

## The Place of Victims in the Criminal Justice System

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**Summary:** Victims are often the forgotten parties in the criminal justice system, despite their involuntary and highly distressing involvement in this arena. This article reflects on some of the approaches to victims in the practice of the Probation Service in Ireland, and in the United Kingdom, and presents a review of some of the pertinent literature. It highlights the effects of crime on victims and considers how probation officers can respond to this, exploring some implications for effective practice.

**Keywords:** Victims, victimisation, criminal justice system, offenders, pre-sanction reports.

### Introduction

The last 30 years have seen the rise of the victims' movement in Ireland and the UK. This movement involves a variety of interest groups, policymakers and state agencies, all calling for the recognition of victims' losses and for an improvement in the manner in which victims are treated in the criminal justice system. Zedner (2002) observes that since the 1980s the study of victims has become a growth industry within criminology, prompting debate about the rights of victims and the standards of practice in related fields, and suggests that the victim should be recognised as a key player in the criminal justice process as 'without the co-operation of the victim in reporting crime, furnishing evidence, identifying the offender and acting as a witness in court, most crime would remain unknown and unpunished' (p. 435). Nevertheless, the

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criminal justice system is still often criticised for the manner in which it can disregard victims' interests and/or use victims to achieve the desired outcome in a court case, for example as witnesses for the prosecution (Koffman 1996; Victim Support 2000; Williams 2002a).

It is accepted that the criminal justice system was traditionally concerned with the perpetrators of crime to the neglect of the victim and much is found in the literature detailing the struggle of victims to gain a voice or some level of recognition within the system (Crawford and Goodey 2000; Department of Justice 1997; McIvor 1996; Newburn 2003; Roberts 1997; Victim Support 2000; Zedner 2004; Zellerer and Cannon 2002). Goodey (2000) argues that measures in recent times to integrate victims into the criminal justice system must be given careful consideration and thought; such developments may not always be primarily in the interests of victims but may be about reducing recidivism, about promoting the reintegration of offenders into the community or a means by which agencies of the criminal justice system can win public support.

The issue of 'secondary victimisation' is recognised in the literature and becomes apparent when the victims of crime experience further victimisation through their experience with agencies of the criminal justice system, which they may perceive as insensitive or even harmful (Koffman 1996; Maguire and Pointing 1988). All too often 'an individual's initial negative reaction on becoming a victim is reinforced and intensified by their experience of the criminal justice process' (Reeves and Mulley 2000, p. 127).

Victims are increasingly encouraged to play a role in decision-making about offenders through reparation and victim impact statements. The relevance of incorporating the victim's perspective has certain benefits. It can afford those who have been subjected to crime, recognition and respect for the plight they have experienced and give them a voice where previously they were silenced, something which is often desired and welcomed by victims of crime (McIvor 1996; Roberts 1997; Williams 2002b). Additionally, some argue that incorporating the victim's perspective helps probation officers to make more accurate risk assessments and provides the probation officer with information on which to base effective future work with offenders (Dominey 2002).

Ireland, like many other countries, had a tendency to overlook the effects of crime on victims as the criminal justice system focused on the

detection, prosecution, conviction and sentencing of criminals (Department of Justice 1997). The *Victims Charter* acknowledges and aims to rectify this position in the Irish system (Department of Justice, Equality and Law Reform 1999).

### **Effects of crime on victims**

Few would deny the often devastating effects of crime on those upon whom it is inflicted. Victims of crime may be affected adversely in many ways: physically, emotionally, psychologically and financially. Unfortunately, many people's first contact with the criminal justice system is as a result of being a victim of crime. Roberts (1997, p. 151) remarks that 'in the aftermath of a violent crime, victims often have to cope with physical pain, psychological trauma, financial loss, and court proceedings which all too frequently seem impersonal and confusing', and others concur with this observation (Kosh and Williams 1995; Watson 2000; Williams 2002a). Research has indicated that victims of crime do have particular needs, ranging from the need for information from the criminal justice process to the need for emotional support (Mawby and Walklate 1994).

