

„Victim Protection in Criminal Proceedings Legislation: A pan-European Comparison“

Country Report: Great Britain

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A. Does your country's legal structure differentiate between the civil and criminal legal consequences of an offence?

1. The systems of Civil and Criminal Justice are essentially separate. Prosecutions for criminal offences are brought on behalf of the public at large, usually in the name of the Crown. The principal prosecuting authority is the Crown Prosecution Service although, in relation to a variety of regulatory offences, the prosecution may be brought by other governmental departments or bodies e.g. the Health and Safety Executive or Local Authorities. In each such case, the 'victim' of the particular crime is likely (though not necessarily) to have been the originator of the complaint which leads to the prosecution and will usually be the principal witness. However, the purpose of criminal proceedings is the enforcement of the law and the punishment of the perpetrator. It is not primarily concerned with compensation of the victim although, upon sentence following conviction, an order for compensation may be made (see paragraph 5 below).

2. So far as the criminal law is concerned, the principal methods of punishment are custodial punishment, fine, and 'community punishment' orders, or 'community punishment and rehabilitation' orders by which the court may order the perpetrator to perform a specified number of hours of unpaid work of benefit to the community, together with a requirement of drug abstinence and/or requirements of participation or non-participation in specified activities and/or treatment in respect of drug or alcohol dependency or other mental condition.

3. All of the punishments so far mentioned are related to the appropriate treatment of the offender rather than to any compensation or restitution to the victim. Nonetheless, in criminal cases, as part of the sentencing exercise, the court may order pecuniary compensation for the victim, whether in respect of personal injury or in respect of goods stolen or money obtained from the victim by fraud.

4. A compensation order may be made as the only sentence for an offence (though this is rarely done) or in addition to other forms of sentence. The court must be satisfied that the injury, loss or damage which has occurred is attributable to the offence. It determines the amount of compensation having regard to any evidence before it and to any representations made by or on behalf of the prosecutor. If the value of the injury or loss is not agreed by the defendant it has to be established by evidence and, if this cannot be done without complicated enquiries, the court may decline to make a compensation order, leaving the victim to his/her civil remedies.

5. In practice, compensation orders are not frequently made, because the court must have regard to the means of the perpetrator so far as they are known to the court at time of sentence. It is regarded as wrong in principle to impose a compensation order where there is no realistic prospect that it

will be paid within a reasonable time. If the perpetrator has not the resources immediately available to pay, the court may determine the amount he can reasonably pay out of income and order payment by instalments for a period of up to two years, or three years in exceptional circumstances. The fact that the perpetrator has been sentenced to imprisonment does not necessarily mean that a compensation order is inappropriate, but such order will not be made on the basis that the compensation will be paid out of future income unless there are clear prospects of employment open to the perpetrator on release from custody so that the obligation to pay compensation will not be an encouragement to commit further offences.

6. So far as enforcement of compensation orders is concerned, this is a matter for the court rather than action on the part of the victim. In default of payment, the court has the power to issue a warrant committing the defaulter to prison on a sliding scale up to 12 months in respect of an outstanding amount exceeding £10,000 (subject to certain exceptional powers to increase that period in respect of compensation in excess of £20,000).

7. Because of the general ineffectiveness of the remedy of compensation for the victims of criminal assaults, either because of the failure to detect, arrest or prosecute the perpetrator, or because of the perpetrator's lack of means at the time of sentence, a person who has suffered injury as the result of a crime has the right to apply for compensation to the Criminal Injuries Compensation Authority which, upon satisfactory proof of injury in the course of crime, has power to make awards of compensation to the victim (see paragraphs 27-29 below).

B. Does your country's legal order take efforts by the perpetrator which aim to provide personal conciliation with the victim (mediation) or compensation for the material or immaterial damage done to the victim into account? Will it acknowledge symbolic acts of compensation?

