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**Conference briefing**

# **Towards Justice**

## **Law Enforcement & Reconciliation**

**June 2021**

**Martina Y Feilzer**



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# Foreword

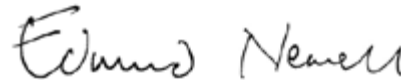


This briefing document has been prepared to guide and inform discussions at the 2021 Cumberland Lodge Police Conference, [Towards Justice: Law Enforcement & Reconciliation](#), which we are convening online on 17–18 June 2021. It provides an independent review of current thinking and research around each of the conference session themes, to help us gather some thoughts before we meet to discuss them in more depth.

We are grateful to our freelance Research Associate, Professor Martina Feilzer, for preparing this resource for us. Martina will be joining us for the conference to capture all the key ideas and recommendations from guest speakers and group discussions, to feed into a Cumberland Lodge Report on this topic, which we hope to launch at New Scotland Yard, later this year.

We hope you find this briefing, and the ensuing conference discussions, both stimulating and informative for your work and practice.

With all good wishes

A handwritten signature in black ink that reads "Edmund Newell".

**Canon Dr Edmund Newell**  
Chief Executive

## About the author



Martina Y Feilzer is the author of this briefing document. She has been commissioned to support our work on policing and criminal justice in 2021, as a freelance Research Associate. She is a Professor of Criminology and Criminal Justice at Bangor University, with research interests including: public perceptions of criminal justice at local, national and European levels; the relationship between the media and public opinion of criminal justice; questions of legitimacy, trust in justice and penal policy; and comparative and historical criminal justice research.

Martina is Co-Director of WISERD, the Wales Institute of Social and Economic Research and Data at Bangor University, and also Co-Director of the Welsh Centre for Crime and Social Justice. She is currently developing a research programme on the experiences of police officers going through periods of transition after regime change or past injustices.

Martina started her career as a Research Officer at the University of Oxford and joined Bangor University, as a Lecturer, in 2007. She has accumulated a wealth of empirical research experience in the field of criminal justice, and has worked on policy-relevant research in relation to youth justice, probation, parole and policing. She works with both quantitative and qualitative research methods, and prefers a 'mixed-methods' approach to research.

Most recently, Martina has worked in collaboration with North Wales Police to develop police degree programmes under the College of Policing PEQF (Policing Education Qualifications Framework).

## Contents

<b>1. Introduction</b>	<b>1</b>
<b>2. Putting the past right</b>	<b>3</b>
<b>3. Justice, accountability and blame</b>	<b>7</b>
Criminal justice response – national and international	8
Truth and reconciliation commissions	9
Independent inquiries and Lessons Learned Reviews	11
Transitional justice	12
<b>4. The challenges of investigation</b>	<b>14</b>
<b>5. Victims' perspectives</b>	<b>18</b>
<b>6. The state and the media</b>	<b>21</b>
<b>7. Summary</b>	<b>24</b>
<b>Endnotes</b>	<b>25</b>

# 1

## Introduction

This [Cumberland Lodge Police Conference](#) focuses on the role of the police in investigating past harms and injustices in the UK and contributing towards reconciliation and community healing. A cross-sector delegation of representatives from all levels of the police is meeting with legal professionals, charity representatives, academics, victims of historic policing wrongs, senior civil servants and future leaders, for a virtual conference over two days, on 17–18 June 2021.

Drawing on experiences from the UK and overseas, this conference examines how law enforcement can contribute to community reconciliation and the pursuit of wider social justice. This briefing offers an independent review of current research and thinking, to guide and inform our upcoming discussions. It is structured around the five interactive sessions of the conference programme:

1. Putting the past right
2. Justice, accountability and blame
3. The challenges of investigation
4. Victims' perspectives
5. The state and the media

The review below builds on three previous briefings that accompanied preliminary webinars on this theme. These webinars were convened by Cumberland Lodge in January and February 2021 and open to the public:

### **Towards Justice: Responding to Past Harms, 27 January**

With guest panellists:

- **CC Simon Bailey, QPM** (Chief Constable, Norfolk Constabulary)
- **Wendy Williams, CBE** (Author of the *Windrush Lessons Learned Review*, 2018)
- **Matthew Scott** (Criminal Barrister, Pump Court Chambers)

## **Towards Justice: Insights into Truth and Reconciliation, 10 February**

With guest panellists:

- **Jonathan Powell** (Chief Executive Officer of Inter Mediate; former British Chief Negotiator on Northern Ireland)
- **ACC Kerrin Wilson, QPM** (Assistant Chief Constable, Lincolnshire Constabulary)

## **Towards Justice: Victim Perspectives on Past Injustices, 25 February**

With guest panellists:

- **Dame Vera Baird, QC** (Victims' Commissioner for England and Wales)
- **AC Robert Beckley, QPM** (Assistant Commissioner, Metropolitan Police; Overall Command of the investigations into the 1989 Hillsborough Disaster)

