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Report

Towards Justice: Law Enforcement & Reconciliation

Martina Feilzer

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Towards Justice:

Law Enforcement & Reconciliation

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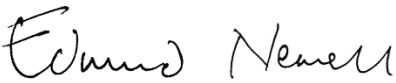
Many thanks to our media partner for this conference, *Policing Insight*, the independent digital magazine focusing on the governance, management and politics of policing.

Policinginsight

Foreword

This report presents the key findings of a conference and series of discussions convened by Cumberland Lodge on how to address historical wrongs in society. Drawing on the insights, experience and expertise of police officers, academics, non-governmental organisations, lawyers, victims and survivors, *Towards Justice: Law Enforcement & Reconciliation* sets out clear, practical recommendations for dealing with past harms in society in ways that are just and humane. Underlying the report is the recognition that the passing of time is not healing for victims if injustice persists, and risks making issues more contentious, problematic – and costly – for all concerned.

Launched at New Scotland Yard at the start of our 75th anniversary year, this is the latest in a series of reports on policing and society produced by Cumberland Lodge through its long-standing association with the Police. We are extremely grateful to the members of our Police Conference Steering Committee, particularly Rob Beckley, for their help in developing and facilitating the discussions, our media partner *Policing Insight* for reporting on earlier stages of the project, and our freelance Research Associate, Professor Martina Feilzer, who has written this report. We hope that its publication will be an important step towards improving policy and practice around issues of injustice.



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About the author

Martina Y Feilzer was 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).

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Executive Summary

The past decade of policing and criminal justice has been dominated by debates seeking to understand how law enforcement can better respond to non-recent serious harm. These debates emerged as past police failings were highlighted and caused public anxiety through child sex abuse scandals, the ongoing inquiries and criminal investigations into the Hillsborough stadium disaster and other high-profile events of public concern. The 39th Cumberland Lodge Police Conference, held virtually on 17-18 June 2021, explored a range of complex issues in relation to the role of the police in investigating non-recent harms and injustices in the UK and contributing towards reconciliation and community healing. The conference brought together a cross-sector delegation of 100 senior police officers, legal professionals, charity representatives, academics, senior civil servants and future leaders.

Conference participants heard contributions from high-profile guest speakers as well as powerful testimonies from victims, survivors and families of non-recent harms and abuses, ranging from child sexual abuse within institutions, to the investigation into Stephen Lawrence's murder, the Windrush scandal, Hillsborough, The Troubles in Northern Ireland and the contaminated blood products scandal.

The conference was organised into seven interactive sessions: Putting the Past Right; Justice, Accountability and Blame; The Experience of Northern Ireland; The Challenges of Investigation; Victims' Perspectives; The State and the Media; and Final Reflections. It took place under Chatham House Rule, to help facilitate an open exchange of views in an inclusive environment.

Part I of this report was shared with conference participants before the event to serve as a baseline for discussion and to provide an independent review of current research and thinking on this topic. It builds on previous short briefings that accompanied three public webinars organised by Cumberland Lodge, recordings of which are available online. Part II summarises the cross-sector discussions from the conference and presents eight key reflections and recommendations for future policy and practice.

Reflections and recommendations

The complexity of the themes discussed at the conference makes it difficult to summarise in a few sentences or words. Nevertheless, the reflections and recommendations below present the main discussion points and policy-focused demands for change, which consolidate learning from previous public inquiries and institutional reviews, as well as academic thought.

1. Recognise the importance of addressing non-recent harms

It is vital that law enforcement, policymakers and politicians recognise that non-recent harms continue to resonate in the present, causing further harm and damage, and sowing mistrust and new trauma. It is essential that we apply learning from recent responses to non-recent harms and their relative successes and failings to continually improve the systems of remedy.

2. Review existing forms of remedy open to victims of non-recent harm

The forms of remedy open to victims, survivors of non-recent harms and their families, have emerged over time in an unsystematic fashion, leading to tensions; for example, adversarial criminal justice proceedings and public inquiries based on inquisitorial principles; confusion for victims, survivors and their families as to the diverging aims of these processes; long, drawn-out timelines for searches for truth and justice; and significant costs. It is time to review these processes, consider these inherent tensions, and ensure that they meet the needs of those most affected.

