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Citation: Davies, Pam and Cook, Ian (2021) Victims, witnesses and the criminal justice system. In: An Introduction to Criminology. SAGE, London. ISBN 9781526486851, 9781526486868, 9781529765298, 9781529766127, 9781529766950

Published by: SAGE

URL: <https://uk.sagepub.com/en-gb/eur/an-introduction-t...> <<https://uk.sagepub.com/en-gb/eur/an-introduction-to-criminology/book267388>>

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Davies, P. and Cook, I. R. (2020) Victims, witnesses and the criminal justice system. In: Davies, P. and Rowe, M. (eds.) *An Introduction to Criminology*. London: Sage.

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Learning objectives

- To explore the challenges and implications of defining victims and witnesses.
- To describe and explain the changing role of victims and witnesses within the criminal justice system in England and Wales.
- To identify the support and assistance for victims and witnesses provided by the public and voluntary sectors.
- To map the journey of victims and witnesses through the criminal justice system.

Framing questions

- To what extent are victims and witnesses given a central role in the criminal justice system?
- Do the special provisions for victims and witnesses ensure that they are treated fairly?
- What are the problems with matching victims' services with victims' needs?

Introduction

Victims of crime and witnesses of crime have not always been a priority for those in the criminal justice system or academia. In different parts of the world, the criminal justice system has stood accused of treating both groups as a means to an end – a

successful conviction – as well as compounding, causing or ignoring harms. Over many years, support has been limited for victims and witnesses with their needs rarely considered. Academics interested in crime, broadly defined, have not usually concentrated on the experiences of victims or witnesses. Indeed, victims are often peripheral figures within criminological accounts while witnesses are rarely mentioned.

Things have arguably improved, however. More and more academics – many calling themselves victimologists – have centred their work on victims and victimisation. Many criminology degrees now have victimology modules. The study of witnesses remains far patchier admittedly. Also, different criminal justice systems have introduced measures to support victims and witnesses, often alongside rhetoric that boosts of both groups being placed at the 'centre' or 'heart' of the criminal justice system. This shift within the criminal justice system is in part the result of the work of activist groups campaigning for the rights and needs of victims and (to a lesser extent, once more) witnesses.

This chapter examines the relationship between victims, witnesses and the criminal justice system. We explore two important themes. Under the first, we explore the evolving role of victims and witnesses in the criminal justice system in England and Wales. Under the second, we review public and voluntary sector support and assistance for victims and witnesses. To do this, we draw on academic research on victims and witnesses and use a variety of examples. The all-too-prevalent and stubborn cases of inter-personal violence problems of rape and domestic abuse are concentrated on. The next section opens the discussion by considering how victims and witnesses have been defined and what the implications

of these definitions are. Next we examine the evolving role of victims and witnesses in the criminal justice system in England and Wales and further afield. Following this, we critically consider the journeys of victims and witnesses through the criminal justice system, looking at three issues: **attrition** (i.e. cases dropping out), **secondary victimisation** and, through a case study of Victim Support, the provision of services by voluntary organisations.

Mapping the Terrain: Conceptualising Victims and Witnesses

Defining and identifying victims of crime is not straightforward. Indeed, definitions of the term **victim** are controversial and range from a narrowly defined victim of *crime* to more expansive conceptualisations that are inclusive of those who have suffered harm and injustice. Walklate, for instance, provides an expansive definition, identifying a victim as “an individual who has suffered some kind of misfortune” (2007: 27). Definitional issues are also considered in chapters 3 and 27, suffice to say here that the label victim is often contested and struggled over.

One such struggle revolves around who *qualifies* as a victim. Many academic victimologists agree with the Norwegian criminologist Nils Christie (1986) who reasoned that the treatment of victims by the criminal justice system is often linked to whether they are deemed to qualify as an ‘ideal victim’ or not. **‘Ideal victims’** are those who are most readily given the complete and legitimate status of being a victim. Such victims attract this status because they are perceived to be vulnerable, defenceless and clearly innocent. They are, therefore, worthy of a sympathetic and

compassionate response including support and compensation. Many victimologists, nevertheless, are weary of the popular belief in the ideal victim and the treatment of those who do not qualify.