General Questions

Adults

8. There is no formal scheme or procedure under which an adult perpetrator may seek to provide personal conciliation with the victim or compensation for damage done to the victim, so as to avoid or alleviate punishment upon conviction. However, when, in his/her plea of mitigation as to the proper sentence to be passed following conviction, the perpetrator can satisfy the court by evidence or otherwise that financial or other reparation has been made or offered, that will certainly be reflected in the sentence passed. Where there is a question whether or not an immediate custodial sentence is appropriate, if the perpetrator makes realistic proposals for reparation, the court may adjourn the question of sentence for a specific period to test the sincerity of the proposals. Further, following the recent introduction of the Community Rehabilitation

Order it may be possible, with creative use of the court's power to require participation in specified activities, to enable some sort of symbolic compensation to be made in appropriate cases.

Young Persons (i.e. age 10-18)

9. A different approach is taken in the context of Youth Justice reforms since 1998, an important part of which has been to develop a 'restorative justice' approach to tackling the problems of youth crime and to reduce the imposition of custodial sentences. The Crime and Disorder Act 1998 envisages the participation of victims in decision-making about any reparation and specifies the requirement to consult victims before making Reparation Orders. The Youth Justice and Criminal Evidence Act 1999, later consolidated in the Powers of Criminal Courts (Sentencing) Act 2000, introduced Referral Orders (in the case of a young perpetrator pleading guilty to a first offence) and Reparation Orders (in respect of young perpetrators generally). Other options include Action Plans and Supervision Orders. All are orders containing elements of restorative justice. Referral Orders are made to require young people who plead guilty to a first offence in court to attend a Youth Offender Panel, led by a Youth Offending Team Officer with two volunteers from the local community. The Panel agrees with the young person, his or her parents or carers and the victim (where appropriate) a 'contract' lasting between 3 and 12 months. The contract can include attending programmes to address offending behaviour, to repair the harm done by the offence or a variety of other actions, including financial reparation and mediation (though because of the perpetrator's age and means such provision is rare). The conviction is spent once the contract has been completed. Symbolic acts of compensation, e.g. verbal or written apology, may often form part of the reparation involved.

II Does your country's legal system support a perpetrator's efforts which are aimed at providing conciliation with the victim (mediation) or compensation for the damage caused,

- (a) before criminal investigation is initiated,**
- (b) before the formal criminal court procedure begins,**
- (c) as part of the formal criminal court procedure,**
- (d) as part of the execution of punishment stage?**

Adults

11. There is no state-sponsored machinery for mediation or restitution proceedings with a view to avoiding criminal investigation or prosecution. There is an element of discretion within the Crown Prosecution Service in consultation with the police as to whether or not criminal proceedings should be brought where the victim does not wish to pursue his/her complaint. This is particularly so in the case of domestic violence, cases of damage to property, small-scale theft etc. Equally, in respect of more

serious offences (particularly cases of sexual assault), where there is a lack of co-operation or desire to proceed on the part of the victim, a decision not to prosecute may well be reached. However, such decisions are taken prior to the commencement of proceedings. Once the decision has been taken and the proceedings are in progress, there is no provision for mediation between the parties. Indeed, approaches to a victim by a perpetrator with a view to avoiding or influencing proceedings would in most cases be regarded as improper. However, following conviction, attempts at mediation or restitution will be taken into account in the manner mentioned under paragraph 9 above.

Young Persons

12. In the Youth Justice system, before criminal court procedure begins, where the crime is not grave and is admitted, the young perpetrator is made subject to a Reprimand (a formal police procedure). On admission of a second offence, a Final Warning is given. The latter involves restorative processes as recommended by the Home Office and Youth Justice Board Guidance, issued in November 2002. Unlike a Reprimand, the young perpetrator is assessed by a member of the Youth Offending Team to determine the causes of the offending behaviour and a programme of activities is identified to address these. As to the consequences for failure to carry out the requirements of the programme, see paragraph 16 below.

III What consequences do the perpetrator's efforts to provide for personal conciliation with the victim (mediation) or compensation for the damage caused have in relation to criminal proceedings in general and in particular to the criminal sanction?

Adults

13. As will be apparent from what has already been stated, the answer to detailed questions posed under this head are as follows:

(1) Mediation or compensation efforts do not negate criminal culpability.

(2) At the investigation stage, the police may conclude that further investigation is undesirable after successful mediation or compensation efforts have been made between victim and perpetrator. However, they would only take a decision not to proceed further upon the advice of the Crown Prosecution Service. Once proceedings have been commenced, the matter proceeds to trial subject only to the co-operation of the victim in a case where he/she is the only, or a vital, witness.

