

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY AND PRACTICE COMMITTEE

Victims – Policy Brief

THE ISSUES

In recent years the perception of the role of victims has altered from merely being witnesses, to people who have a legitimate expectation to be involved in the criminal justice process. This has evolved from initially being informed about decisions to having a voice at the sentencing phase. If the CPS intends altering the charge to a less serious offence, the victim should be consulted, although the final decision will be that of the CPS lawyer.

Payment of Compensation Orders

The principle of compensation being paid to the victim by the offender is well established. The Criminal Justice Acts of 1988 and 1991 promoted the use of compensation orders and for many years magistrates have been obliged to order compensation wherever possible. Legislation requires magistrates to:

- a) Give priority to awarding compensation over other financial penalties such as costs and fines and the victim surcharge in cases where defendants have insufficient means to pay them all;
- b) Give reasons for not awarding compensation in cases in which it is a live issue.

In spite of this difficulties persist and the greatest difficulty lies in enforcing payment of the order. Many defendants have little income and the majority of those required to pay compensation orders are ordered to pay by instalments – usually in small amounts. Accordingly victims may have a very long wait before full compensation is recovered, even if payments are made on the due date. Default is common and even if payment is completed the piecemeal payment is a prolonged and unwelcome reminder of a traumatic event to the victim of the crime. There is a further problem in that if a reluctant offender is eventually imprisoned for non-payment of the compensation then the balance owing is realistically unenforceable thereafter.

The Association has since 1995 been calling for a statutory scheme by which some or all of the compensation ordered by the court could be paid to the victim immediately and recovered from the offender in appropriate instalment as necessary to suit the offender debtor's financial circumstances. Payment from the Victim Compensation Fund would only apply to individual victims and not corporate, charitable or institutional victims.

Victims Surcharge

The Victims Surcharge was introduced in the Domestic Violence, Crime and Victims Act 2004. During the consultation period preceding the legislation, we vehemently opposed the proposal, and argued strongly for the introduction of a central compensation fund (as above). The Victims Surcharge is completely different – the money collected from the surcharge goes into a general fund ‘to fund a range of services helping victims of crime and witnesses.’ Although the legislation was passed in 2004, the provision for a victims surcharge was not implemented until April 2007 with very little warning, and then only partially. The Act allows for a surcharge to be imposed in the case of every sentence and also for 50% of it to be imposed on PNDs but initially only applies to sentences which include a fine. This is due to technical considerations rather than principle and the result is that many minor offences, such as motoring offences, which attract a fine, have the surcharge added, whilst more serious offences, such as domestic violence, do not. A particular example of inequality is motoring offences committed by drivers of foreign vehicles who cannot be issued with fixed penalty notices but have to come to court and are therefore subject to the victims’ surcharge. This could appear discriminatory and makes the purpose and equity of the surcharge hard to comprehend.

Victims Personal Statement (previously known as Victim Impact Statement)

In addition to giving a witness statement victims can also give a victim's personal statement. This allows them to include anything they have not said in their witness statement and could include how the crime has affected them physically, emotionally or financially, whether they feel vulnerable or intimidated, if they are worried about the defendant being given bail or whether they are considering claiming compensation.

The statement can be made at the same time as the witness statement and can be added to at any point before the court hearing. It will become part of the papers the court sees including the police, the Crown Prosecution Service, the defence, and the magistrates and judges at the courts. This will enable staff to help the victim throughout the case.

A parent or carer can make the victim personal statement on behalf of a child or a vulnerable adult if they wish them to.

If the case goes to trial, the victim can be asked questions about their statement in court. They could be asked about how the crime has affected them, or about any loss, injury or damage they have suffered, and there is an argument that this unfairly discriminates against the less articulate.

It should be noted that the views of the victim upon the appropriate sentence cannot be taken into account and if given will be disregarded.

In principle we support the concept of victims’ personal statements but how they are implemented before they get to court is unclear.

Vulnerable victims

Victims and witnesses are often frightened and unwilling to give evidence in front of the defendant in court in domestic abuse trials and this can lead to high levels of ineffective trials.

At the 2009 Annual General Meeting it was resolved that there should be a presumption in favour of special measures such as live video link for vulnerable witnesses in such cases. JPPC will be taking this resolution forward.

Training Packs

Arising from the Magistrates' Association conference in July 1996 which examined the role and experience of victims and witnesses in the criminal justice system, the role of magistrates in relation to victims and witnesses and what magistrates can do to improve the treatment of victims and witnesses in court, the Association produced a Victims & Witnesses training pack which outlines a choice of workshops for magistrates to explore the issues locally and includes a tape recording of a victim's experience, use of local victim support speakers, identifies problems and solutions and suggests group work based on case studies. The pack was distributed to courts locally.

KEY RECOMMENDATIONS

- There should be a central compensation fund from which victims of crime are paid compensation ordered by the court immediately rather than receiving it in small instalments over a long period of time, or not at all.
- The Victims Surcharge should be used to pump prime the central compensation fund.
- There should be a presumption of special measures such as live video link for vulnerable and intimidated victims and witnesses in domestic abuse trials.
- The use by all Police Forces of the Victim Personal Statement should be mandatory so that they are readily available to magistrates when sentencing.

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