evidence' when they come to give it, and while they may be entitled to hear about the outcome of the case, the entitlement is only to hear about it within a day of when the Witness Care Unit hears about the outcome from the court by which time they may well have read about it in the paper.

To that victim of the crime, he or she is the reason they are all there in the court room and yet the victim is the 'side show'. If you are the bereaved family of a victim of murder, you could be sitting in the public gallery along with the defendant's family, the interested student, a collection of people who've stepped in to shelter from the rain; whereas what is unfolding in court is the story of the loss of your child/husband/wife or mother. So, we should not be surprised that many victims describe the criminal justice process as being victimised all over again.

We need to be honest. At present, our criminal justice system is at root and at branch a system to process offenders and administer the law and, unfortunately and I believe unnecessarily, victims are subsumed into the "administration of law".

The interests of justice

In our quest to be scrupulously fair to defendants and to ensure that the interests of justice are not prejudiced – all extremely important things - it seems to me that sometimes we lose balance and end up by being unfair and sometimes even inhuman to victims.

- So, there is no limit to the number of **post mortems** that can be held when someone dies – for example, it is quite legitimate for six additional post mortems to be carried out on behalf of each of the six defendants in a case, leaving bereaved families sometimes months and months waiting to bury their child/father etc. Yet, in Northern Ireland, it seems to be possible to do any subsequent post mortems within two weeks.
- In the interest of justice we require child victims of adult offenders to give their evidence in adult court and don't allow them to sit with family, or someone they know when giving evidence from a live link. Even the ushers who sit in are not allowed to reach out to the witness if they get upset. Whereas we have a **youth court** system for child defendants which recognises the need for children to go through a trial in surroundings which are more age appropriate. And, where proceedings are undertaken in the crown court, there are several practice directions outlining how to make the process less intimidating for young defendants.
- And of course it is right we have a system of **appeals** against sentence and conviction, but how is the interest of justice served where the first the victim hears about the perpetrator seeking leave to appeal is reading it in the paper?

No, the idea that victims are at the heart of the criminal justice system is not a benign deception. There is nothing benign about it.

I believe we can improve the position of victims without prejudicing the administration of justice:

- Let's look at allowing victims some challenge or advocacy so that they can be assured that the system is doing the very best it can in 'their' case.

- The Criminal Justice System should recognise much more the 'deal' - the victim stepping aside for the state to prosecute. What do they get in return? They need acknowledgement of interest, be kept informed, have some time spent letting victims know how things will run and what the outcome of a case means.
- We should be more transparent and accountable so that the sentence that is delivered in court is more or less the sentence that the person convicted would serve. Or that where a defendant is acquitted in a trial, a case review involving the victim or their family could be held to go through what happened and why and what options there might be.

Does pro-victim mean anti-offender?

There is a polarised world within criminal justice. People want to create a debate saying that because I'm speaking up for victims I am anti-offender. But I do not agree that this is a zero sum game, tempting though that debate is.

I am not here to argue that we should instead have a system which is *not* fair to offenders. Because possibly the worst thing we can do is to lock people up who aren't guilty. Similarly when people are convicted what's vital is that they are rehabilitated. The one thing that victims do say is that they don't want this to happen to someone else.

What I am here to say is that we need a system that is equally fair to victims because **in their own right** they are vital for justice to run its course. When we ask victims to step aside and let the Crown deal with the case, this is as fundamental as the right to a fair trial for defendants and we should not treat the victim like a piece of bagged evidence in a trial process.

I do not want to dismiss the many improvements in the way that victims and witnesses are treated; it was not so long ago that we did not have a Victim Support charity, that prosecutors were not allowed to speak to victims or that

victims and their families did not have have a separate waiting area in court. But as a sum total, the improvements just do not add up to anything that approaches real power or a challenge to the current system.

