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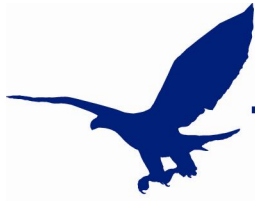
Victimology: Victims of Crime and the Criminal Process

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Section 13 of the Domestic Violence, Victims and Crime Act 2004 (England and Wales) introduced a Victims' Code of Practice. Critically assess how this Code contributes towards the developing concept of rights for victims of crime and the impact upon the professional practices of ONE of the criminal justice agencies.

Introduction

Domestic law is littered, and justifiably so, with a number of important checks and balances that seek to provide a charter of compliance by all criminal justice agencies to those persons suspected of committing crime and indeed those who are subsequently convicted. Examples include the Police and Criminal Evidence Act 1984, The Human Rights Act 1998 and The Rehabilitation of Offenders Act 1974, where previous convictions can become nullified in the passing of time. Furthermore, specific bodies within the criminal justice system are also the subject of certain acceptable standards of protocol such as those, for example, afforded to our courts by the Contempt of Court Act 1981. It is therefore extraordinary that an equally vital component, namely the victim, has, until only recently, had no such statutory support. Historically this key element has had to rely on arguably a hotchpotch of good practice and professionals within the criminal justice system who felt compelled to support a victim of crime. Accountability only came into effect when



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Parliament received Royal assent for the raft of legislation contained within the Domestic Violence, Crime and Victims Act 2004. Specifically Part 3, Section 13 that engages with a Victims Code of Practice which became law in April 2006.

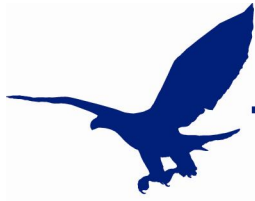
This review will initially outline the key principles of the Act as they explicitly relate to the victims of crime and the constitutional requirement for criminal justice agencies to provide a clear and unambiguous benchmark of service delivery. The focus will then be turned towards the critical question of how this Code contributes towards the developing concept of rights for victims of crime. In doing so the Crown Prosecution Service (CPS) will be used as a vehicle to examine the operational impact of the Act. Finally, the question of whether the Code is fit for purpose will be analysed and, where appropriate, recommendations for change will be articulated.

Victims Code of Practice

Section 32 of the Domestic Violence, Crime and Victims Act 2004 places a statutory obligation on the Secretary of State for the Home Office to “issue a code of practice as to the services to be provided to a victim of criminal conduct by persons appearing to him to have functions relating to —

- (a) victims of criminal conduct, or
- (b) any aspect of the criminal justice system.”

(Section 32 of the Domestic Violence, Crime and Victims Act 2004).



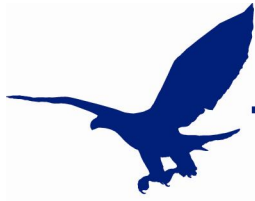
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The following dialogue provides a summary of the key principles of the Code - "The Code of Practice for Victims of Crime sets out the services victims can expect to receive from the criminal justice system including:

- A right to information about their crime within specified time scales, including the right to be notified of any arrests and court cases.
- A dedicated family liaison police officer to be assigned to bereaved relatives.
- Clear information from the Criminal Injuries Compensation Authority (CICA) on eligibility for compensation under the Scheme.
- All victims to be told about Victim Support and either referred on to them or offered their service.
- An enhanced service in the cases of vulnerable or intimidated victims.
- Flexibility with regard to opting in or out of receiving services to ensure victims receive the level of service they want.

Criminal justice bodies, including the Prison Service, the Criminal Injuries Compensation Authority and all police forces in England and Wales will need to ensure that victims of crime and their families receive information,



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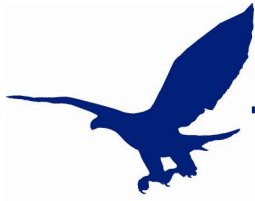
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protection and support. The Government's current programme of work for victims also includes the establishment of Witness Care Units, a consultation on Victims' Advocates, the forthcoming Prosecutor's Pledge and the commitment to the appointment of a Victims Commissioner by April 2006. The Government aims to ensure that every victim, including relatives of people who have died as the result of a crime, has access to information on support services in their local area." (Home Office 2005).