Societal expectations about who qualifies as a victim, as well as how a victim should behave, can have very real consequences not only for victims but also for those called upon as witnesses. Close to Christie's notion of the ideal victim is Cole's (2007) concept of the 'true victim'. Cole argues that a true victim is a 'noble' victim who suffers in silence; they refrain from gathering sympathy or publically displaying weakness. They command their own fate and do not exploit their injuries and their victimisation must be immediate, concrete and without any doubt. Such expectations are especially problematic for those suffering harm where there are no third party witnesses – for example, those who experience domestic abuse. Thus, taking the definitional and labelling controversy further, many feminists prefer to use the term *survivor* rather than victim (see Box 1). From a feminist perspective, 'survivor' denotes a more active and positive image of women who overcome harmful experiences. This status challenges perceptions of the female victim as passive, helpless, powerless, blameworthy or victim-prone and complements discussion about the negotiating and coping strategies women employ to live their daily lives.

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Box 1: Victim → Survivor

Not everyone who suffers victimisation likes to think of themselves as, or to be called, a victim. Feminists, including those involved with Rape Crisis centres, often

prefer to speak of survivors for a number of reasons. First, using the term 'survivor' makes clear the seriousness of rape as, often, a life-threatening attack. Second, public perceptions are shaped by terminology and the word 'victim' has connotations of passivity, even helplessness. In the context of a movement which aims to empower people who have been victimised, this is clearly inappropriate: "using the word 'victim' to describe women takes away our power and contributes to the idea that it is right and natural for men to 'prey' on us" (London Rape Crisis Centre, 1984: iv).

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While criminologists have spent time thinking about who or what a victim is, few criminologists have considered who or what a **witness** is. The *Oxford Dictionary of English* provides some assistance, however. It defines witness as a *noun* – "a person who sees an event, typically a crime or an accident, take place" – but also as a *verb* – to "see (an event, typically a crime or accident) happen". The emphasis is on sight, hence the synonym eyewitness. As with a victim, a witness is usually understood *relationally* – that is, in relation to the other people and things involved in the event(s).

The state has also sought to define a witness. The Crown Prosecution Service, for instance, defines a **witness** as a person who stands up in court to state what they know after taking an oath to tell the truth (Crown Prosecution Service, 2017). Meanwhile, section 52 of the Domestic Violence, Crime and Victims Act 2004 also which gives a comprehensive outline of who should qualify as a witness.

Central to this definition is the idea that witnesses are those who can assist in criminal proceedings.

Since the late 1990s, there has been an emphasis in England and Wales on identifying, and providing services for, a particular group of witnesses: Vulnerable and Intimidated Witnesses (VIMs). Following the Youth Justice and Criminal Evidence Act 1999, these two groups are eligible for 'special measures'. These allowances can include screens in the courtroom to prevent the defendant and the witness seeing each other, and allowing the defendant to give evidence via a live video link from somewhere outside the court room (see also chapters 34 and 35). In guidance from the Ministry of Justice (2011: 5), intimidated witnesses are defined as "those whose quality of evidence is likely to be diminished by reason of fear or distress". The guidance states that in determining whether a witness should be included in this category or not, the court should consider several issues:

- The nature and alleged circumstances of the offence;
- The age of the witness;
- Where relevant:
 - The social and cultural background of the witness;
 - The domestic and employment circumstances of the witness;
 - Any religious beliefs or political opinions of the witness.
- Any behaviour towards the witness by:

- The accused;
- Members of the accused person's family or associates;
- Any other person who is likely to be either an accused person or a witness in the proceedings.

The guidelines, furthermore, list the following as vulnerable witnesses:

- Those under 18;
- Those who suffer from a mental disorder (as defined by the Mental Health Act 1983);
- Those who have a significant impairment of intelligence and social function;
- Those who have a physical disability or disorder.

Victims of sexual offences and human trafficking as well as witnesses of knife and gun offences are also entitled to special measures unless they wish to opt out. As we can see with the special measures for VIMs, qualification and classification as a particular type of witness and/or victim plays an important role in shaping service provision in the criminal justice system and, potentially, in making experiences at court more bearable.

The criminal justice system relies on victims and witnesses in several ways, including reporting crimes and furnishing the police – often gatekeepers to the criminal justice system – with information to build evidence for a court case.

However, not all victims and witnesses report incidents to the police for a variety of reasons as we know from successive sweeps of the British Crime Survey and more recently the Crime Survey for England and Wales. Thus, those 'on record' as victims and witnesses within the criminal justice system are only a small and distorted proportion of those suffering misfortune.