David and Goliath

Because what we have here is a David and Goliath situation:

It is a defining feature of the organisations that support victims of crime that they rely very heavily on volunteers, and on people who have lived through the experience of being victimised or being bereaved and want to support others who have had similar experiences. It is a powerful thing- victims who see volunteers work tirelessly to help them know they are doing it because they care; and that when someone who has been bereaved say something that may be challenging to a victim it's because they understand and want to help. That's vitally important. It is the sector's strength. And something that, as a society, we should be thankful for.

But when it comes to challenging the criminal justice system to do more or to tell them they haven't got it right, they are up against a highly professional and professionalised sector – the judiciary, the police, the CPS, the probation, the bar. It strikes me that as well as these formidable professional groups, there are a whole host of other organisations behind them – members organisations, societies, trade unions, improvement agencies and a significant number of offender-focused lobby groups.

And the resources underline the power relationship - about 2% of the overall criminal justice budget goes directly to victims

And while every police officer can recite a defendants rights – we all in this room probably can – *'you have the right to remain silent, the right to a phone call etc.'* who in this room can recite victims rights from the victims code of practice? Which member of the public can tell you what's in it? Even those who have been victims and who have exercised their rights, including their right to receive a 'victims of crime' leaflet, do not know about the Code!

We have played around the edges, some might say, covered our tracks about the deception, or more kindly, have introduced some well-meaning advances. The system has created victim personal statements, the point of which is to explain how the crime affected a victim, except its not up to the victim whether it is read out in court if they wish it to be; a code of practice that cannot be enforced; a complaints system which is hopelessly inadequate – a system so far removed from victims that they have to apply to it through their MP and has since 2006, dealt with 58 complaints of which only two were investigated and one complaint upheld. I can't help but compare it to the Prison and Probation Ombudsman which last year received over 4,000 complaints. Nobody I have spoken to has suggested that the system is so good that victims have no need to complain. It's just that it is completely invisible.

The challenge ahead

There are major changes coming down the line – significant cuts to budgets, sentencing reform and planned closure of some of the court estate.

Look, if we are doing more for less, I have no doubt that we must look at all options on efficiency, including how we use scarce crown court time and move more work into magistrates court; case management – which means to me gripping a case and getting it heard on time, so that a witness does not wait months on end for their case to come up and the incentives for defendants to plead guilty. It is why I've argued in my report that we need look again at whether a universal system for victims of crime which takes little account of seriousness or vulnerability of a victim, is sustainable.

For me this is an opportunity for radical change and one which we must grasp to improve justice. That involves a reassertion of why we support victims and an understanding that if we grant them some dignity and humanity in the process, it is the interests of justice that are served.

I'm conscious that in order to achieve this, we have many challenges ahead and so I want to work with whoever can help us meet those challenges:

- I stand ready to support Justice Leveson's work at the Sentencing Council;
- I am ready to work with the CPS, the police and HMCS so that when we talk about improving efficiency in the system, it actually improves the experience of victims;
- And, I am up for working with Ministers for getting a better deal for victims all round.

Just before I finish I'd like to tell you very briefly about two incredibly dignified mothers of murdered children I came across during my travels. Both of whom are fighting for improvements in the system and at the same time volunteering to help others in similar situations.

One told me that after weeks watching the man she was told murdered her daughter being tried, he was acquitted. She was then refused a ten minute meeting with the prosecutors to explain to her what had happened and what might happen next.

The other mother bravely attended a parole hearing in a prison, ready to come face to face with her daughter's murderer. She was told her husband wasn't allowed to accompany her to give her support.

I know that no-one in this room would feel that was an acceptable way to treat anyone, never mind an acceptable way to treat bereaved families.

I am conscious of the David and Goliath situation we are in. As much as I want to talk up how powerful I would like to be as the Commissioner for Victims and Witnesses, I know that it's up to the judges, the bar, the CPS, the police, the government and others not to close the door on me but to do the

right thing by victims of crime and recognise their role. And in that endeavour I ask for and hope that I can rely upon your support and help.

Thank you.