Our webinar recordings and briefings for this project are available to access on-demand: <https://www.cumberlandlodge.ac.uk/project/towards-justice-law-enforcement-reconciliation>

# 2

## **Putting the past right**

The first webinar in the preparatory series, [Towards Justice: Responding to Past Harms](#), on 27 January 2021, discussed how past harms can haunt the present and examined the complex challenges of putting them right, and the different perspectives and experiences that need to be considered in the process. This panel discussion highlighted the different forms that past harm can take, which we will delve into deeper during the opening session of the main conference. Such harms range from non-recent interpersonal crimes, committed with impunity by individuals, to past criminal conduct by state agents, past conduct by state agents that is considered to have been wrong and harmful but does not amount to criminal conduct, and significant societal conflict and mass harm. The role of law enforcement and policing in responding to such past harms may differ, but the need for accountability, acknowledgement of the harms experienced, and remedy does not.

Different groups affected by past harms include victims of direct and indirect harm, suspected wrongdoers, the wider public, and institutions of justice and state representatives; and each will have different interests and potentially conflicting perspectives on the way in which accountability and acknowledgement should be achieved. However, principles of justice are based on a fundamental understanding that progress towards a 'better' future should involve: recognising and publicly acknowledging past wrongs (e.g., through admissions of guilt, an apology, or signs of repentance by those responsible for the harm), aiming to repair the harms caused in some form, holding to account those who were responsible for the harm in some way, and learning lessons to avoid such harm being inflicted again.

Some responses to past harms – such as recent changes to the way we respond to alleged victims of non-recent sexual abuse (see section 4 on Victims' Perspectives below, from page 18) – carry the risk of causing new wrongs and harms today, through miscarriages of justice, as well as potentially prolonging the

i. Also see section 4 below (from page 18) on changes in victims' roles in the criminal justice system, and the Cumberland Lodge webinar, [Towards Justice: Responding to Past Harms](#) (January 2021).

ii. One example of this was the passing of the Turing Law in 2017, in England and Wales – a collective clemency law that extended the posthumous pardon awarded to Alan Turing by Her Majesty The Queen in 2013, to all those who were convicted under the offence of buggery.

sense of victimisation amongst those who are awaiting closure, accountability and justice.<sup>i</sup>

Past harms occur in unique social, political and historical contexts and, as a result, standardised criminal justice processes sometimes seem inadequate or impervious to the complexity of the responses required. For this reason, the way society responds to past harm can take various forms: from criminal justice processes to public inquiries, and in the case of societal conflict, a combination of restorative and retributive justice principles (such as Truth and Reconciliation Commissions), through to International Criminal Tribunals, and varying forms of transitional justice. This range of potential responses was examined in the [Towards Justice: Insights into Truth and Reconciliation](#) webinar on 10 February 2021, with an open discussion about their potential for supporting reconciliation, as well as their limitations.

Some past actions are judged in light of contemporary values and become contested as wider societal changes generate debate about whether certain conduct, or even legislation, was wrong and harmful.<sup>ii</sup> At times, such debates are used to further present-day agendas, and how far we unravel the actions of the past, in response, can depend on the scale of harm, the degree of intent to cause harm, the evidence of harm caused, the needs of victims and the rights of the accused, and the level of external mobilisation and consensus regarding the harm suffered. Understanding the motivations and nuances behind different responses to past harms, as well as the different actors involved – such as individual victim, group or state interests – is key to assessing whether they achieve their aims.

While there are important decisions to make in terms of the most appropriate approach to different past harms, early consideration of the overall aim of the chosen response is also key to framing expectations, avoiding the unwitting creation of new divisions, and providing some sense of closure to victims, perpetrators and the wider community. Key questions are: what are the desired outcomes, and from whose perspective?

One important driver for responding to past harms effectively, no matter which form that response takes, is the rebuilding of public trust in justice and the agencies involved in its delivery, such as the police and the courts. This is particularly important where state actors were involved in harmful conduct, abuses of power, or failing to provide appropriate protection. Establishing responses that involve forms of justice and accountability, but not necessarily a criminal justice process, can start a process of rebuilding trust in the rule of law. Such processes need to be supported by ongoing dialogue and engagement with the affected individuals, communities and civil society.<sup>1</sup>

The limitations of different responses to past harms need to be acknowledged; for instance, the requirements of criminal justice processes to prove guilt can clash with the desire to establish the truth of past harms and to support effective community reconciliation. The burden of proof required in a criminal trial is different from allowing victims to recount their stories through Truth Projects. A criminal justice process in which the accused is acquitted due to weak evidence can sometimes cause further harm to victims, who feel that their experiences have been invalidated.<sup>iii, 2</sup>

iii. The acquittal of two retired police officers and a former solicitor in the latest Hillsborough trial illustrates the extent of further harm that can be experienced by victims when criminal justice proceedings are unsuccessful.