Having considered definitional issues surrounding 'victims' and 'witnesses' we will now consider the role of these key players in the criminal justice system.

The Role of Victims and Witnesses in the Criminal Justice System

A commonplace critique of the criminal justice system in England and Wales is that it has marginalised victims and witnesses, taken them for granted and given little attention to any rights or needs that they may have. This is not a new criticism. Indeed, Kearon and Godfrey (2007: 30) argue that victims of crime in the UK were disempowered in the 1840s, becoming "less able to initiate prosecutions, or control the court process" with their role in court reduced to a "witnesses to a case brought in the *public interest*". The conflict became one between the prosecution and the defendant, where the offence was committed against the Crown (see also chapter 34). In Christie's (1977) words, this involves 'stealing' the conflict from the victim. Rock (2007: 38) elaborates further on these ideas when he portrays the victim of crime as:

“the ‘forgotten person’ who appeared only as a witness, an applicant for compensation or a complainant or *alleged* victim until the conclusion of a trial. The prime conflict at law did not touch significantly on the victim: it was deemed to be between two parties only, the prosecution and the defendant, and the individual victim merely provided evidence of an offence that, for all practical purposes, was committed not so much against him or her but against the collectivity in the form of the Crown, the State or the community. Private wrongs were a matter for tort and civil procedure[.]”

Given the functional importance of crime victims to the operation of the criminal justice system in England and Wales, and their crucial role in providing evidence, it is perhaps surprising that it was not until the post-war period that the first significant mechanisms were introduced to support direct victims. This began with the introduction of a criminal injuries compensation scheme in 1964 whereby selected victims could – and still can – claim financial compensation from the state. Its website announces that “we can compensate blameless victims of violent crime, or people whose loved ones have died as a result of violent crime”. Requiring ‘blameless’ applicants to have reported the crime to the police, the scheme adds extra characteristics – of responsibility and dutifulness – to Christie’s notion of the ideal victim.

Since 1964 there have been numerous developments and alterations in the provision of support and assistance for victims of crime. Some of these are listed in the next section (in Table 4.1.1). The state’s increased focus on the needs of the

victims corresponds with the emergence of a victims' movement in the UK and other parts of the world during the latter part of the twentieth century. This movement was in reaction to the marginalisation of victims in the criminal justice system and, in part, recognition of the under-reporting of victimisation. The victims' movement also corresponded with, and blurred with, the 'second wave' feminist movement. The latter raised awareness of the victimisation of women in the home and of women's experiences of sexual violence and campaigned for such violence to be recognised by the criminal justice system and society more widely. England and Wales have not been alone as these movements also gathered pace elsewhere. As Sebba (2001: 36) notes, lobbying by feminists and organisations devoted to victim assistance was:

"instrumental in the intensive barrage of victim-related legislation and policy reform which were instigated in the 1980s and 1990s [...] and included the granting of procedural rights to victims in the course of the trial process (and subsequent proceedings), victim-oriented sentencing dispositions such as restitution, the introduction of state compensation boards and victim assistance programmes."

Supportive provisions and victim assistance schemes are now provided in most jurisdictions across the world, all of which have differing relationships to their respective criminal justice systems. Some victim services are at arm's length from, or fully independent of, the government, some are provided under statute, and

some are run by voluntary groups and charities. Focusing predominately on the UK, both Kearon and Godfrey (2007) and Rock (2007) demonstrate that the victim has in effect been reinvented as a witness or, worse still, a tool of the criminal justice system. How victims access and experience these supportive provisions is explored in the next section.

Focusing predominately on the UK, both Kearon and Godfrey (2007) and Rock (2007) demonstrate that the victim has in effect been reinvented as a witness or, worse still, a tool of the criminal justice system. That being said, Fyfe (2005: 514) reminds us that victims rather than witnesses became the primary focus of the early reforms:

“[D]espite the incontrovertible importance of witnesses, their role in the criminal justice system has, until recently, largely been taken for granted. Witnesses were rarely given any preparation or assistance in relation to their appearance at court, despite the fact that giving evidence in court and being cross-examined can be intimidating and distressing experiences. Moreover, they frequently had to endure long waiting periods in court buildings where they risked encounters with the accused and their supporters. Nevertheless, the concerns of witnesses were largely invisible to policy-makers. Unlike victims, who were gradually becoming recognised as needing and deserving government assistance, witnesses had not achieved the same status.”