'Victims of crime have been subjected to someone interfering in their lives, and this negative experience may fundamentally alter their view of the world' (Reeves and Mulley 2000, p. 126). Victim surveys highlight people's 'hidden' experience of crime and 'fear of crime' (Goodey 2000, p. 15). The main sources of victim data in the Republic of Ireland are official statistics and the results of limited surveys such as that provided by Breen and Rottman (1984) and the Central Statistics Office (1998). A study undertaken by Watson with the Economic and Social Research Institute on victims of crime in Ireland discovered that, aside from the possible physical injury or financial loss attached to crime, 'Victimisation can result in psychological distress and increased suspicion, or victims may respond by restricting their activities' (2000, p. 208). Feelings of anger, fear and guilt are both normal and healthy and it is usually the emotional impact of a crime that is more profound for the victim than physical pain or financial loss (Reeves and Mulley 2000). Other reported effects of crime include feelings of self-blame for the offence and the impact on work such as missing time or losing/leaving a job (Watson 2000).

The effects of crime can vary according to the offence. Most studies indicate that the dominant effect for all victims, regardless of the crime, is psychological distress (Zedner 2002). Anecdotal evidence suggests that people are more affected by certain categories of crime and whether or not they know the perpetrator. It is also crucial to bear in mind that different people are affected differently by crime. Victims often find it hardest to recover from crimes such as assault, robbery, domestic burglaries and car theft (Tudor 2002). Some people can come to terms with the crime relatively quickly and move on with their lives whilst others (for example the elderly, repeat victims, victims of sexual assaults or other violent crimes) are more vulnerable to experiencing long-term detrimental effects as a result (Department of Justice 1997; Nettleton *et al.* 1997; Watson 2000; Zedner 2002). However, the likelihood of such an experience relates not only to the impact of criminal victimisation itself but also to other aspects in the person's life (Mawby and Gill 1987; Mawby and Walklate 1994; Nettleton *et al.* 1997). For some, criminal victimisation can result in post-traumatic stress syndrome.

The risk of victimisation in general depends in part on one's geographical location, as well as one's age, sex and patterns of lifestyle activity such as going out in the evenings and consuming alcohol (Zedner 2002). Certain groups or categories of people appear to be more prone to victimisation, and repeat victimisation at that, than other categories in the population (Koffman 1996). Van Dijk (2000) concedes that victim recidivism is very common and claims that many victims are revictimised by the same type of offence often within the same year. Victims of crime are disproportionately male, single, young, reside in urban areas and belong to lower socio-economic groups (Fattah 1989 cited in Spalek 2003). Interestingly, this is also the profile of a typical offender. The statistics indicate that those most at risk of becoming a victim are young males between the ages of 16 and 24, those that are unemployed, lone parents and single people living in the private rented sector and those that socialise in pubs and clubs three or more times a week (Zedner 2002).

Males are victims in 64% of mugging offences and 80% of assaults against strangers, while females are victims in 74% of domestic violence cases (Zedner 2002). In Watson's (2000) survey, assaults appear to have more impact on victims than other crimes; victims of assault knew the offender in more than half of cases, rising to three in four cases in relation to females; one in four female assault victims was assaulted by their

spouse or partner. Victims usually have strong views about what happened to them and the person that did it to them and 'For the most part, victims of crime want to be kept informed and want to be given an opportunity to say something' (Nettleton *et al.* 1997, p. 38). Evidence also suggests that significant numbers of crimes go unreported (Koffman 1996; Zedner 2002).

### ***Victims Charter***

The Probation Service is an agency of the Department of Justice, Equality and Law Reform. An Garda Síochána, the Courts Service, the Prison Service and the State Prosecution Service (Office of the Director of Public Prosecutions and the Chief State Solicitor's Office) are identified as the other parts of the Irish criminal justice system in the Department of Justice, Equality and Law Reform's *Victims Charter* (1999). The *Victims Charter* seeks to describe all elements of the criminal justice system from the point of view of a victim of crime. It sets out what victims of crime can expect from players in the justice system, including the Probation Service.