Furthermore, in the Towards Justice webinar on 10 February 2021, Jonathan Powell, Chief Executive Officer of Inter Mediate and the UK's former Chief Negotiator on Northern Ireland, suggested that too great a focus on putting right the past can actually hinder progress towards a better future. In the context of Northern Ireland, the communities affected by decades of conflict both recount stories of victimisation and harm, and in this case, designating individuals or whole communities as 'victims' or 'perpetrators' (which will be regarded as a political act) could hinder rather than aid progress towards reconciliation.

In some cases, rather than aiming to 'put the past right', the focus should be on supporting individuals and communities to come to terms with past harms as part of the process that examines what happened and holds to account those who were responsible. Acknowledgement of what has happened is often

key to the maintenance of social order, the protection of victims, the prevention of future crime, and a state's ability to convince its citizens to trust it with their safety and security rather than take the law into their own hands. In that context, responses to past harms can be considered as a process rather than a single intervention or an event that delivers 'justice'.

As the Towards Justice webinars and accompanying briefings showed, we are yet to identify a single effective process for responding to past harms that is without significant limitations or shortcomings. Nevertheless, there are some key considerations that might influence decisions as to the most appropriate response in different scenarios, to avoid causing further harm and recognise the different interests and perspectives involved – of the victims, of those who caused the harm, of the communities involved, and of the state.

## 3 Justice, accountability and blame

High aspirations are often set for responses to past harms, such as delivering justice and accountability, offering reconciliation, and enabling lasting peace. Such terms are universally recognisable, but as set out above, they are assessed from various perspectives, based on different motivations and expectations of outcomes. Justice can be regarded as an ideal, a philosophical concept, or something that is delivered as an outcome of criminal justice processes and equated with both the punishment of offenders and the institutions set up to deliver it.<sup>3</sup> Accountability – 'one of the most important checks on the exercise of power' – is considered to be a key element of justice, signifying an end to impunity through prosecution and the holding to account of individuals, followed by repentance and reconciliation.<sup>4</sup>

Three main dimensions of justice are identified in the literature on justice theory – although justice, as a concept, is approached differently depending on the disciplinary background of the researcher:

- **Distributive justice** – the fair distribution of outcomes
- **Procedural justice** – the formal rules and procedural rights granted to parties
- **Interactional justice** – the quality of treatment of the parties involved.<sup>iv</sup>

In addition to the various underpinning dimensions of justice, perspectives on what justice is can also vary between different audiences and social, cultural and political contexts.<sup>5</sup> Specific types of response to past harms may satisfy elements of these dimensions and some of the relevant expectations, but no one type is likely to embrace them all. Court sentences, for example, include important communicative elements, such as by publicly denouncing the offender and expressing blame and censure to a number of audiences, whilst restorative justice programmes might 'lack the sort of public accountability we expect from

iv. Some procedural justice theorists combine procedural justice and interactional justice. For a short review, see: Balde, R and Wemmers, J-A (2021). Perceptions of Justice and victims of crimes against humanity in Guinea. *International Review of Victimology*, 27(2), 138-161.

criminal justice institutions',<sup>6</sup> but may offer greater interactional justice by offering victims more of a voice and an active role in proceedings and in determining the outcomes.

Thus, in considering different responses to past harms, tensions may become apparent between:

- Conceptions of justice as accountability
- Justice as an end to the impunity of individuals
- Justice as repentance and reconciliation, based on truth-telling and public recognition of harm.

Such tensions exist in most – if not all – responses to past harms, and they feed through into different expectations about what those responses should be. The specific nature of past harms – their scale and nature, the current state of community relations, and levels of trust in the police and the state – and the individual and group perspectives involved, provide an important context in which responses should be formulated. Below, the main types of response to past harms are set out, together with their key features and limitations.<sup>v</sup>

## Criminal justice response – national and international

The main response to interpersonal crime lies with criminal justice institutions. Conceptions of justice are here conflated with the processes and institutions of the criminal justice system – national or international. In order to deal with the gravest of crimes, such as genocide or war crimes, the International Criminal Court (ICC) was established in 1998 by the Rome Statute, with the aim of putting an end to the impunity of crimes committed by states. This criminal process involves responding quickly, efficiently and with compassion to victims, whilst maintaining the rights of the accused to fair and impartial proceedings, to reduce the risk of wrongful convictions and miscarriages of justice.