In bringing this section on the role of victims and witnesses in the criminal justice system to a close we introduce the concept of '**procedural justice**'. We do so in order to consider whose interests are being served and supported as the role of victims and witnesses changes and as support and assistance has evolved. Simply put, procedural justice equates to fair treatment. Procedural justice emphasises the fairness of the process by which decisions are made (Elliott *et al.*, 2013). In the following sections, we review the extent to which support and provisions are introduced and adapted to meet the wants and needs of victims and witnesses. We also consider how these same developments can be seen rather differently, not as primarily in the interests of victims and witnesses but as efficiency measures designed to improve the smooth running of the criminal justice system and please the voting public. Our review of developments, therefore, highlights a shift from activist to market driven services and support (Hall, 2020).

Evolving Support and Assistance for Victims and Witnesses of Crime

As noted above, the criminal justice system in England and Wales – echoing most of its counterparts in other parts of the world – has traditionally had scant regard for the needs of victims and witnesses of crime. However, many changes have been introduced aimed at 're-balancing' the system. Criminal justice policies in different countries have been mobilised to bring the victim and witness (more) centre stage with new policies introduced and old ones repackaged accompanied by claims that they meet the needs and rights of victims and witnesses. However, the 'rights' of

the victim in penal procedure in common law countries such as England and Wales, Australia, Canada, New Zealand and most of the USA are largely limited to that of witness for the prosecution, though changes have recently seen the granting of participatory rights for crime victims as part of a concerted endeavour to bring the victim to the forefront. Some of the changes made in recent years, such as the measures to protect witnesses in court, seem to have improved the victims' position, yet victimological commentators remain sceptical about the extent to which policies advocated in the name of the victim are a good thing (Davies, 2015).

Entitling victims and witnesses

As Table 4.1.1 shows, a series of changes in the criminal justice system have taken place in England and Wales repositioning the victim and the witness in recent decades. A key development, and a catalyst for further changes, was the publication of the *Victims Charter: A Statement of the Rights of Victims of Crime* (Home Office, 1990). It claimed to set out for the first time the entitlements and rights of victims of crime. A revised version was published by the Home Office six years later in 1996. Its new sub-title – *A Statement of Service Standards for Victims of Crime* – gave a more realistic summary of the actual contents. The vocabulary used had shifted from 'rights' to 'service standards'. Nevertheless, the introduction of the Victims Charter was a key landmark development which acknowledged the importance of the victim in securing justice.

Table 4.1.1: Important developments in support and assistance for victims and witnesses of crime in England and Wales

Date	Development
1964	Criminal Injuries Compensation Board set up to administer Criminal Injuries Compensation Scheme (CICS) for victims of violent crime
1972	First UK Women's Aid refuge set up in Chiswick, London
1974	First Victim Support project set up in Bristol
1976	First UK Rape Crisis Centre opened in London
1986	Childline established
1987	First Home Office funding for Victim Support
1989	Victim Support launched the first victim/witness in court project
1990	Home Office Victim's Charter published
1991	Home Office fund Victim Support's Crown Court Witness Service
1996	Victim's Charter (revised 2 nd edition) published
1999	Home Office funding to establish the Witness Service in Magistrates' Courts
2001	Victim Personal Statements (VPS) introduced
2003	Victim Support provides a Witness Service in all criminal courts
2005	<i>The Code of Practice for Victims of Crime</i> published
2007	The Witness Charter published
2015	Revised <i>Code of Practice for Victims of Crime</i> published and the rolling out by the European Union of new rules setting out binding rights for victims that Member States are obliged to adhere to

The Victims Charter was revised several times throughout the 2000s before becoming the *Code of Practice for Victims of Crime*. The latest version at the time of writing – from 2015 – takes the form of a 104-page document comprising 20 entitlements for victims of crime. To comply with the Victims’ Rights Directive of the European Union’s (that Member States had to adhere to from 2015), the 2015 Code broadened its focus away from only victims of “recordable” offences (Hall, 2017). Entitlements in 2015 Code include: being informed about certain developments in the police investigation (e.g. when suspect is arrested and charged and any bail conditions imposed); the option of a court familiarisation visit; and the ability to enter court through a different entrance from the suspect and sit in a separate waiting area where possible. As Box 2 highlights, victims also have certain entitlements to write and potentially read out a Victim Personal Statement in court. The language of the *Code of Practice for Victims of Crime* is revealing, however, with the words entitled and entitlements appear continually throughout the document, with far less references to duties and duty. If we take the Victims Code as an approximate indicator of the current state of victim-oriented policy, rights-based vocabularies remain noticeably absent.