"This Code requires the following organisations to provide services to victims:

- The Criminal Cases Review Commission
- The Criminal Injuries Compensation Authority
- The Criminal Injuries Compensation Appeals Panel
- The Crown Prosecution Service
- Her Majesty's Courts Service
- The joint police/Crown Prosecution Service Witness Care Units
- All police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defence Police
- The Parole Board
- The Prison Service
- The Probation Service
- Youth Offending Teams"

(The Code of Practice for Victims of Crime 2005, pg 2).



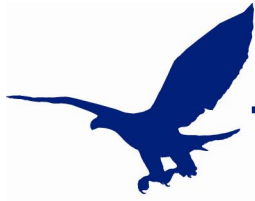
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In a nutshell the Codes mandate engages with an individual (of any age) who has made a complaint to the police in which they have been directly subjected to any criminal conduct as defined under the National Crime Recording Standard (NCRS). The NCRS contains a comprehensive list of criminal conduct and contains very few exemptions, save those offences which are typically investigated by the Health and Safety Executive. In cases where the victim dies or becomes so incapacitated that they are unable to make a complaint or is a juvenile the Code directs that the service nonetheless commences and where appropriate a relative acts as a spokesperson. The scope of service also embraces Businesses albeit a named contact must be established.

In providing any service within the Code the organisation in question shall only take into consideration the nature of the criminal act. It is beside the point neither if the allegation is questionable in terms of accuracy or honesty nor if an individual has been charged. Indeed the only way in which a victim of crime can be excluded from the provisions of the Code is if, following investigation, it is determined that the complainant is not a victim of crime within the remit of the NCRS framework. Vulnerable or intimidated victims are eligible for an enhanced service. For example, where appropriate other partners within the scheme will be alerted to their victim status.

Although all embracing and robust in nature it is perhaps somewhat surprising that the Act carries little in the way of punitive action against non-compliance,



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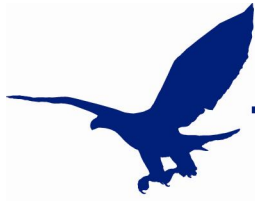
save the following provision – “(1) If a person fails to perform a duty imposed on him by a code issued under section 32, the failure does not of itself make him liable to criminal or civil proceedings.

(2) But the code is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the code in determining a question in the proceedings.” (Section 34, Effect of non-compliance, Domestic Violence, Crime and Victims Act 2004).

A breach of a suspect’s right, for example those enshrined within the Codes of Practice 1984, would meet with more gravitas. It is contended that this aspect alone appears to dilute the emphatic headlines that populate the Code.

The Impact of the Code upon the Crown Prosecution Service

As one of the principle partners of the criminal justice system the “Crown Prosecution Service (CPS) is responsible for prosecuting criminal cases investigated by the Police in England and Wales.” (CPS 2008). The Code has a number of obligations for the CPS and joint CPS and Police Care Units, the former of which will be examined first. Both elements are contained within ‘The Code of Practice for Victims of Crime’, produced by the Office for Criminal Justice Reform. Primarily the CPS is responsible for informing victims of charging decisions. However, where a decision is made not to proceed due to insufficient evidence, realised during a review of the circumstances with the investigating officer, then it is the responsibility of the police to advise the victim of this particular outcome. In all other cases, including circumstances



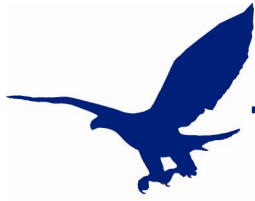
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where a case is dropped or substantially altered following a case review, the CPS must notify the victim of this decision within five working days. In cases of vulnerable or intimidated victims this timeframe is reduced to one working day.

In rare cases and mainly for specific legal reasons the CPS may dictate that no explanation other than compliance with the tests contained within the Code for Crown Prosecutors is deemed appropriate. Should this occur then this decision must be recorded by the CPS. "The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases." (CPS (victims) 2008). In relation to the more serious cases the CPS must make available a facilitated meeting to explain why a case is not brought to trial or where a decision is ultimately made to drop or radically change the charge. The following scenarios will always meet these maxims –

- Cases where death is allegedly caused by the criminal conduct (e.g. murder, manslaughter and dangerous driving);
- Child abuse;
- Sexual offences;
- Racially and religiously aggravated offences;
- Cases with a homophobic or transphobic component.