Criminal justice processes risk side-lining and disempowering victims as stakeholders in the process of responding to past harms, however, and can lead to secondary victimisation. In addition, the criminal justice system and criminal justice processes require a clear distinction between 'victims' and 'offenders', which can create mutually exclusive categories that do not necessarily reflect the realities of past harms or conflicts. On the other hand, court proceedings and sentences publicly denounce offenders and express formal blame and censure of past actions to victims, offenders and the public. Criminal justice proceedings symbolise the rule of law, provide for settled standards and safeguard those involved, offer consistency of process in the way crimes and past harms are responded to, and ensure the maintenance of human rights standards.<sup>7</sup> Successful convictions may also satisfy victims' desires both for the punishment of those who harmed them and the prevention of future harm.

## Truth and reconciliation commissions

Restorative justice processes, broadly conceived, have been hailed as a more forward-looking alternative to standard retributive criminal justice proceedings – in particular, when it comes to large-scale abuse or harm. Restorative justice regards harms as violations of people, communities and relationships, and primarily focuses on making good the harm caused to individuals and communities, as well as requiring accountability from those who were responsible.

Restorative justice approaches are conceived as being less formal than criminal justice proceedings and also more inclusive, because they seek to involve everyone with a stake in the conflict. They are based on a positive and, perhaps, idealistic notion of community, drawn from an expectation that conflict can be resolved, and all parties successfully reintegrated. The hope for such approaches is that the process of establishing the facts of past harms and securing expressions of remorse from those who

v. There is a fuller discussion of these in the February 2021 Cumberland Lodge webinar briefing, *Towards Justice: Insights into Truth and Reconciliation*, available at: <https://www.cumberlandlodge.ac.uk/read-watch-listen/towards-justice-insights-truth-and-reconciliation-webinar-briefing>



were responsible, will lead to a sense of catharsis, forgiveness and reconciliation.

Restorative justice is based on a distinction between ‘victims’ and ‘offenders’, even though both are seen as stakeholders in the conflict, and as indicated above, such distinctions can be problematic. Additionally, some forms of restorative justice have been criticised for ignoring questions of power, both in the events leading up to harm and the subsequent responses to it; and for ignoring key concepts of delivering justice, such as proportionality, equity and consistency. So, whilst restorative justice has been hailed as a victim-centred approach, it does have its limitations. It is based on voluntary participation, but where such approaches are institutionalised, the degree of genuine voluntariness of victim and offender participation has been questioned. Given the different needs and wishes that individual victims of harm express, there is a risk that the consequences of past harms may depend more on the individual victims involved than on established principles of proportionate and equitable sanction. Additionally, some restorative justice schemes have been accused of ‘using’ victims as vehicles to rehabilitate offenders, and questions have been raised as to whether restorative justice is principally about victims’ needs or about offenders’.<sup>8</sup>

Despite the claim to involve all parties and allow everyone a voice, some formality and degree of control over the narration of the past are manifest in the context of state-managed truth commissions, as well as in other restorative justice processes, where ‘truth-telling’ can be carefully managed by the parties involved, as well as by the state itself. This raises the question of the relationship between establishing truth and achieving justice, and the inherent tensions between the dimensions of justice, and processes that aim to promote a more peaceful future.<sup>9</sup>

## Independent inquiries and Lessons Learned Reviews

In England and Wales, in cases of past harm where conduct is deemed to have been wrong, but where standard criminal justice proceedings are inappropriate or have previously failed and events ‘have caused or are capable of causing public concern’, inquiries can be set up under the parameters of the *Inquiries Act 2005* (I). The power to set up an Independent Inquiry rests with a Government Minister, and recent examples include the ongoing Independent Inquiry into Child Sexual Abuse and the Grenfell Tower Inquiry. The evidence of how effective Independent Inquiries and reviews are, is mixed. Some can last for many years, leading to lengthy reports with recommendations that, whilst accepted by governments, are not always fully implemented. Others can generate sufficient evidence to lead to criminal proceedings against individual perpetrators of crime and wholesale policy change.

The extent to which victims feel able to participate in public inquiries depends on the way in which the inquiry is framed, and this can lead to tensions in the early stages. Inquiries and Lessons Learned Reviews are resource-heavy and lengthy, but when they are established with a clear focus and expectations, and with the proactive engagement of relevant parties, they can provide opportunities for victims to have their voices heard, for a formal recognition of harms to be made, for expressions of accountability and apology, and for learning and policy change to help prevent future harms.

Highlighting the importance of a clear focus and expectations, the recently completed Windrush Lessons Learned review was completed in less than two years, and its recommendations (published in March 2020) were welcomed across political divides and by the communities affected and accepted in full by the UK Government. In addition, the Home Secretary offered the Chair of the review, Wendy Williams CBE, an opportunity to assess the extent to which her recommendations had been implemented, one year down the line – something reflected on during the

first preparatory webinar for this conference, [Towards Justice: Responding to Past Harms](#).