3. Offer alternative systems of remedy such as restorative justice and an independent body for victims of non-recent harm

Different forms of remedy available to victims of non-recent harms have different aims and desired outcomes, but one process which has gained momentum in other areas of the criminal justice system and has not been considered in a systematic fashion in responding to victims of non-recent harm in England and Wales, is that of restorative justice. It has been used in truth and reconciliation commissions in other countries but has been largely absent in the events discussed during the webinars and the conference. If a review of current systems of remedy were to be undertaken, the value offered by restorative justice principles should be considered.

4. Establish a duty of candour

The common experience of victims, survivors and their families of being unable to obtain information to understand the situations in which they find themselves, is a strong reason for considering establishing a duty of candour for serving and retired police officers, as well as other public bodies. The lack of transparency can lead to mistrust and the suspicion of cover-ups. This recommendation comes with the caveat that a wider review of remedies for non-recent harms is undertaken, thereby establishing processes which allow such a duty of candour to be supported and which encourage individual and organisational candour.

5. Introduce an Independent Public Advocate

The sheer complexity of the situation that victims, survivors and their families can experience, and the multiple agencies with whom they must engage, is a strong reason for considering the introduction of an Independent Public Advocate. This person would act as a single port of call for the provision of support to those affected. The role, responsibilities and remit should be distinct from the Victims' Commissioner and the availability of resources must be examined. Consideration should also be

given to the introduction of trauma-informed training to those responding to victims, survivors and families of those suffering significant harm.

When reviewing systems of remedy and considering both process and outcome of any new system, due consideration should be given to principles of restorative and procedural justice in responses to victims, survivors and their families.

6. Reflect on the role of the media

Investigative journalism and an independent and sustainable media system are essential in holding to account those in power and acting as the fourth power in a democracy. This needs to be protected. However, the role of the media in cases of non-recent harm is complex and includes below-standard reporting and the abuse of media power, causing harm to individuals in already vulnerable positions. Calls for changes to media practice need to reflect current standards and systems of media regulation and accountability.

The decline of local media is a threat to public accountability of local systems of power, including policing and local government. Supporting local news media is an important aspect of local democracy and thought should be given to how a healthy local news media could be maintained.

The increasing role of social media in disrupting existing relationships between state, media, the police and the public, and providing a platform for members of the public to make their voices heard, needs to be recognised.

7. Develop learning organisations

Developing learning organisations – interorganisational learning to improve processes and practice and learn from past experiences – in the context of non-recent harms and law enforcement requires a thorough understanding of the particular conditions in which policing operates and the challenges this brings. Allowing for organisational learning and self-reflection requires a commitment by leaders to listen to challenging views

that can be uncomfortable to hear and that may call into question an organisation's goals, strategies and expectations. This is not an easy top-down undertaking as it requires a significant shift in cultural and organisational practices, however, it could be supported by the new Police Education Qualifications Framework (PEQF).

8. Remember humanity

A recurring theme was that people at every stage of the bureaucratic and process-driven institutions responsible for responding to allegations of harm, including the police, social services, law enforcement and the government, need to remember that they are dealing with fellow humans who are facing highly-charged, traumatising and emotional situations. This fundamental principle should underpin all systems, processes, and interactions with those involved.

These recommendations are discussed in more detail from page 34 onwards.

I.

Pre-conference briefing

Part I: Pre-Conference Briefing

Part I of this report served as a briefing for participants, ahead of the Cumberland Lodge conference in June 2021. It offers an independent review of current research and thinking, informed by existing literature and practice, as well as three public preparatory webinars on this theme, convened by Cumberland Lodge in January and February 2021:

Towards Justice: Responding to Past Harms, 27 January 2021

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 2021

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: Victims' Perspectives on Past Injustices, 25 February 2021

With guest panellists:

- Dame Vera Baird, QC (Victims' Commissioner for England and Wales)
- Assistant Commissioner Robert Beckley, QPM (Assistant Commissioner, Metropolitan Police; Overall Command of the criminal and disciplinary investigations into the 1989 Hillsborough disaster, Home Office)

The review below builds on three previous briefings that accompanied these preliminary webinars; the webinar recordings and briefings are available to access on-demand on the Cumberland Lodge website.