The *Victims Charter* states that the Probation Service: 'Concerns itself with your plight as a victim and attempts to consider your sensitivities and trauma in the way that it undertakes its work. Offenders are strongly encouraged to take responsibility for the hurt, damage and suffering they may have inflicted on you' (p. 18). It also advises victims that the Probation Service will consider them when preparing reports for court and, when requested, will assist in the preparation of victim impact reports.

The *Victims Charter* is currently being revised and updated. Also the Minister for Justice, Equality and Law Reform established the Commission for the Support of Victims of Crime in 2005, with a remit to disburse funding for victim support and assistance measures and to develop a framework for victims into the future.

### **Pre-sanction reports**

Assessments by way of pre-sanction reports (PSRs) are carried out by probation officers and proposals are presented to the court on the most appropriate method of dealing with offenders and on the measures that might be put in place to prevent reoffending. The Probation Service's

first published guide for officers writing probation reports came in 1999 and was entitled *Service Practice for the Preparation and Presentation of Pre-Sanction Reports*. This document stated that the primary focus of reports ought to be on the offence and the offender's pattern of offending (Probation and Welfare Service 1999).

In relation to victim issues, the guide states that PSR authors should make proposals 'so that the risk of the offender creating further victims of crime is reduced and so that the community is thus protected and made safer. Hence the PSR is targeted towards victim and community protection' (p. 4). The guide stipulates that 'victim issues' should be a specific section and heading in probation reports to the courts and suggests the following form:

- Offender awareness of victim(s).
- Offender awareness of impact of crime upon victim.
- Attitude to victim.
- Attitude to reparation.
- Capacity to make reparation.

Although the guide stipulates that 'Preparation of PSRs may involve consulting with and canvassing the view of a range of people relevant to the case' (p. 10), it does not suggest with whom it may be appropriate to liaise.

Dominey (2002, p. 168) argues that the tasks of probation officers at the report-writing stage in carrying out an assessment of an offender's awareness of the victim include:

- Making decisions regarding who or what qualifies as a victim in the case before them.
- Directly questioning the offender about the victim and the consequences for them both at the time of the offence.
- Challenging the offender with information supplied by the State Prosecution Service on the offence or the victim.
- Gaining the offender's perspective on the experience of being a victim themselves.
- Commenting in the PSR as to the offender's attitude to the victim.

Spalek (2003) notes that probation officers are likely to assess offender awareness of the impact of their crime by directly ascertaining the views

of the offender regarding the offence and by encouraging the offender to divulge any personal experience of being a victim in order to evaluate their understanding of the consequences of their crime. Dominey (2002) remarks that the quality of PSR assessment depends on the level of training probation officers have in the area of victimology and also describes how 'often a PSR author is presented with a case where there is not a straightforward relationship between one offender, one offence and one victim' (p. 167). It is not always possible to identify victims, such as in the possession of drugs for personal use or soliciting for prostitution (Spalek 2003), or in cases such as shoplifting or fraudulent welfare claims where the victim may be a 'faceless' commercial organisation or government department (Dominey 2002).

Work done at the PSR stage to assess the offender's level of victim awareness is, according to Dominey (2002, p. 171), 'the start of a process intended to raise victim empathy in offenders'. Where assessment of the impact of the offence upon the victim is included, it assists probation staff in making accurate assessments of the offender's pattern of offending and can provide a basis for effective work with the offender in the future (Dominey 2002; Williams 2002b). What is also evident is that victim issues are more important in some PSRs than in others and offenders may be more likely to feel remorse in cases where serious harm has resulted (Dominey 2002).

Probation work in the UK now involves direct work with victims of crime, alongside traditional indirect work. Its central mission is similar to that in Ireland in that it seeks to make offenders 'aware of the impact of the crimes ... on their victims, the community and themselves' ('National Standards'). Many agencies in the criminal justice system have new responsibilities in working with victims of crime. The Probation Board for Northern Ireland (2005) set up a Victim Information Scheme in 2005 to work directly with victims by providing information when an offender has come under probation supervision.