## Transitional justice

Transitional justice is an umbrella term usually reserved to describe a period of transition from oppressive and violent state regimes towards more peaceful and democratic ones, and it can involve elements of all the approaches set out above. According to the United Nations, in 2004, transitional justice encompasses: ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.<sup>10</sup> In some contexts, however, the harms that transitional justice is responding to are narrower, and the focus is more specifically on repairing community relations, (re) building trust, and securing the legitimacy of state activity and state power.

Transitional justice approaches are multi-fold and may include: reparation initiatives, ‘rule of law’ programmes, institutional and structural reforms, criminal prosecutions, truth commissions, or amnesties.<sup>11</sup> They can have formal and informal elements, and their features will be specific to the unique history of the population or country in question, the scale of past violence and abuse, and the level of international involvement. A crucial aspect of transitional justice is the goal of re-establishing state legitimacy and the legitimacy of all the relevant institutions of justice.<sup>12</sup>

Each of the approaches to past harms set out above take victims’ perspectives into account, but to a greater or lesser extent, depending on their primary focus. For example, some examples of transitional justice focus more on the need to secure future peace than on responding to victims’ demands for formal accountability. Regardless of focus, any approach to past harms should consider the potential for ‘secondary victimisation’ – the interaction between victims and others (in particular, agents of the criminal justice system, truth commissions or public

inquiries, etc.) once a victim has chosen to report a crime or past harm. Negative consequences of victims’ interactions with the police and the courts are well-known, including having to relive past trauma or undergo questioning of accounts, which can retraumatise or worsen the harm that people originally experienced. In setting up responses to past harm, clear communication with victims and victim groups about timelines, contact and possible outcomes is important for helping to set realistic expectations. Raising hopes about certain outcomes of truth-telling, or holding up the promise of catharsis and healing, can leave victims feeling cheated if those expectations are not fully met.

The duration and style of the formal processes of truth-finding, inquiries and criminal justice processes can cause victims to feel a loss of control over their own story, which can disempower people rather than enabling them to participate fully and make their voices heard.<sup>13</sup> Victim groups can take it upon themselves to speak for the victims of past harm and often play an important role in highlighting concerns. Clear and transparent communication with victims and their representatives, from the outset, is key, along with clearly outlined opportunities for participation.

## 4 The challenges of investigation

The responses to past harms set out above all require investigations into the alleged harms to be carried out. The responsibility for such investigations depends on the chosen format, existing evidence, and a number of other variables. What investigations of past harms have in common, however, are the difficulties faced in collecting evidence on events of the distant past. These kinds of investigation require significant resources and dedicated teams of investigators; they involve the challenges of establishing and securing evidence, addressing witness memory fade, responding to the fact that witnesses may no longer be available, and identifying any false memories. In the context of past harms involving state actors, evidence may have been lost or obscured; false evidence and cover-ups may have been created, and obstacles may have been put in place to make investigations even more difficult.

Jason Roach, Professor of Psychology and Policing at the University of Huddersfield, discussed the investigation of past harms in relation to cold cases in a 2017 paper, and suggested that such cases require a different investigative mindset to contemporary investigations, noting the difficulty of inheriting a chain of prior decisions and evidence collected. Confirmation bias – where investigators and researchers subconsciously seek to find information that supports an existing belief, ignoring or discarding evidence that challenges that belief – can multiply in such investigations and make it difficult for investigators to depart from the original lines of enquiry and thinking.<sup>14</sup> Of course, this only applies in cases where a criminal investigation did take place at the time of the harm. In many instances of past harm, no such investigations took place, meaning forensic or physical evidence is unlikely to be available to investigators, and this makes establishing what happened particularly challenging. Investigations may be led by the allegations made, which can magnify the tensions evident in all criminal justice investigations,

between believing somebody's testimony of events that happened in the past and protecting a suspect from wrongful conviction. For those who are suspected of having committed a crime, securing evidence of their whereabouts at the time of that the harm was inflicted will often be impossible.

The expertise of police officers lies at the heart of the ability to fully investigate past harms, both in terms of their skills and experience in conducting investigations and the responsibility of rebuilding public trust by demonstrating a willingness to contribute to the search for justice. By way of context, the latest *Crime Outcomes in England and Wales* report for notifiable offences recorded by the police (published in 2020), shows that over one-third (35%) of all criminal investigations are closed due to evidential difficulties, in addition to 43% of cases that are closed because no suspect could be identified.<sup>15</sup> This highlights the difficulties of investigating recent crimes, let alone trying to investigate harms that happened many years ago. In relation to past sexual offending, there are additional considerations, such as who made the allegation that triggered the investigation, the age(s) of the victim(s) at the time it happened, and the possible impact of an investigation on the victim(s). Such are the difficulties in investigating non-recent sexual offences that a national policing response was established in 2014 to support and co-ordinate these investigations – known as Operation Hydrant.