1 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 was explored further 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. 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 Chapter 4 on Victims' Perspectives below, p. 25) – carry the risk of causing new wrongs and harms today, through miscarriages of justice, as well as potentially prolonging the

sense of victimisation amongst those who are awaiting closure, accountability and justice.[i]

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 held 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. 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. What are the desired outcomes, and from whose perspective?

i. See Chapter 4 below on changes in victims' roles in the criminal justice system and the Cumberland Lodge webinar, Towards Justice: Responding to Past Harms (January 2021).

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.[i]

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 an accused is acquitted due to weak evidence can cause further harms to the victims who will feel that their experiences have been invalidated.[ii] Furthermore, in the second webinar, 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

ii. The acquittal of two retired police officers and a former solicitor in the latest Hillsborough trial illustrates the extent of further harm caused to victims by unsuccessful criminal justice proceedings.

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.

2 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.[2] 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.[3]

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.[iii]

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.[4] 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 publicly denouncing the offender and expressing blame and censure to

iii. 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.

a number of audiences, whilst restorative justice programmes might 'lack the sort of public accountability we expect from criminal justice institutions',[5] but they 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.[iv]

iv. A fuller discussion of these is provided 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

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.[6] 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 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'.[7]

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.[8]

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 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 (see page 8).

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 (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'.[9] 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.[10] 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.[11]

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.[12] 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.

3 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 challenges 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.[13] 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 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.[14] 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.

Operation Hydrant, which investigates non-recent child sexual abuse involving institutions, organisations or people of public prominence, published its latest statistics up to and including March 2021, suggesting that half of all allegations made had resulted in no further action. This had 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 this context, and there is evidence to suggest that a significant proportion of victims of non-recent offences do not wish to engage with investigations.[15] 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.[16] 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 by 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.[17] 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.[18]

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.[19]

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',[20] regardless of the time that has passed.

4 Victims' perspectives

This section summarises the Cumberland Lodge webinar briefing, Towards Justice: Victims' Perspectives on Past Injustices, which can be read on-screen 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.[v] 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 victims' 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.[21]

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

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.[22] [23] 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 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, Sir Thomas Winsor, stated that 'The police should immediately institutionalise the presumption that the victim is to be believed'.[24]

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.[vi] 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,[25] 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'.[26] 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.[27]

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.

vi. 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*, 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 [Accessed 15 February 2021]

Independent Office for Police Conduct (IOPC)'s 2020 Operation Kentia review. [Accessed 16 February 2021]

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.[28]

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 May 2020 while Chauvin was a serving officer, 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.

5 The state and the media

The relationship between the state and the media, in the arena of criminal justice, is fraught. At one level, the media is charged with acting as a fourth power, monitoring and scrutinising the institutions of the state, as 'guarding the guardians of the law'.[29] At 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 is 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.[30] [31]

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 reports 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.[32]

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.[33]

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, 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 pardon of Alan Turing and the subsequent legislation – the 'Alan Turing Law'– which was passed in 2017).[vii]

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 at protests, and reported and highlighted sensitive issues such

vii. The Alan Turing Law, passed in 2017 in England and Wales, is a collective clemency law extending a posthumous pardon awarded to Alan Turing by the Queen in 2013 to all those convicted under the former offence of buggery.

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.[viii]

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

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 fulfils this role and acts as the 'fourth power' of government, and is 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.[34] Nevertheless, he recognised the vital role that the media played 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, he also found that the media's role in looking for police wrong-doing and acting as a vehicle of accountability often strains relations between the two.

The relationship between the police and the media is inevitably uneasy, as both institutions depend on one another to some extent, to fulfil their roles, but also to offer vital checks and balances to ensure that their respective roles are carried out effectively, legitimately and ethically.

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 raise more questions than answers, as it raises expectations and hopes of restoration and closure that cannot always be 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.