(3) Once the prosecution has commenced, even if mediation or compensation efforts are successful, the case will normally proceed to trial/judgment. However the success of such efforts will be highly relevant to the severity of the sentence. Failure of such efforts would be unlikely to come to the attention of the judge passing sentence. Failure would,

in any event, not lead to the perpetrator being punished more severely than in the 'ordinary' case.

As already stated, successful mediation and compensation efforts by the perpetrator may well affect the actual type of punishment, whether in the form of a light or reduced custodial sentence, or a fine, or a community penalty rather than custody. When passing sentence, the court has no power to order early release from a term of imprisonment, or to prescribe the type of privileges or the other treatment accorded to the perpetrator when in prison. The categorisation of prisoners as 'security risks', or as subject to other considerations which govern their regime in prison, is a matter for the prison authorities under Home Office Regulations which regulate the matter.

Young Persons

14. In the Youth Justice system, for a young perpetrator co-operating with a restorative process as part of a Reprimand or Final Warning there is no further consequence, except that, in the case of a Final Warning, non co-operation with a Youth Offending Team intervention which is offered on a voluntary basis would be recorded and available to the court in the event of a subsequent conviction. Mediation or financial reparation carried out as part of a Referral Order 'contract' will represent successful discharge of the contract with the Youth Offender Panel. In general terms, the conviction will be 'spent' at the end of the Referral Order. Mediation or other restorative processes, such as conferencing, may, with consent, be undertaken as part of other types of Youth Court sentences: for example, an Action Plan Order, Reparation Order or Supervision Order. Again it will form part of the young perpetrator's successful completion of that order.

IV Can the investigative authorities or the criminal courts require personal conciliation between victim and perpetrator (mediation) or compensation for the material and immaterial damage done?

Adults

15. The answers to the detailed questions posed are as follows:

(1) It is not possible to (preliminarily) drop proceedings on condition that the perpetrator attempts to achieve personal conciliation with the victim or that he compensates for the damage caused.

(2) If, by way of punishment, a perpetrator is put on probation, the court will not impose a condition that the perpetrator is required to attempt to achieve personal conciliation with the victim or that he compensates him for the damage caused. However, the court may, in addition to a

probation order, make a compensation order if the circumstances are appropriate (see paragraphs 4-7 above).

(3) Personal conciliation between the perpetrator and the victim cannot be ordered as part of the sentence passed by a criminal court. However, compensation for damage caused may be ordered (see paragraph 4 above).

(4) The victim cannot **require** the investigative authorities or the court to make an order for personal conciliation or compensation. However, so far as compensation is concerned, he/she may inform the police or Crown Prosecution Service of his/her desire for compensation, which the prosecutor will bring to the attention of the court. Further, as a matter of sentencing policy, where the court has power to make a compensation order, but does not exercise it, it must state its reasons for not doing so.

If, having been ordered to pay compensation, the perpetrator fails to do so, the court has power to order a period of imprisonment in default according to a scale laid down by statute proportional to the amount involved (see paragraph 6 above).

Whereas there are elaborate statutory criminal legal and procedural mechanisms for the freezing and confiscation by the State of money and assets which are the proceeds of drug dealing and other crime, there are no such mechanisms by which the victim's claim for compensation can be secured. The period of imprisonment in default of payment will act as a substantial incentive for the perpetrator to pay the compensation ordered. It does not, however, provide security.

Young Persons

16. In the youth justice system, there is a clear expectation that a young perpetrator subject to a Referral Order or other Youth Orders will carry out an agreed form of reparation as part of the contract made with the Youth Offender Panel. The court may make a Reparation Order requiring the young perpetrator to make specified reparation to the victim - although only with the victim's specific consent - or to the community. Breach of the 'contract' will be regarded as breach of the Order and can lead to a return to court and more severe penalties. Whereas nominally the agreement of the young perpetrator to the making of the Order is required, the incentive provided by the circumstances is coercive in effect.

V What consequences do the conciliatory or compensatory efforts a perpetrator makes have on the rights of the victim under civil law (e.g. on damages or compensation for pain and suffering) or on potential civil law litigation?