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Box 2: Key development: Victim Personal Statements

Introduced by the New Labour government in 2001, the Victim Personal Statement appeared in the *Code of Practice for Victims of Crime* for the first time in 2013 (Hall, 2017). Their role is summarised in the 2015 version:

“A Victim Personal Statement (VPS) gives you an opportunity to explain in your own words how a crime has affected you, whether physically, emotionally, financially or in any other way. This is different from a witness statement about what happened at the time, such as what you saw or heard. The VPS gives you a **voice** in the criminal justice process. However you may not express your opinion on the sentence or punishment the suspect should receive as this is for the court to decide” (Ministry of Justice, 2015: 21, bold in original).

Often termed Victim Impact Statements in other jurisdictions, they originated in California in 1976 and have become one of many criminal justice policies that have circulated internationally (McMenzie *et al.*, 2019). They are available to victims in several jurisdictions, especially those with common law such as Aotearoa New Zealand, Australia, Canada, Northern Ireland and Scotland. In England and Wales, victims are eligible to make a statement at any time prior to sentencing and, should a suspect be found guilty, they can request that it is read aloud or played in court before a decision on the sentencing is reached. The victim is able to decide if they want to read it aloud themselves or have someone else read it on their behalf, while the judge or magistrate is allowed to take this into account when determining the sentence.

There have been concerns about the low numbers of people who are actually offered (and have written) a VPS in England and Wales (Hall, 2017). Equally, questions have been raised in different parts of the world about the effect of the VPS on the objectivity of the court, unnecessarily raising the expectations of

victims, and statements leading to harsher sentences (O’Connell, 2016).

Nevertheless, the VPS has been praised for giving the victim ‘a voice’ in the courtroom (beyond their role as a witness), reducing their feelings of helplessness, and improving their confidence in the criminal justice system (O’Connell, 2016).

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Service provision for witnesses in England and Wales has lagged behind those of victims. This is best illustrated by the development of the first Witness Charter 17 years after the original Victims Charter. The original Witness Charter (Office for Criminal Justice Reform, 2007) outlines 34 ‘standards of care’, informing both defence and prosecution witnesses of what they should expect from the different criminal justice agencies and from lawyers involved in the case. These were reduced and revised into 21 standards of care in the 2013 version (Ministry of Justice, 2013b). Notably, none of these standards of care mention witness protection. As Box 3 demonstrates witness protection is an important – and necessarily secretive – element of the state’s services for selected witnesses of crime.

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Box 3: Key provision: Witness protection

There is little public knowledge about witness protection in the UK. This is no surprise given the secrecy surrounding it. What we can be clear on is that the Metropolitan Police created the UK’s first Witness Protection Unit in 1978 and similar schemes elsewhere were subsequently established. Since 2013 these have

been orchestrated by the UK Protected Persons Service (UKPPS) which sits within the National Crime Agency. According to their website, the UKPPS has a remit is to provide “protection to people judged to be at risk of serious harm where the protection arrangements required by the individual are not available to the local police force or referring agency”.

Witness protection is not mentioned in the 2013 Witness Charter. The UKPPS website states that the protection provided is bespoke and, from the outside, protection seems to centre around the resettlement of those at risk of serious harm. As one anonymised official working in witness protection interviewed on a 2015 edition of *Newsnight* (2015) notes: “our best tool [...] is miles on a map. So if you lived in Dover, we could look at somewhere miles and miles away”.

The UKPPS is often promoted as being a tool in the ‘fight’ against organised crime. Here, it is seen as a means of providing more willing and less intimidated witnesses for the prosecution which could increase conviction rates. Interviewed in *The Independent* (2010, n.p.), the head of the Greater Manchester Witness Protection Unit – named only as Kim – said:

“For some people it is positive experience. Some people have had their lives blighted by crime or have spent their lives involved in criminality. Those people can see it as an opportunity for a fresh start with people who can advise them in how to turn their lives around.”