2.
Key themes and recommendations

Part II: Key themes and recommendations

The 39th Cumberland Lodge Police Conference was held virtually on 17-18 June 2021 and guest speakers included:

- Assistant Commissioner Robert Beckley QPM – Overall Command of the Hillsborough investigation
- Professor Coral Dando – Professor of Psychology, University of Westminster
- Richard Fewkes – National Co-ordinator of Operation Hydrant
- Sir Robert Francis QC – Barrister, Serjeants' Inn Chambers
- Sir George Hamilton QPM – Former Chief Constable of the Police Service of Northern Ireland (PSNI)
- Professor Jean Hartley – Professor of Public Leadership, The Open University
- Susan Hemming CBE – Director of Legal Services, Crown Prosecution Service (CPS)
- Dr Emma Ireton – Senior Lecturer in Dispute Resolution, Nottingham Law School
- Michael Lockwood – Director General, The Independent Office for Police Conduct (IOPC)
- Sean O'Neill – Chief Reporter, The Times
- Danny Shaw – Head of Strategy and Insight, Crest Advisory

The conference was organised into seven interactive sessions – Putting the Past Right; Justice, Accountability and Blame; The Experience of Northern Ireland; The Challenges of Investigation; Victims' Perspectives; The State and the Media; and Final Reflections. It took place under Chatham House Rule, to help facilitate an open exchange of views in an inclusive environment.

Part II of this report summarises the cross-sector discussions and presents eight key recommendations that emerged from the conference.

The core arguments that led to the recommendations will be organised thematically:

- Systems of remedy and procedural considerations
- Investigations of non-recent harms
- Victims' perspectives
- The role of the media in exposing non-recent harm
- Looking to the future and learning the lessons from non-recent harms

A reoccurring theme at the conference was the need to recognise that non-recent harms continue to resonate in the present, causing further harm and damage and sowing mistrust and new trauma. At the time of the conference, several non-recent harms were under scrutiny: the Daniel Morgan report was published on 15 June 2021; the Infected Blood Inquiry was hearing public evidence from those affected and their families; the Independent Inquiry into Child Sexual Abuse was ongoing; and in May 2021, a court acquitted two former police officers and an ex-solicitor who had been accused of altering police statements after the Hillsborough disaster. This was the latest in a series of trials and proceedings into Hillsborough – four trials in total, two sets of inquests, a public inquiry and other investigations and reviews. Additionally, the Government had just released its End-to-End Rape Review report[35] indicating an area of crime and justice dogged by persistent problems in investigation, recognition of victim need, poor police response, and failures to achieve satisfactory outcomes for those harmed by crime and criminal justice processes. The conference also coincided with growing calls for a public inquiry into the handling of the COVID-19 pandemic, placing the role of public inquiries into the spotlight.

Thus, the conference was held in a context of the acknowledgement of non-recent and current harms and the role

of the state and the police in those harms. In some instances, the state and/or the police were responsible for harm caused, and in other instances the police had been tasked with responding to past harms. On rarer occasions, they were involved in both these roles. The conference provided a timely platform for rich discussion on the shortcomings of current systems of remedy and approaches to addressing non-recent harms. Additional themes that emerged included the need to identify ways to improve these systems of remedy, pay more attention to those caught up in state processes and reflect on the need for humanity in complex situations of harm, and learn lessons for the future.

Putting right past harms: Systems of remedy for non-recent harms and procedural considerations

Part I set out the range of harms that current systems of remedy are trying to respond to. 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 conference sought to deepen understanding of how current forms of remedy, from the criminal justice process to public inquiries, interact to provide responses to these various forms of non-recent harms. Sessions focused on why certain non-recent harms are brought to public and political attention and why others are not.

Key factors to consider in recognising non-recent harms include:

- the time passed since the relevant events and the number of individuals affected who are still alive;
- the role of persistent individuals, victims and survivor groups pushing for justice and not giving up, including their capacity to conduct research on the non-recent harms or support provided by others, such as investigative journalists or academics;
- and media interests in the non-recent harms, traditionally, through investigative journalists and the mainstream media.

