Legislation and policy: In victims' best interests?

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From a position some 40 years ago when victims were acknowledged to be the forgotten people in the criminal justice system, it is now commonly accepted that victims and victim policies have moved, if not centre-stage, at least onto the main agenda of criminal justice policy. While public spending on victims remains low, at least compared with police, courts and prisons, it has undoubtedly risen; in England, Wales and Scotland, for example, the Criminal Injuries Compensation Authority paid out around £450 million to the victims in 2011–2012.¹ At the same time, the government funded Victim Support England and Wales to the tune of £68 million, a 50 per cent increase in 5 years. Similar trends can be found elsewhere. But government financing of victim services is only one measure of shifting priorities. Governments across the world have moved from a position where victims' needs were (sometimes) addressed to one where victims' rights were acknowledged and public agencies required to provide appropriate standards of service. Within Europe, for example, the EU, through the European Agency for Fundamental Human Rights (FRA), has focused on the rights of crime victims and variations in their treatment across Europe (fra.europa.eu/en/publication/2014/fundamental-rights-challenges-and-achievements-2013).

One other, less readily acknowledged, policy development that is likely to continue concerns the transition from policies aimed at what the EU terms the 'generic crime victim', to provisions targeted at specific victim and/or offence categories. However, what governments consider to be in the best interests of victims may not be seen in quite the same way by victims themselves.

This new emphasis forms the subject of this issue. Developed from a conference staged at the University of Wales, Newport,² in 2012, the editors have drawn together four papers to illustrate this. While the emphasis is on the United Kingdom, all four articles raise issues that are of

immediate relevance elsewhere. The articles deal with specific aspects of policy, legislation and the conception of a particular victim group, rather than governance, but their content can be considered with the developments outlined above in mind.

First, Tracey Sagar and Debbie Jones consider the social construction of ‘off-street’ sex workers in terms of the prevalent view of them as victims that has emerged in academic literature and public policy, encapsulated in the UK Home Office (2006) *Coordinated Prostitution Strategy* document, which has led to local policy based on this construction. Drawing on an empirical study, Sagar and Jones challenge this view, arguing that many sex workers should not be regarded solely as victims (particularly of patriarchy) because they choose to engage in this area of work, often enjoy their work and in this way exhibit agency rather than acting as passive victims. Sagar and Jones argue that local policymakers need to bear this in mind when developing relevant services. Following on from Sagar and Jones, there are two pieces dealing with specific groups – those subject to stalking and those involved in forced marriage. Jenny Korkodeilou outlines behaviour that has perhaps only been recognised as a separate offence relatively recently, that of stalking. She discusses academic research and initial attempts to legislate, arguing that despite some substantial activity it remains the case that society’s understanding of this offence remains limited. Again based on empirical research with victims, she argues that, however well-meaning, legislation and policy have failed to address the needs of victims, as expressed by her sample, who state that their voices and views are not properly heard or are dismissed and that they remain essentially invisible within the criminal justice system. Ruth Gaffney-Rhys examines a related phenomenon, in her case that of legislation and policy that potentially does not serve the best interests of the victim. Reviewing legislation on the subject of forced marriage, she notes that the Anti-Social Behaviour, Crime and Policing Act 2014 has for the first time created a specific offence of forcing someone to marry and brings the law in England and Wales in line with several European jurisdictions. However, she discusses whether such legislation has been based on a fully developed consideration of all issues and thus whether it, in the end, is likely to benefit victims. Finally, Rob Mawby discusses the tourist industry and tourists as victims. He reviews policy internationally and argues that tourist victims need policies to be developed that are sensitive to local conditions. He argues that within England and Wales services are not developed to any degree, but that examples of good practice are available from other jurisdictions.

One common factor underpinning these articles is the variable process of policy formulation and the creation of legislation intended to afford protection against specific offender groups. Governments seem to need, on occasions, to be persuaded that particular victim groups, as in the case of tourists, are in need, or are ‘deserving’, of specific policy and legislation. Moreover, while not exclusively so, government response is often operationalised via legislation, usually

around criminalisation of certain behaviours. While this may be necessary, it is perhaps not always sufficient in terms of comprehensively addressing an issue as, perhaps, in the case of forced marriage. It might also be argued that it is only through being characterised as victims that sex workers have had some of their concerns addressed by local policy; in their case the argument put forward by Sagar and Jones brings more complexity to the issue. What also appears to be an issue is that, when it is developed, central or local policy does seem to fail on occasions to properly take into account the needs of victims, as expressed by the victims themselves, and this may, as Korkodeilou points out, result in services that are not ideally fitted to their needs. In recent decades victims have been towards the top of the criminal justice agenda of successive governments, but perhaps the coming of a properly researched ‘bottom-up’ process for the formulation of legislation and policy remains someway off.

Notes

- 1 Victims in Northern Ireland received about £23 million.
- 2 In May 2013, the University of Wales, Newport, merged with Glamorgan University to become the University of South Wales.

References

Home Office (2006) *A Coordinated Prostitution Strategy and Summary of Responses to Paying the Price*. London: Home Office.

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