Yet Kim also acknowledges that it “can be very traumatic for people”. Indeed, this chimes with Fyfe and McKay’s (2000: 88) assessment that witness protection is “a

profoundly disorienting and destabilizing personal experience". Through their research as well as reports in the media, those on witness protection have aired concerns about their safety, the difficulties of breaking social ties and the challenges of maintaining a new identity. One participant, 'Rachel', interviewed in *The Guardian* reasoned: "I feel like a fraud every day [...] My name is not my name. I cannot tell anybody. I have nothing to fall back on. I live in shock" (Booth, 2018, n.p.). Like Rachel, there have been other service users who have been critical of the management of witness protection with criticism of the information about the scheme given to them before participating and the services subsequently provided for them (see also *File on 4*, 2012).

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Justice for victims and witnesses?

Restorative justice is now available to many victims of crime in England and Wales. Although it is notoriously difficult to define, in the context of support for victims of crime, restorative justice can be viewed as a process of dialogue between victim and offender in which the victim describes their feelings about the crime and the harm caused as a result and, from this, they both develop a plan to repair the harm done. Unlike many other criminal justice mechanisms, it 'gives victims a voice'. As the 2015 Victims Code outlines, all victims are entitled to receive information on restorative justice and it is potentially available to all victims of crime at all stages of the criminal justice process, although there are local differences in service provision.

While it is technically available for all victims, there is controversy around its use for certain offences including domestic violence, sexual assault and hate crime.

Despite progressive moves such as the introduction of restorative justice, it seems that victims and witnesses of crime in England and Wales continue to occupy a position defined by their perceived need rather than by any notion of rights (Goodey, 2005). Significantly, the various incarnations of the Witness Charter and the Victims Code cement procedural justice. They give neither witnesses nor victims “enforceable rights, but merely permits them to complain if the service obligations are not met” (Wolhuter *et al.*, 2009: 5). Thus, in bringing this section on the evolving support and assistance for victims and witnesses of crime to a close we return to the concept of procedural justice to summarise how the provisions that have emerged over the last half a century or so might be interpreted from a victim/witness perspective. The rhetoric and language of ‘entitlements’, the concerns with giving victims a voice and treating victims and witnesses with respect and dignity seem to amount to what Elliott and colleagues (2013: 590) term the ‘relational criteria’ of procedural justice. That is:

“politeness, concern for rights, treatment with dignity and respect, expression and consideration of views, neutrality of decision-making process, addressing needs and concerns, doing the right thing by the victim, explanation of reasons for police actions, and police trustworthiness.”

Such justice is not rights-based justice as such but one conceived in terms of a more limited *procedural* fairness.

Experiencing the Criminal Justice System

With the developments above in mind, how do victims and witnesses experience the criminal justice system in England and Wales? There is no homogenous experience; every victim and witness is different as are their interactions and perceptions of the criminal justice system. That said, both the Victims Code and Witness Charter attempt to capture a typical 'journey' through the criminal justice system so as to provide clarity to victims and witnesses. The Victims Code (Ministry of Justice, 2015) suggests there are five stages that victims will encounter if their case goes to court: reporting the crime; police investigation; charge and pre-trial hearings; trial; and after the trial. In a similar fashion, the Witness Charter (Ministry of Justice, 2013a) is structured according to a journey a witness might take through the criminal justice system, focusing on the police investigation, pre-trial arrangements, arriving at courtroom, speaking in court, and post-trial. A close reading of both documents, however, show the journeys of victims and witnesses are not homogeneous, there are exit points along the way, and there is the availability of special entitlements for certain groups such as vulnerable and intimidated witnesses.

Other factors, some of which are related to the defining of victims and witnesses (as noted earlier) and their respective roles in the criminal justice system,

contribute to these differential experiences. We now explore two issues that affect the journeys of many victims and witnesses through the criminal justice system. Both are under-acknowledged within the Witness Charter and Victims Code. They are the processes of attrition and secondary victimisation.

Attrition

Attrition in criminal justice refers to the 'drop out' of cases. In rape cases, attrition is stubbornly problematic. Hester (2013) notes that rape cases can drop out at any one of three stages: at police involvement and investigation, during CPS involvement, or at court. Her research into rape cases and the criminal justice system in the North East of England found that three quarters of the cases dropped out at the police stage with many of these involving very vulnerable victims such as those with extensive mental health problems. Measures to protect rape victims in court (who fall into the 'vulnerable victim' category) seem to be having little impact on the attrition rate for rape victims. Perceptions of the 'credible' ideal victim on the one hand and 'non-credible' culpable victim who 'precipitated' their rape on the other appear firmly entrenched reinforced by so-called 'rape myths'. Rape myths are commonly held beliefs about rape that are ill-informed and misconceived. Such myths suggest women: lie about rape and make false allegations; want, enjoy and provoke rape; can prevent rape; should put up a fight and show signs of struggle; sustain genital injuries; and are less traumatised by rape by a non-stranger. More broadly, concerns remain about the impact of special measures in relation to all

crime types on attrition rates and 'victim blaming' attitudes continue to thrive in the criminal justice system in England Wales.