However, where mainstream media may have acted as a gatekeeper for publicising non-recent harms, in recent years, social media has amplified the voices of victims, survivors and others affected, and allowed people to mobilise support for their causes. Nevertheless, the key to examining past harms thoroughly is to get political buy-in through effective lobbying of local and/or national political activists and politicians, as this

increases the pressure on ministers to hold a public inquiry if, and where, other forms of remedy for non-recent harms have failed.

Establishing who is involved in bringing non-recent harms to public attention highlights the different groups and individuals affected by non-recent harms, including victims of direct and indirect harm, suspected wrongdoers, the wider public, institutions of justice, and state representatives. In this section, we will highlight how the different interests and conflicting perspectives of the participants and audiences of forms of remedy for non-recent harms impact the way in which accountability and acknowledgement is currently processed. Essentially, when discussing the most appropriate approach to non-recent harms, early consideration of the overall aim of the chosen response is key to framing expectations, avoiding the unwitting creation of new divisions, and providing some sense of closure to victims, perpetrators and the wider community.

In Part I, we set out the various drivers of a response to non-recent harms and the limitations of current responses or systems of remedy available.

The webinar and accompanying conference briefings also suggested that we are yet to identify a single effective process for responding to non-recent harms and that victims, survivors and their families currently rely on a range of responses, from criminal justice processes to inquests, police complaints systems, and various forms of inquiries, with the public inquiry seen as the most significant remedy possible. The shortcomings of different responses to non-recent 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.

Participants in the conference confirmed some of the discussions held in previous webinars and those set out in the briefings, but additional dimensions and details emerged. For example, the drivers and outcomes desired by conference participants included:

- the acknowledgement and establishment of what happened and the harm caused;
- the holding to account of those responsible for the harm;
- the move towards restoration and reconciliation by coming to terms with non-recent harms;
- and the rebuilding of public trust in justice and the agencies involved in its delivery, such as the police and the courts.

The conference showcased the different forms of remedy available to victims, survivors and their families, and demonstrated how current forms of remedy can work against each other rather than offering effective resolution; for example, criminal investigations holding up health and safety inquiries, or inquests concluding *accidental death* rather than *unlawful killing*. There are some inherent tensions between the different forms of remedy, and these are, in part, due to different legal and procedural considerations as well as different aims and objectives.

To further illustrate this point, participants discussed in-depth public inquiries and inquests and their legal and procedural basis, the lack of consensus over their role, how inquiries should be run, and who they are for. Violent or unnatural deaths, deaths in police custody, sudden and unexpected deaths, and deaths in certain other cases are referred to a coroner who will make a decision on whether to hold an autopsy and/or hold an inquest.[36] The inquest becomes a public court process in which the participation, information, legal representation, and support rights of the bereaved families are unclear and regarded as insufficient. There are concerns that inquests have fallen behind in the attempts to modernise the administration of justice and ensure appropriate accountability of decision making, and that the coroner service lacks the resources to respond to changing societal needs and complex cases. Short form verdicts have been criticised for their inability to fully acknowledge the complexity of some cases, in addition to their lack of legal status.[37] Recognising the lack of clarity and information available on inquests, the Government has produced a Guide to Coroner Services to Bereaved People.[38]

Public inquiries are often perceived to be a sort of court aiming to achieve justice for survivors where other processes have failed or have been deemed inadequate, but they are not part of the legal process and do not result in legal liability. Inquiries are part of the political process and can take evidence and pronounce views on blame and culpability. As such, Dr Ireton suggests they have evolved over time and take a hybrid form as a political and legal process based on inquisitorial principles of fact and truth-finding; one that does not recognise parties or sides to an inquiry[39] creating tensions between such processes and those of the adversarial criminal justice system.

Furthermore, public inquiries focus on the macro-level, aiming to identify wider failings in the checks and balances of public administration and regulations. Thus, they rely on inquiry participants giving full and frank evidence and putting public interest before personal or organisational interest. However, participants will, of course, be mindful of civil or criminal proceedings that could follow giving evidence. An example of this was seen in the Grenfell Inquiry when three employees of a cladding firm refused to give evidence due to fear of self-incrimination. This fear may also be a factor in the institutional defensiveness witnessed when police officers are asked to discuss past failings, harms caused, and institutional processes contributing to harm.