Victim work requires a high level of skill to respond to victims' needs whilst simultaneously respecting offenders' rights. Some reservations about direct victim work have been expressed and it has been suggested that it is demanding and perhaps even inappropriate for probation officers to deal with both offenders and victims simultaneously (Reeves and Mulley 2000; Spalek 2003). Probation officers have voiced concern that they may not have the competencies required for victim work, however others stress that probation officers have the skills to deal with

many potentially stressful situations including direct work with victims (Nettleton *et al.* 1997; Tudor 2002).

### **Victim impact reports**

At the pre-sanction stage of an offender's case before the court, probation officers may be requested to prepare an independent report on the victim, detailing the impact of the crime upon them and any long-lasting implications. These reports are also referred to as victim impact reports or victim statements. Through such reports, the 'victims are afforded proper recognition and respect, while some of their hurt and pain is communicated for the court's consideration' (Probation and Welfare Service 2001, p. 9). The Community Law Reform Committee of Australia defines victim impact statements as 'a statement setting out the full effects – physical, psychological, financial and social – suffered by a victim as a result of a crime' (quoted in Walklate 2002, p. 147). Many consider such statements to be a positive thing; at the very least they are an improvement in victim participation in the criminal justice system and could even extend to recognition of the rights of victims.

Victim impact reports can only be compiled with the consent of the victim. Within the Probation Service, the practice is that the victim is dealt with by a separate officer to the one assessing the offender and preparing the PSR.

### **Restorative justice projects**

There would appear to be a recent revival in interest in restorative justice as the way forward, reflected in the *No More Excuses* white paper in the UK (Home Office 1997) and the Children Act 2001 in Ireland. An increasing number of probation services are adopting aspects of restorative justice in order to achieve greater citizen involvement in the rehabilitative, sanctioning and surveillance aspects of their work than is possible when the focus is solely on offender supervision.

Essentially, restorative justice is about bringing the offender, victim and others affected by the crime together, to discuss the implications of the offence and collectively to reach a resolution (Hudson 2003; Marshall 1999). In doing so, the intention is to bring offenders to an

understanding and recognition of the harm they have caused their victims and the wider community.

A guiding value of the Probation Service generally in fulfilling its mission is that 'intervention to restrain further offending is more effective when undertaken by way of reparation, restoration, renewal and resettlement than by simple retribution' (Probation and Welfare Service 2001, p. 5). The aim of restorative justice is important: 'it must always be undertaken with the other party(ies) in mind. Hence, victim contact work, victim perspective work with offenders in the course of report writing, in supervision, in group work, in custody and on release into the community, may be carried out within the parameters of restorative principles' (Tudor 2002, p. 132).

Some specific models for restorative justice exist such as victim/offender mediation, restorative conferencing and family conferencing (Tudor 2002). Currently, there are two restorative justice projects in Ireland: the Nenagh Community Reparation Project and the Restorative Justice Services in Tallaght. The Nenagh Community Reparation Project was established in 1999 in conjunction with the Probation Service. Other stakeholders in the project include Nenagh District Court, An Garda Síochána and a panel of representatives from the local community. The project is based on the community reparation model of restorative justice. Following a guilty plea in court, a judge may refer an offender to the project to participate in a process of reparation. The reparation process consists of the offender and victim coming together, along with the various community stakeholders, to discuss the offence and reach a unanimous resolution. This agreement is then presented to the judge, who has the ultimate authority in deciding if a proposal is satisfactory (Nenagh Community Reparation Project 2002). Restorative Justice Services (formerly the Victim/Offender Mediation Service) was established in 1999 in Tallaght, Co. Dublin and is funded by the Department of Justice, Equality and Law Reform through the Probation Service.