Operation Hydrant investigates non-recent child sexual abuse involving institutions, organisations or people of public prominence. Its latest statistics (up to and including March 2021) suggest that half of all allegations made so far have resulted in no further action. This has happened for a number of reasons, including: the death of the suspect (33%), failure to identify the suspect (21%), lack of victim support for action (19%), or insufficient detail or evidence (9%).

It is important to consider victims' wishes, in these investigations, and there is evidence to suggest that a significant proportion of victims of non-recent offences do not wish to engage with investigations.<sup>16</sup> Of course, victims' wishes should be secondary

to decisions about whether or not to investigate where there are concerns about ongoing risks to other people and/or a risk of future harm and victimisation to the victim(s).

In cases where the risk of future harm is low or non-existent, a more mundane concern is the limited resources available to policing. The resource implications of investigating past crimes are immense and are highlighted in the significantly higher costs associated with the policing of Northern Ireland, compared to other parts of the UK.<sup>17</sup> In considering costs as a factor in investigations, the suggestion is not to imply that a financial value should be assigned to the harm caused, but to consider the impact that using resources on non-recent cases might have on stretched police resources and activity in relation to contemporary harms and crime. This is significant, given the enormous pressures on the criminal justice system and the current delays in dealing with serious offences in the courts.

In a 2019 article, Dr Hannah Maslen from the University of Oxford, and Colin Paine, Detective Chief Superintendent of Thames Valley Police, provided an indication of the resource implications of comparing the investigation of an average sexual assault with a complex case of child sexual exploitation (CSE). An average sexual assault case takes about 77 hours to complete, compared with nine investigators taking two years to complete a CSE investigation.<sup>18</sup> Available resources are a consideration in all responses to past harm, from the criminal justice system to public inquiries: the Grenfell Tower Inquiry, for example, is estimated to have cost £117 million so far.

The Oxford CSA (Child Sexual Abuse) framework, published in 2019, is a decision-making framework for guiding police investigations into child sexual abuse cases. It lists the following factors for consideration, based on a general assumption (rebuttable presumption) in favour of investigation:

- Solvability
- Threat posed by offender
- Harm to (past) victim(s) by starting investigation

- Resource implications and impact on other investigations
- Police legitimacy and impact on public trust and confidence.<sup>19</sup>

Hence, it is clear that investigating past harms is difficult, resource intensive and fraught with challenges. When investigations take place long after an event, there is no guarantee that long-delayed justice will satisfy victims of past harms. However, where past harms perpetuate current injustices, pose ongoing risks, or where lessons need to be learnt in order to prevent future harm, investigations and inquiries, however difficult, may be a pre-condition for victims and communities to be able to come to terms with the past. Responses and criminal trials, in particular, have a symbolic value, reflecting 'a collective will to recognise victims and victimisation and hold offenders accountable',<sup>20</sup> regardless of the time that has passed.

# 5

## Victims' perspectives

*This section summarises the Cumberland Lodge webinar briefing, Towards Justice: Victims' Perspectives on Past Injustices, which can be read on-screen in full, or downloaded from: <https://www.cumberlandlodge.ac.uk/read-watch-listen/towards-justice-victim-perspectives-past-injustices-webinar-briefing>*

The position of victims of crime in the criminal justice system has changed dramatically from the 18th century, when victims were able to decide on prosecuting offenders and they alone carried the burden of bringing offenders to justice. Victims were driving the processes of justice, but due to the costs and obstacles involved justice was reserved for the wealthy and powerful until insurance to pay for prosecutions was introduced.<sup>vi</sup>

Victims' central role in criminal justice changed in the early 19th century, with the advent of a new professionalised police force that gradually gained the power to bring charges, rendering victims mere instruments to the processes of justice. The balance shifted, once again, during the latter parts of the 20th century, when feminist and victim's movements forced a recognition that the criminal justice system was failing many victims by ignoring their reports, subjecting them to secondary victimisation through cross-examination, and appearing to downplay their suffering through the 'lenient' sentences imposed.<sup>21</sup>

The decades that followed saw an increasing focus on victims' rights, which lead to the introduction of a Code of Practice for Victims of Crime in 2005, setting out the minimum standards that victims of crime could expect from agencies in the criminal justice system providing a service to them. Whilst most of the rights enshrined in the Code of Practice relate to service rights, there are some rights that have procedural implications for defendants, such as the Victims' Right to Review scheme, introduced in 2013, which enables victims to seek a review of Crown Prosecution Service (CPS) decisions not to prosecute.<sup>22 23</sup> Possibly the most significant shift in police responses to victims of crime came in the aftermath of a number of scandals that exposed the police

vi. The first records of this kind of insurance date back to 1737, and it was fairly widespread by the 1760s.

vii. Following the high-profile case of Carl Beech's false allegations of sexual abuse by senior politicians, more critical police reports followed, such as the 2016 Henriques Report by Sir Richard Henriques, and damning inspections and investigations by HMICFRS in 2020.