All participants in public inquiries should be encouraged to be transparent and open, and overcome defensiveness as a result of the perceived bureaucratic impenetrability of the police, the remaining cultural resistance in the police to looking backwards, or a misguided sense of protecting the organisation's reputation. However, where the interests of individuals avoiding self-incrimination interact with those of institutions avoiding reputational damage, such interactions will support institutional defensiveness and be difficult to disrupt. The prospect of open and candid disclosures at public inquiries would be strengthened if organisational and individual motivations can be separated and no longer encourage defensiveness and secrecy. Only then can public inquiries be the valuable instrument that they are meant to

be and allow us to learn from the past to prevent the recurrence of harms in the future.

The procedure and conduct of an inquiry are not predetermined by the Chair of the inquiry, which provides flexibility, but also an element of arbitrariness. In terms of the rationale for public inquiries, their political status outweighs the constraints of other legal processes. Reasons for convening inquiries for some past wrongs but not others are purely political; there is no application process for public inquiries, the decision lies solely with a Government minister and there is no transparency as to how such decisions are derived. As such, there is no clarity of process and no consistency in approach to public inquiries; the process of establishing an inquiry is arbitrary, inconsistent and widely criticised. Importantly, most inquiries are held in public so that the public can form its own judgement on issues of concern and on the inquiry's findings and process.

So, whilst clearly considered an important tool for victims, survivors and their families in getting answers to non-recent events and harms, those campaigning for an inquiry can misunderstand the process and feel side-lined yet again. Participants in an inquiry may have different expectations of the inquiry's aims and objectives, dependent on their capacity, and this can lead to further dissatisfaction. The interaction and diverging procedures and expectations of remedies available causes problems for investigations of non-recent harms and, of course, has a significant impact on victims, survivors and their families, and that will be discussed in more depth in the next section. Exhausting all remedies available can lead to a long drawn-out process prolonging trauma, undermining trust in systems of remedy, and preventing closure for victims, survivors and families, as well as delaying organisational learning and prevention. Additionally, as there is no single point of information, complaint, or remedy for victims, survivors, and their families, they feel as if they are fighting against the system as well as dealing with the aftermath of the harm experienced.

As the Towards Justice webinars, accompanying briefings and the conference proceedings highlighted, we are yet to identify a single effective process for responding to past harms that is without significant limitations or shortcomings. There are some key factors that must be considered before deciding on the most appropriate response, to avoid causing further harm and to recognise the different interests and perspectives involved, including the victims, perpetrators, the wider community, and the state. It seems clear that what is needed is a thorough review of the responses and remedies to non-recent, mass harms and those involving state actors.

Reflection:

Remember humanity

A recurring theme was that people at every stage of the bureaucratic and process-driven institutions responsible for responding to allegations of harm, including the police, social services, law enforcement and the government, need to remember that they are dealing with fellow humans who are facing highly-charged, traumatising and emotional situations. This fundamental principle should underpin all systems, processes, and interactions with those involved.

Reflection:

Recognise the importance of addressing non-recent harms

It is vital that law enforcement, policymakers and politicians recognise that non-recent harms continue to resonate in the present, causing further harm and damage, and sowing mistrust and new trauma. It is essential that we apply learning from recent responses to non-recent harms and their relative successes and failings to continually improve the systems of remedy.

Recommendation:

Review existing forms of remedy open to victims of non-recent harm

The forms of remedy open to victims, survivors of non-recent harms and their families have emerged over time in an unsystematic fashion, leading to tensions; for example, adversarial criminal justice proceedings and public inquiries based on inquisitorial principles; confusion for victims, survivors and their families as to the diverging aims of these processes; long, drawn-out timelines for searches for truth and justice; and significant costs. It is time to review these processes, consider these inherent tensions, and ensure that they meet the needs of those most affected.

Investigations of non-recent harms

Part I sets out some key hurdles to the effective investigation of non-recent harms. These relate to practical issues such as establishing and securing evidence, addressing witness memory fade, responding to the fact that witnesses may no longer be available, and identifying any false memories.[40] In the context of non-recent 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.