17. The answers to the detailed questions posed are as follows:

(1) Payment, or an order for payment, of compensation by a perpetrator does not in any way nullify the rights of the victim under civil law, save that to the extent that payment has been received by the time the civil proceedings are heard, the victim must give credit for such payment against the amount of damages claimed/awarded in the civil action. Unsuccessful conciliatory or compensatory efforts by the perpetrator have no consequence for the victim's rights under civil law.

(2) As already indicated, compensation paid by a perpetrator does not defeat or terminate civil law litigation by the victim save to the extent that it reduces the amount of the civil claim. Unsuccessful efforts at conciliation or compensation have no consequence in respect of the civil law proceedings.

(3) If a victim has proceeded to a civil law judgment before any compensatory payment from the perpetrator (whether under the terms of a criminal compensation order or otherwise) the receipt of such payment will go in part satisfaction of the judgment obtained. Unsuccessful efforts at compensation will be irrelevant.

C. Which position does the legal system in your country grant to victims?

1. What informational rights do they have?

18. The non-statutory 1996 Victim's Charter sets out a number of service standards which victims of crime can expect to receive from the criminal justice agencies. On information, victims can expect:

a crime which they have reported to be investigated and to receive information about what happens;

the chance to explain how the crime has affected them, and their interests to be taken into account;

19. The police and the prosecuting authorities share responsibility for providing advice about the progress of a case through the criminal justice system, up to and including conviction and sentence (and, where relevant, appeal). The Crown Prosecution Service is also planning in the future to develop better services to facilitate the disclosure of information to victims and witnesses. Proposals include offering face to face meetings with victims in all categories of cases, providing more information about the case once it has entered the system, writing to thank witnesses for taking the time and trouble to give evidence and informing them of the outcome of the case.

20. Additionally, the Criminal Justice and Court Service Act 2000 places statutory requirements on the National Probation Service to inform the victims of offenders, sentenced to more than 12 months in prison for a

violent or sexual offence, about plans for their release, including any conditions to be attached to the release.

21. Victims have the right, at any stage, not to receive further information about the case if they so wish.

22. The Government is planning to introduce statutory rights for victims through a Victims of Crime Bill during this Parliament. The Bill will give the Home Secretary a power to issue a Code of Practice which will place obligations on the criminal justice agencies to provide protection, information and practical support to victims of crime. The Code of Practice will enhance the provisions in the non-statutory 1996 Victim's Charter and reflect the significant changes which have taken place in the last six years.

2. What opportunities do they have to influence the development of criminal proceedings or to actively participate in them?

23 In many cases, the police having investigated the matter, a criminal prosecution will only be brought if there is a desire on the part of the victim to press charges (see paragraph 11 above). As a matter of good procedure, the victim will be informed, and invited to discuss the proposal of the prosecuting authority to drop the proceedings. However, the victim's consent is not essential. The investigative proceedings are conducted by the police without any right on the part of the victim to be present, interrogate the perpetrator, or direct or influence the course of the investigation. Once the prosecution is commenced, the victim has the right at all times to be present in court, though not to participate in the proceedings by asking questions or making formal requests. There is no right of appeal against decisions made by the investigative authorities or the court. Equally, crime victims have no right to ask questions or make representations through a lawyer in the investigative or court proceedings. Nor do they have a right to have a lawyer paid for by the state. When the victim attends at court as a witness, he/she has rights no different from that of any other witness.

24. In the Youth Justice system, in the case of a Reparation Order a victim must be consulted as to the proposed requirements in the order; for a Referral Order, the victim will normally be invited to participate in the Youth Offender Panel. Victims may also be invited to attend other restorative processes, for example mediation or conferencing, involving young perpetrators subject to Final Warnings or court orders such as Reparation Orders, Action Plan Orders or Supervision Orders.

3. What further legal and practical mechanisms are used to help protect the victim or reduce the stress caused to him/her by criminal proceedings?

25. Good police practice dictates liaison with, and practical support to, a victim when at court. In addition, in relation to violent or other crime in respect of which the safety of the victim prior to or at court is in jeopardy,

there are witness protection schemes and measures available to the police within their budgetary limitations. However, such measures are not the responsibility of the court. In proceedings before the court, the judge has the power in appropriate cases to permit a victim to give evidence via video-link or from behind screens placed so as to shield the victim from the direct gaze of the perpetrator or hostile members of the public. Reassurance and practical assistance in the environs of the court are also available in most court centres from voluntary organisations such as Victim Support and the Witness Support Programme.