Secondary victimisation

Secondary victimisation refers to the further harm caused to victims of crime as a direct result of their participation in the criminal justice system. It is often emotional or psychological, and is not necessarily a deliberate act. As noted by Wolhuter *et al.* (2009: 47), it can take several forms:

"Insensitive questioning by the police, the failure to communicate information about what is happening in the victim's case, delays, unexplained decisions by the prosecution to drop a case [...] and aggressive cross-examination in the court process have been recognised as causing the victim further suffering which amounts to secondary victimisation."

On the one hand, it is clear that the Witness Charter and the Victims Code try to encourage practices by criminal justice practitioners and agencies that limit secondary victimisation for victim-witnesses, even if they do not use the phrase secondary victimisation. On the other hand, scholars have argued that there are systematic faults with the criminal justice system that create the conditions for secondary victimisation to take place. Wolhuter *et al.* (2009), for example, point to

two systemic problems. The first is the 'institutional culture' of criminal justice agencies that combine a "crime-control focus on 'catching criminals' or obtaining convictions" with some prejudices and stereotypes towards marginalised groups in society, meaning that the needs of victims and witnesses are side-lined, especially those from certain parts of society (*ibid*: 48). The second is the common law adversarial system that repositions the victim as a witness and views the crime as a crime against the state rather than against the victim. This system uses the principle of orality whereby all evidence must be produced in court and it must be orally introduced (Goodey, 2005). Under this system, the courtroom can be particularly difficult for victims and witnesses:

"During the trial itself the English adversarial process involves a contest between the prosecution and the defence in which cross-examination is the primary weapon. Defence counsel resort to tactics under cross-examination designed to undermine the prosecution or attack the credibility of the witness. This experience of cross-examination has been regarded as one of the more traumatic forms of secondary victimisation, particularly in rape trials[.]" Wolhuter *et al.* (2009: 48)

Taking the example of rape, victims and witnesses are often known to one another and there are usually no bystanders or independent witnesses, their status as victim/witness/perpetrator becomes indistinct and blurred to magistrates, jury and judge in a court of law rendering victimhood difficult to prove. Often the victim

is the sole witness. Scholars have highlighted how defence lawyers in the adversarial system use aggressive questioning in order to expose 'untruths' in a victim's testimony, and often call into question the victim's lack of consent to sex by reference to past sexual behaviours (Lees, 1997; see also Rock, 1991). Though the witness is entitled to be treated with dignity and respect under the Victims Code and the Witness Charter, the criminal justice system in England and Wales also acknowledges the rights of the defendant to a fair trial. This is sometimes represented as a balancing act between the rights of the victim and those of the accused (Goodey, 2005). In these scenarios, victims may fail to meet the ideal victim criteria and risk being discredited as non-credible witnesses and undeserving victims. The common law adversarial approach to criminal justice has tended to adopt the 'ideal victim' and a similar 'ideal witness' approach to testimony in court.

Victims, Witnesses and the Provision of Services by the Voluntary Sector

Recent decades have witnessed the increasing involvement of a range of voluntary organisations in the provision of services and support for victims and witnesses of crime in England and Wales. This shift echoes the development of services for victims and (less so) witnesses by the voluntary sector in other countries. Voluntary organisations such as Victim Support, Childline and Rape Crisis are important providers of support for victims and witnesses in England and Wales, operating not-for-profit, staffed predominately with volunteers, and given varying degrees of support and funding from state bodies.

In this section, we explore the work of Victim Support (VS) in England and Wales, how it has changed over the years and how it became politicised. VS was initially set up in Bristol in 1974 and by the early 1980s it had become an extensive network of local schemes across England and Wales with a central headquarters in London (Simmonds, 2013). Reacting against a void in dedicated victim services, VS focused their energies on using volunteers to visit victims of crime. “Their role”, as Simmonds (2013: 203) notes, “was to offer emotional support and practical assistance within a few days of the crime occurring – in other words they provided an outreach service offering crisis intervention.”