See also: the Metropolitan Police Service 2020 report, [An inspection of the Metropolitan Police Service's Response to a Review of its Investigations into Allegations of Non-Recent Sexual Abuse by Prominent People](#); and the Independent Office for Police Conduct (IOPC)'s 2020 [Operation Kentia review](#).

treatment of child victims of serious and repeated sexual abuse (e.g., from the Saville, Rochdale and Rotherham scandals) and in 2014, the then Chief Inspector of Constabulary stated that: 'The police should immediately institutionalise the presumption that the victim is to be believed'.<sup>24</sup>

The move to offer procedural rights to victims of crime and, in particular, the policy of presuming belief, is in clear conflict with a defendant's right to be presumed innocent until proven guilty. Born out of a desire to avoid 'letting down more victims', this policy has been blamed for a series of high-profile, false allegations of sexual abuse.<sup>vii</sup> The College of Policing's most recently published guidance, in 2020, for Senior Investigating Officers who investigate allegations of non-recent institutional child sexual abuse, makes no reference to 'believing' complainant accounts,<sup>25</sup> and in the context of the investigative and judicial process the College of Policing recommends removing the term 'believing' from investigations and changing it to stating that 'victims can be confident they will be listened to and their crime taken seriously'.<sup>26</sup> These shifts and changes to the approach taken towards the position and role of victims of crime highlight the impact of changes to victims' rights on the rights of people who are accused of criminal activity. Once those who are accused of criminal conduct are wrongly convicted in court, a miscarriage of justice occurs, creating new kinds of harm and victimisation.<sup>27</sup>

In the context of past harms and crime, victimisation can take different forms:

- Victimisation by individual offenders causing intentional and malicious harm
- Victimisation through individual or institutional neglect
- Large-scale harm mass victimisation of groups and communities
- Individual and group victimisation through state violence or neglect.

Expectations of remedy for different forms of harm experienced will, by necessity, be shaped by the nature of victimisation, the timing of remedies, and victims' needs. Victims who are still experiencing harm may simply want their victimisation to stop; others may want to forget about their victimisation, seek to deny it, and move on; some seek punishment of the offenders as a form of revenge; some want to work towards forgiving those who harmed them, as part of a process of healing; and some are content to have their voices heard and set out the truths of their past, by communicating the harms they experienced in the hope of preventing future harm to others.

This complex picture of how individuals respond to suffering and harm is further complicated when group interests need to be considered and whole communities see themselves as victims, in cases of community conflict, victimisation of communities by the state, and mass atrocities. Whilst identifying 'victims' and 'perpetrators' of past harms is generally considered to be an essential part of the process of healing and reconciliation, it is not a neutral process, and claiming recognition of victimisation can be politicised and exploited by those who are pushing for a particular criminal justice outcome or political settlement. It can also be exploited by those who measure their success by the degree of blame that is attributed to offenders.<sup>28</sup>

Victims often look for the delivery of justice, accountability, recognition and reparation, as a pre-condition for trust and peace. In the USA, the trial and conviction of former police officer Derek Chauvin, in 2021, following the murder of George Floyd in April 2020, recognised the victimisation of black people at the hands of the police. This process delivered a powerful message that justice can prevail for black people who suffer harm at the hands of the state. Whether more substantive action against the ongoing injustices suffered by black Americans will be taken, remains to be seen.

## 6

## The state and the media

The relationship between the state and the media, in the arena of criminal justice, is fraught. On one level, the media are charged with acting as a 'fourth power' – monitoring and scrutinising the institutions of the state and 'guarding the guardians of the law'.<sup>29</sup> On another level, the media can exploit crime and criminal justice for entertainment purposes, to attract and retain audiences, and for 'cheap' headlines.

The 'romantic' notion of the media as a guardian of democracy can seem to be at odds with that of the media as frivolous entertainment and 'big business'. In this context, the media are frequently presented as the voice-piece of the powerful, and accused of reproducing dominant ideologies and misrepresenting reality. This latter accusation is particularly pronounced within criminal justice, with accusations frequently aimed at the media (by academics, members of the judiciary, police officers and commentators, for example) for misrepresenting the amount of crime there is in the UK, the prevalence of certain types of crime, the processes of the criminal justice system, and sentencing trends – thereby causing increased levels of fear of crime in society, 'moral panic' and a more punitive climate of opinion.<sup>30 31</sup>

Such claims about the direct influence of media content on the public and public opinion have been subjected to scrutiny and contested by researchers and media studies scholars. Nevertheless, police services and other criminal justice institutions have long placed weight on the importance of good media relations, and through it, communication with the public. As a consequence, the police are no longer content with monitoring media representations in a passive way but aim to actively influence and manage their media image. This follows a recognition that the way in which the media report on criminal justice events – including miscarriages of justice and high-profile incidents, such as the murder of Stephen Lawrence in 1993 – can have an immediate impact on the public's expressed levels of trust in the police. In a 2003 Ipsos MORI study, nearly two-thirds



of respondents stated that perceived high-profile mistakes made by state agencies undermined their trust in those institutions.<sup>32</sup>