In addition, the tensions between different forms of remedy and the way evidence is collated for those may lead to frequent recounting of past memories, which may not only cause victims, survivors and families to relive their traumatic experiences and deepen trauma, but can also mean that evidence elicited through different questions can become contradictory and thus be easily undermined in criminal justice proceedings. The evidential requirements of criminal justice proceedings differ from those of public inquiries and this causes further confusion for victims, survivors and their families, and confirms the call for a review of the systems of remedy in place. Over the course of fighting for justice, victims and survivors may have to recount their experiences to multiple agencies involved in collating evidence, leading to duplication of efforts currently required in responding to non-recent harms.

The previous section has highlighted that public inquiries, in particular, rely on the frank and truthful provision of evidence of all participants which is threatened where those giving evidence fear later repercussions. A lack of candour from state actors giving evidence can delay inquiries and undermine their effectiveness. It can also decrease the trust between survivors and family members and the organisations involved, which, in turn, increases public distrust in those organisations. There

is currently no legal duty of candour owed by public bodies to public inquiries, with the exception of public health service providers, but there is a duty of cooperation for police officers who act as witnesses in inquiries.[41] The Duty of Candour as set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: regulation 20, requires public health providers to 'act in an open and transparent way in relation to care and treatment provided to service users'.

In its explanation of the statutory and professional duty of candour, the Care Quality Commission (CQC) highlights the importance of issuing an apology where harm has occurred, which resonates strongly with the debates which occurred over the course of both the webinars and the conference. The CQC is explicit in saying that an apology is always the right thing to do in a timely manner and does not imply liability, acknowledges that something could have gone better and harm has occurred, and is a first step in learning.[42]

In his report on the experiences of the Hillsborough families of the numerous processes they were subjected to, to 'fight for the truth', Bishop James Jones called for a duty of candour for serving and retired police officers as well as other public bodies, modelled on the one adopted for public health service providers as set out above.[43] Debates around this topic are intensifying both in response to the latest collapse of Hillsborough prosecutions and the findings of the Daniel Morgan Independent Panel.[44] The call for admitting failings and the acknowledgement of the harm caused was made in the context of police complaints, public inquiries, Northern Ireland's history of community conflict and state harm, and discussions of the principles of embedding a learning culture in organisations.

Institutional responses to the emergence of non-recent harms need to be transparent and open and recognise the reasons for defensiveness, such as cultural but also resource-driven resistance to looking backwards at past harms. Policing, for example, is struggling to meet the demands of current harms, and remains driven by a response mindset with its need to act

immediately to current threats, harms, and priorities. This may be a factor in the reluctance to look to past harms, complicated by historical records that are difficult to access, badly organised, and incomplete. Police leaders also have an internal audience to consider, trying to resist the impression of a system and organisations in crisis, with officers feeling undermined by the narrative of police wrongdoing, thus threatening current officers' sense of self-legitimacy. This also has wider implications for presenting police services as attractive employers in particular to those from underrepresented groups. So motivations for individual lack of candour and cover-ups are complex and influenced by self-protection as well as a misguided desire to protect their reputation.

Traditionally, the police has taken a risk-averse approach to admitting guilt following legal advice to never admit to harm caused, or to apologise for wrongdoing, in order to avoid legal liability. As mentioned above, this organisational approach to avoid reputational damage may coincide with individual officers' sense of self-preservation and desire not to self-incriminate. In those instances, organisational and individual motivations combine and lead to a greater likelihood of a lack of candour and organisational secrecy. It is key to recognise and disrupt such alignment of motivations and consider tools for disruption in different systems of remedy. Consideration should be given to limitations on legal liability, whistle-blower protections, and other processes that would encourage individual and organisational candour.

Recommendation:

Establish a duty of candour

The common experience of victims, survivors and their families of being unable to obtain information to understand the situations in which they find themselves, is a strong reason for considering establishing a duty of candour for serving and retired police officers, as well as other public bodies. The lack of transparency can lead to mistrust and the suspicion of cover-ups. This recommendation comes with the caveat that a wider review of remedies for non-recent harms is undertaken, thereby establishing processes which allow such a duty of candour to be supported and which encourage individual and organisational candour.