26. Indicated in paragraph 22 above, the Victims of Crime Bill will also give the Home Secretary a power to issue a Code of Practice binding on the criminal justice agencies.

Are there state or private institutions in your country that grant crime victims compensation for damage caused and support independent of efforts on the perpetrator's part?

27. There is a state compensation scheme for the victims of criminal injuries, administered by the Criminal Injuries Compensation Authority which provides for financial awards to be made in respect of physical and mental injuries caused by a violent crime and, in certain circumstances, to compensate for past or future lost earnings or special expenses caused by a violent crime. Also for the death of a close relative as a result of a violent crime including, in some cases, compensation for the loss of earnings of the person who was killed. The scheme does not extend to crimes in general. It was first introduced in 1964 and recently remodelled. It makes awards totalling more than £200 million every year. As originally introduced, the scheme made awards based on the common law, cases being assessed in the same way that personal injury claims were dealt with in the civil courts. However, since this was proving increasingly expensive, in 1996 the system changed when a tariff of injuries was introduced i.e. a list of fixed compensation payments for particular types of injury.

28. A comprehensive guide to the scheme is available to claimants and, in general, legal advice or representation is not needed to apply for compensation. Legal costs are not awarded. The independent charity, Victim Support, which provides free services to victims throughout Great Britain gives confidential, emotional and practical support, providing information about the scheme and assistance in filling in the application. However, it does not provide legal advice. Where, (as is usually the case) the victim cannot afford legal advice and representation, advice is available from Citizens Advice Bureaux, law centres run by charities or local authorities, or welfare rights organisations. In appropriate cases, the level of award provided for in the tariff may be refused or reduced in respect of the victim's behaviour before, during or after the incident in which he/she was injured, or his/her criminal record, or failure to co-operate with the police or with the Authority.

29. Where a perpetrator has been identified and will be brought to trial, the authority waits for the trial verdict before deciding the application for compensation. In other cases, the average length of time between application and award is eight months. If the victim is dissatisfied with the award made by the Claims Officer assigned to the case, he may obtain a review by a more senior officer within the Authority, from whom there is a right of appeal to the Criminal Injuries Compensation Appeals Panel which is independent of the Authority and is chaired by a specialist personal injuries lawyer.

E. What is the current factual situation regarding the use, acceptance and success of the possibilities your country's legal system offers for personal conciliation between victim and perpetrator (mediation), compensation of the damage caused to the victim and symbolic compensatory acts on the perpetrator's part?

30. In the Youth Justice system, the Youth Justice Board is committed to 'targets' for increasing victim satisfaction and the proportion of youth offending team interventions which are restorative. There is widespread political support for the development of a restorative justice approach. Available research results are positive in terms of participants', including victims', satisfaction and enabling young offenders to take responsibility for dealing with the consequences of their behaviour. However, it has to be acknowledged that, in this context, restorative justice can only be based on active and genuine participation by young perpetrators, which at this early stage of development is by no means assured.

F. Which particular aims are part of the legal/political debate in your country to improve and increase victim protection?

31. One of the Government's manifesto commitments when it was re-elected in 2001 was to pass legislation which protects and furthers the interests of Victims of Crime. Details were outlined in the Criminal Justice White Paper, Justice for All, which was published in July 2002. This commitment has subsequently been incorporated into a formally stated aim of the Home Office "to minimise the threat to and intimidation of witnesses and to engage with and support victims".

32. As indicated in paragraph 22 above, the Victims of Crime Bill will give the Home Secretary power to issue a Code of Practice (through statutory instrument) binding on the criminal justice agencies in order to oblige them to provide protection, information and practical support to victims of crime. If services are not delivered or any agency breaches the Code, the victim will have an avenue of complaint and redress through the Parliamentary Commissioner for Administration rather than through the courts. It is intended that the Bill will also establish a Commissioner for Victims and Witnesses to promote the interests of victims and witnesses and ensure that their views on the criminal justice process are heard.