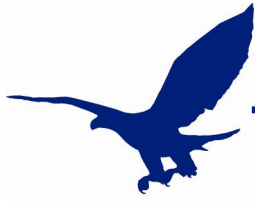
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However, notwithstanding, these definitions the CPS may still circumnavigate this process if the Prosecutor “concludes that in all the circumstances a meeting ought not to take place in which case he or she must record in writing the reason for that conclusion.” (The Code for Crown Prosecutors, section 7.7, pg 12).

There is no specific guidance on this issue albeit the following element of the CPS vision should make such an occasion rare, if not obsolete – “Inspiring the confidence of the communities we serve: being visible, open and accountable for our decisions; being responsive to the needs of the community and providing a valuable public service; being seen as the decision-makers who decide which cases should be brought to court and bringing them to justice.” (The Crown Prosecution Service (CPS)).

In relation to vulnerable or intimidated victims who are called to give evidence the CPS is responsible for maintaining systems that support prosecutors in relation to the implementation of Special Measures under the legislative provisions contained within Part 2 of the Youth Justice and Criminal Evidence Act, 1999 (e.g. video link testimony and the removal of barristers wigs). All other victims must nonetheless be afforded an introduction at court by a CPS representative and informed, where possible, how long they will have to wait until they can give evidence. Furthermore, Prosecutors and CPS representatives are accountable under the Code to answer all questions posed by the victim in relation to court procedures and processes.



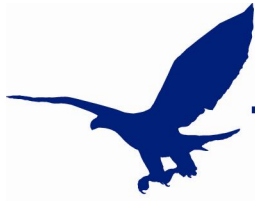
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Other procedural aspects are contained within the Code, such as the requirement to advise the victim of any delays (and the reason why) and the reimbursement of relevant expenses (within ten days of receiving a valid claim form). The CPS must also respond within sixty days of requests for information received from the Criminal Injuries Compensation Authority or the Criminal Injuries Compensation Appeals Panel. Under the auspices of the Code any complaint made by the victim against the CPS should be directed to any national office who will aim to respond within three days.

In relation to joint CPS and Police Care Units (CPSPCU) a number of other requirements are included within the Code which will now be reviewed. In cases where a 'not guilty' plea is entered by a suspect the CPSPCU must conduct a full impact assessment on all victims. In addition victims must be notified of the requirement to give 'live evidence' within one working day of receiving notification from the CPS. The same time span accompanies the requirement to notify victims of relevant hearing dates, once notified by the court. Victims who are called as witnesses must also have a copy of the 'Witness in Court' pamphlet served on them by the CPSPCU.

The CPSPCU must provide those victims under the age of seventeen, called to give evidence in criminal proceedings that involve sex, violence or cruelty, with a 'Young Witness' booklet. Parents or guardians must be served the same too. CPSPCU's are also compelled by the Code to ensure that the outcome of any pre-trial hearings and applications for Special Measures are communicated to the victim within one day of being made aware by the court.



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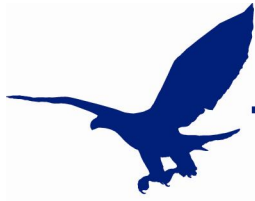
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This is also the case in circumstances where verdicts of the trial are articulated and the suspect is sentenced. Where a sentence is passed the CPSPCU is obliged to make clear the meaning and consequences of the verdict and answer any questions that may be ultimately posed by the victim. In cases where the CPSPCU is unable to do so the event should be referred to the CPS. If there is a radical change to the sentence imposed by the court the CPSPCU must inform the victim within one working day of receipt of the information. Should an arrest warrant be issued the CPSPCU are obliged to notify the victim within four working days (vulnerable and intimidated victims with one). Once an arrest has been secured as a result of this procedure the victim must be updated within the same timeframes along with relevant appearance details. Subsequent appeals from Magistrates, Crown Courts and the Court of appeal raise additional burdens of contact by the CPSPCU.

Finally, where an offender is convicted of a sexual or violent offence (as specified in section 45 of the Domestic Violence, Crime and Victims Act 2004) and receives a custodial sentence of one year or more the CPSPCU must serve upon the victim a 'National Probation Service Victim Contact Scheme' pamphlet within twenty working days of notification from the court. Complaints about a CPSPCU should, in the first instance, be directed to the unit that dealt with the original issue.