The relevance of restorative justice is its capacity to place the victims and the community centre stage as well as the offenders (Zellerer and Cannon 2002; HMIP 2000; Criminal Justice Reform 2005). Victims thus become enabled to express their feelings and perceptions of the crime and harm that they have experienced, offenders learn to understand the effects of their crime and the impact of it upon the victim (Tudor 2002; Zellerer and Cannon 2002; HMIP 2000). One description claims that

‘Restorative Justice processes offer unique benefits: giving victims a voice, answering their questions and empowering everyone involved’ (Criminal Justice Reform 2005, p. 4).

### **Family conferencing**

The Children Act 2001 aims to divert children and young people from court, conviction and custody as much as possible. The Probation Service is responsible for the delivery of a range of community sanctions and interventions under the Act, including family conferencing. Victims are provided with the opportunity to meet the offender, give their account of how the offence has affected them, and establish the facts of the offence; while offenders are provided with the opportunity to apologise to their victim and offer some type of reparation. Whereas victims may traditionally not have a voice in the criminal justice system, here they can be involved and have their opinion heard. However, whilst the majority of victims do appear to benefit from the experience, a small minority are disappointed and perhaps even further traumatised by the experience (Masters 2002; Morris and Maxwell 2000).

### **Effective practice**

It is accepted that social workers and probation officers influence their clients in many ways. Humans learn from watching other people (observational learning) and from what we feel and think (cognitive learning) as our thoughts and feelings govern our behaviour (Coulshed and Orme 1998, p. 158). Payne (1997, p. 120) describes the aim of behavioural social work as ‘increasing desired behaviour and reducing undesired behaviours, so that people respond to social events appropriately’. This is effectively what probation supervision aims to do. Probation officers aim to influence offenders positively so that pro-social behaviour is promoted and undesirable offending behaviour is reduced or stopped. They seek to deconstruct criminal thinking and construct alternative thinking and ultimately pro-social and anti-criminal behaviour. The development of victim empathy and awareness of victim issues is often employed as a key strategy in doing so.

Connolly (2000) states that tackling criminogenic need must include developing an increase in victim empathy in offenders. Support of

this position is found in Zehr and Mika's work (2003), which advocates that offenders must be facilitated to understand the consequences of their offending, for both the victim and community at large, and to take responsibility for their actions. Nellis and Gelsthorpe (2003) expand on this by postulating that constructive work cannot be employed with offenders in the absence of incorporating the issue of the needs, rights and interests of the victims with those who have put them in that position. Probation work aims to rehabilitate offenders and 'in order to rehabilitate victims too, repair of the damage they have caused in offending forms a core part of this work' (Tudor 2002, p. 132).

Increasing victim empathy with offenders can be carried out in the context of one-to-one supervision of offenders and/or groupwork programmes. The aim is to elicit the offender's own experience of victimhood and the 'feelings associated with being a victim, such as shock, anger and guilt, are elicited and links can gradually be made with offences perpetrated' (Dominey 2002, p. 171). It is also worth considering the high probability that many offenders have themselves been a victim of crime (Dominey 2002; Tudor 2002; Williams 2002b) and that this contributes to the cognitive and behavioural processes which support offending.

## **Research base**

Dominey (2002, p. 169) suggests that there is a distinct lack of research into the benefits of offender remorse or victim awareness and asserts that 'The link between expressing remorse today and behaving better tomorrow is not established'. Spalek (2003) also believes that the link between victim empathy in an offender and reoffending has not been adequately researched, making it impossible to know whether an offender who expresses remorse is less likely to reoffend than an offender who does not express remorse. Spalek further contends that whilst giving 'consideration of the victim in work with offenders seems a positive approach to tackling crime', there are also problems such as the 'victim' and the 'offender' not being obviously identifiable or perhaps even being interchangeable (p. 221).

When we know the plight of victims, expand our capacity to assist them and develop approaches and specific interventions to create

awareness in offenders of their victims' lived experience, we in the Probation Service in Ireland will have taken significant steps on the journey towards recognising and empowering victims.

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