Though a charity, VS was long funded through government grants. In the financial year 2013/14, for instance, its income was £50.2 million of which £39.4m was from the Ministry of Justice (Victim Support, 2014). 1987 was a landmark year here as this was when central government started to provide significant funds for VS (Hall, 2017). VS was appealing to the Conservative administration at the time and their successors as, among other things, they shared a belief in creating ‘active citizens’ who help each other (Wolhuter *et al.*, 2009).

VS has changed considerably since its inception. Three changes are worth noting. The first is its movement away from focusing on victims of burglaries in its early years – due in part to the police’s reluctance to refer more serious crimes to a volunteer-dominated organisation (Simmonds, 2013) – towards the delivery of services for a range of victims and witnesses of all types of crime. With regards to victim services, emphasis has remained on providing emotional support and practical help for victims of crime, irrespective of their age or whether the crime has

been reported or not. Well into the twenty-first century, they continue to provide “the sticking plaster for many victims in the aftermath of crime” (Goodey, 2005: 104).

A second key change was the incorporation of services for witnesses of crime. Between 1989 and 2015 VS delivered the Witness Service, piloted first in selected Crown Courts then extended to all criminal courts in England and Wales by 2003. VS provided emotional support and practical help for prosecution and defence witnesses as well as their family and friends (Wolhuter *et al.*, 2009), with the aim of making the experience of being in court less daunting and confusing. As part of this, they arranged pre-trial courtroom tours, supported witnesses during the trial, and provided witnesses with private waiting areas in court.

The third change is their recent reduced involvement in service provision for victims and witnesses. This change stems largely from a fundamental shift, beginning in the mid-2010s, in the allocation of public money for victim and witness services. As part of this, services were categorised as being national or local. Nationally, the Ministry of Justice commissioned a witness service, a homicide service, support for victims of human trafficking, and support for victims of rape through rape support centres. Locally, the elected Police and Crime Commissioners (PCCs) were given the responsibility to award contracts for other victim services within their constituencies. The message from central government was clear: services for victims should be economically competitive and, in many instances, decided locally (Hall, 2018). The repercussions for VS were significant. Their preferential status began to slip as, while they continue to deliver victims services in

many PCC areas, in others they have been replaced by other (often voluntary) organisations. Furthermore, nationally they are no longer publicly funded to deliver services for witnesses. As of April 2015, Citizens Advice – another voluntary organisation – is now running the Witness Service.

Despite all these changes, voluntary organisations including VS continue to play an important role in delivering services for victims and witnesses. However, as we can see with the example of VS, their services, funding and relationship with government is subject to continued transformation within an increasingly competitive environment. While the local flexibility and accountability might be something to celebrate, questions remain about whether a disintegrated and increasingly neo-liberal service market is the way forward. Hall (2020) also provides food for thought when he notes that “on the whole larger charities still tend to dominate this new ‘marketplace’ of supply for victim services and thus we are far from a return to the more activist-based support base for victims of crime seen before the rise of Victim Support as a national ‘preferred supplier’.”

The above review of service provisions emanating from the voluntary sector rounds off our broader review of victims, witnesses and the criminal justice system. We will now summarise the key issues and arguments made across this chapter.

Chapter Summary

- Within criminology, there has been increased attention to the experiences of victims and (less so) witnesses of crime.

- The act of defining victims and witnesses influences how they are treated by the criminal justice system.
- We can point towards several positive developments regarding the treatment of victims in the criminal justice process such as the increased availability of restorative justice to many victims of crime in England and Wales.
- Question remains as to whether the state in England and Wales has provided victims and witnesses with meaningful rights.
- Service provision and protections for witnesses in England and Wales has lagged behind those of victims.
- Service provision for victims and witnesses in England and Wales has become increasingly market-driven and less activist-driven in recent years.
- Voluntary organisations such as VS play an important role in delivering services for victims and witnesses.
- In their journey through the criminal justice system, some victims may experience secondary victimisation.
- For some crime types including serious form of interpersonal violence and abuse, there are stubbornly high attrition rates.

Review Questions

- What policies to support victims and witnesses have been introduced in England and Wales since the 1980s? Have policymakers in done enough to meet the needs of victims and witnesses of crime?

- How and why has the development of services and support for witnesses seemingly lagged behind those of victims in England and Wales?

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