Conclusion

Arguably Section 13 of the Domestic Violence, Victims and Crime Act 2004

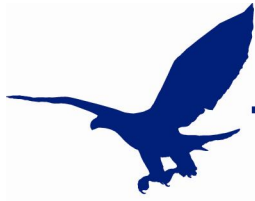


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(England and Wales) that enabled the creation of a Victims Codes of Practice is a long overdue and welcome piece of legislation that in terms of the CPS represents a number of common sense customer care principles as a core ideology. However, the need to establish such a statutory requirement is perhaps evidence of the woeful support that existed previously. But does it really develop the concept of rights for victims of crime? If 'rights' can be determined as simply access to timely and relevant procedural information then the Code may just about pass the test. It should be remembered though any transgression or failure would appear to result in no more than a 'slap on the wrist' by way of victim complaint. Compare this to breaches of criminal procedure as they appertain to suspects of crime. Breaching a suspects Human Rights, for example, can often lead to acquittal. As it stands the Code has little impact upon the CPS as the reasonable person test would, it is contended, only concur that this is what CPS should have been doing in any case. Perhaps the only element that places an increased level of service is the requirement to facilitate a 'face to face' meeting with victims of the more serious offences to explain why such a prosecution is ultimately withdrawn. Then again the Code allows this difficult prospect to be side stepped.

However, if the concept of 'rights' seeks to engage with the more intrinsic realisation of collaborative prosecution between the CPS and the victim then the Code fails miserably. Nowhere does the Code amplify the victim's desirable outcomes. Closure can be edified greatly when the principles of restorative justice are implemented. "Restorative justice is a system or



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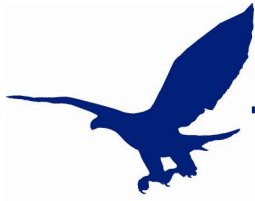
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practice which emphasises the healing of wounds suffered by victims, offenders, and communities that are caused or revealed by offending conduct.” (Schmid, D. (2003)). The absence of such a policy within the Code, it is submitted, leaves victims at the bottom of the criminal justice league.

Victims of crime face the real prospect of psychological harm, especially those who suffer the fate of a more serious crime or where charges are latterly withdrawn. The absence of a requirement to instigate ongoing support for the more vulnerable and intimated aggrieved in the terms of counselling for example also leaves the standard below even the minimum that the Code aspires to. Furthermore it is arguable that the Code fails to deliver at a prosecution level too. In cases where a criminal offence is concluded by way of acquittal, a finding of ‘not guilty’ or is withdrawn prior to trial then surely the victim should be advised of their right to sue via a civil remedy for consequential loss?

In the infamous Orenthal James (OJ) Simpson murder trial in America during the late 1990’s a criminal jury delivered a ‘not guilty’ verdict. However, relatives of the victims were able to successfully sue Simpson in a later civil trial for ‘wrongful death’ and were awarded \$8.5 million in damages by the Superior Court (CNN Interactive, 1997).

Specific feedback from all victims should also be incorporated within the Code to ensure that future service provision incorporates any necessary changes in

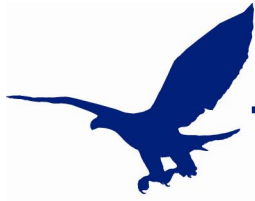


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social policy. In the same manner in which the Supply of Goods and Services Act 1982 allows aggrieved parties to sue those who fail to deliver a minimum standard of service why can't victims do the same for the poor performance of a service provider such as the CPS (based on the 'balance of probabilities')? The existing Code appears to lack teeth and for those who have been the victim of crime (including the author of this review) debatably falls short of the following sentiment articulated by former Prime Minister Tony Blair only a few years ago – “We start with one overriding principle – that the law abiding citizen must be at the heart of our criminal justice system. For too long, that was far from the case. When this Government came to power in 1997, high crime rates and long delays in dealing with cases were damaging confidence in the system. The system seemed to think only about the rights of the accused. The interests of victims appeared to be an afterthought, if considered at all. There was a vacuum in new thinking about how to tackle the drivers of criminality or to respond to the new threats of organised crime.” (Cutting Crime, Delivering Justice, 2004).

In terms of an interim report the implementation of Section 13 of the Domestic Violence, Victims and Crime Act 2004 (England and Wales) and the associated Victims' Code of Practice has promise, but the Secretary of State for the Home Office should be encouraged to review the existing Code and improve its performance in the short to medium term for it to have any reasonable chance of developing the notion of incisive rights for the victims of crime.



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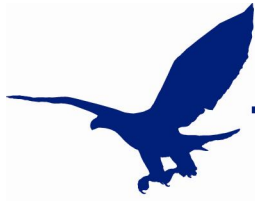
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