Stories about police deviance or perceived failures are attractive to the media and the public alike, and police services are acutely aware of their potential disruptive effects. As mentioned, the police proactively monitor the media and work with media representatives to help control their image, present social problems in line with operational needs, and for investigative purposes. As such, there is an element of interdependency – a symbiotic relationship between the police and the media – that both institutions are well aware of.<sup>33</sup>

In the case of past harms, we see this contested role of the media around policing and criminal justice matters play out in a number of significant ways. Investigative journalists have played a significant role in forcing greater recognition of many high-profile past harms, including miscarriage of justice cases such as the ‘Birmingham Six’, in which six men, who were wrongfully convicted of the murder of 21 people in two pub bombings in 1974, spent 17 years in prison before their convictions were quashed). Other cases that received significant media exposure have been driven by: complaints of police neglect and failure from the family members of victims (e.g., around the investigation of Stephen Lawrence’s murder) or campaigns for justice by families of victims (as in the Hillsborough disaster). These are causes that have been picked up by the media, given greater attention and public exposure as a result, and received significant public support as a result. In some cases, subsequent public campaigns have then been picked up and supported by Parliamentary representatives (as in the posthumous pardon of Alan Turing and the subsequent collective clemency legislation – the ‘Alan Turing Law’ – which was passed in 2017).

There have been instances where investigative journalists have gone ‘undercover’ to expose issues such as racism within the police (as seen in *The Secret Policeman*, a documentary screened on the BBC in 2003 that highlighted racism amongst new police recruits). They have also provided evidence of police misconduct

viii.  
The most recent controversy relates to protests held after the Sarah Everard murder of March 2021, and the way in which policing of these protests, amidst the COVID-19 pandemic, was presented in the media.

at protests, and reported and highlighted sensitive issues such as domestic violence being perpetrated by police officers. On the other hand, some investigative journalists have, in turn, committed crimes themselves, during their investigations, or hindered law enforcement efforts, and in some cases, presented police actions in a selective and potentially misleading manner.<sup>viii</sup>

At times, investigative journalists have an important role to play in acting as third-party witnesses to past harms; in many cases, highlighting state agents’ failings and neglect, misconduct or outright criminality. The evidence to show that the media fulfil this role and act as the ‘fourth power’ of government, and are trusted to do so, was questioned during the Leveson Inquiry into the culture, practices and ethics of the British press, in 2012, with suggestions that the relationship between the media (in this case, News International) and the police (in this case, senior officers in the Metropolitan Police) had become too close, thus hindering impartial investigations into phone tapping at the time.

Lord Leveson made a number of recommendations in relation to the press-police relationship, to help provide safeguards around ‘off-the-record’ briefings, ‘leaks’ of information and the employment of former police officers by media organisations.<sup>34</sup> Nevertheless, he recognised the vital role the media play in communicating policing concerns to the public, allowing the police to explain its priorities, and encouraging the public to report crime and come forward with evidence.

On the other hand, the media’s role in looking for police wrongdoing and acting as a vehicle of accountability often strains relations between the police and the media. The relationship between the two is inevitably uneasy, as both institutions depend on one another to some extent, to fulfil their roles, and they each offer vital checks and balances to ensure that their respective roles are carried out effectively, legitimately and ethically.

# 7

## Summary

This briefing highlights the complexity of dealing with past harms, and the role of the state and the police in both, causing harm, and providing effective responses to past harms. The competing needs of victims of crime, victim groups, suspects or defendants, communities, and the state need to be considered as part of discussions about how best to 'put the past right'. In fact, the very notion of 'putting right' may generate more questions than answers, as it raises expectations and hopes of restoration and closure that cannot be always fulfilled. Instead, we may need to focus on the different needs and expectations in our responses to past harms: ranging from justice, to accountability, acknowledgement of victimisation, prevention of future harm, and reconciliation.

A primary consideration should be given to the avoidance of future harms, the danger of perpetuating injustices (as well as creating new ones), and the impact of responding to past harms on the resources available to deal with current injustices, harms and crime. Sometimes, difficult decisions may need to be taken about whether the specific aims of any responses to past harm – justice and peace, for example – outweigh the interests of individual victims or groups of victims.

Overall, it is clear that there is no one prescriptive response to past harms, but that responses need to be shaped to fit the unique social, cultural and economic contexts of particular harms the forms of victimisation involved, the current context, and the overriding aims of the different parties involved.

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Berkshire SL4 2HP  
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01784 432316  
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