Victims' perspectives

The debates at the conference were enriched by hearing the powerful and, at times, emotional testimonies of victims and survivors of non-recent harms and those of their families. Testimonies related to experiences of victimisation, and how these experiences were exacerbated and prolonged by the lengthy process of acknowledgement of harm and victimisation. Victims, survivors and their families referred to the legal maxim that *justice delayed is justice denied* and how the process of seeking justice caused further trauma, often causing additional and new harm to extended family members and preventing individuals from finding closure. Many of the themes resonate with the debates on victims' experiences of the criminal justice system in the 1980s and '90s and the now accepted principles that victims should be treated with respect, kept informed of the progress of their case, be recognised as affected and involved in the cases before the criminal courts, and be able to provide victim impact statements.

Victims, survivors and their families emphasised the need to be believed and be taken seriously by those who act as gatekeepers to the justice system in the various forms of remedy offered, as well as gatekeepers to access support services. In the second webinar the Victims' Commissioner, Dame Vera Baird, reflected on the question of belief, and the conflation of the notion of those alleging harm being heard and taken seriously in contrast with belief as a reversal of the burden of proof in the context of a criminal investigation. This issue was discussed at length in the *Henriques Report*, and it is important to recognise that there are different interpretations of this terminology.[45] What is vital in the context of this discussion is that victims, survivors and their families are listened to with respect and compassion. This needs to be done without the process of investigations being compromised, but processes of evidence gathering need to be carried out with sensitivity and appropriate training.

Testimony was also heard from whistle-blowers emphasising the extent to which organisations can resist difficult questions about their conduct and the harm caused. Additionally, organisations can turn on whistle-blowers, highlighting the importance of having processes in place that provide some protection to those brave enough to challenge the conduct and outcomes of organisations.

The conference heard from victims and their families about how the lack of a single port of call to assist them through the various forms of remedy and to provide information, advice and support, has increased the pain and struggle of seeking justice. The experience was described as not only fighting for justice but also fighting the system; a number called for a single independent body looking after victims, survivors and families' interests in instances of non-recent, mass, or state-inflicted harm. Where harm occurs as a result of a power imbalance, such as cases of child sexual abuse in institutional settings including schools, football clubs and the Church, not being taken seriously and fighting a battle of *David v Goliath* reinforces feelings of powerlessness and a lack of control and deepens trauma and harm.

A new role should be created for an Independent Public Advocate who can support victims, survivors and their families across all forms of remedy available to them. This role would be quite different from the role of the Victims' Commissioner who has no powers to respond to individual victims' complaints or advise on proceedings. An Independent Public Advocate could ensure the appropriate implementation of protections for vulnerable and intimidated victims and survivors through cross-examinations which could be videoed within a few months of complaints being issued. They would ensure that there is one main contact for victims throughout the justice process; this could take the form of an independent advisor modelled on an Independent Domestic Violence Advisor or an Independent Sexual Violence Advisor. Support should be offered based on the assessments of victims' needs, and not on categories of crime.

Currently, the various systems of remedy do not include forms of restorative justice and thus, consideration should be given to principles of restorative justice as well as those of procedural justice. The process should be, and feel, fair, just, open and equitable, allowing those involved to have more confidence in the process. Providing emotional support throughout the processes of justice is essential.

The proposal for an Independent Public Advocate echoes recommendations from Bishop James Jones' report on the experiences of Hillsborough families. In 2018, then Prime Minister Theresa May responded to Bishop Jones' report by opening a public consultation on the establishment of an Independent Public Advocate who will act for bereaved families after a public disaster and support them at public inquests. When establishing the remit, powers, and responsibilities of such a role, lessons from the Public Advocate system as used in some US states should be considered, as well as a clear distinction and separation from the role of the Victims' Commissioner.[46] A Government response to the consultation on an Independent Public Advocate was due in December 2021.[47]

The process of gaining justice was given great weight in the conference discussions but should not distract from considerations of outcomes. Victims, survivors, their families, and victim interest groups do not speak with one voice in terms of the outcomes they would like to see, and a clear call at the conference was to listen to victims, survivors and their families. Some will be open and willing to engage with restorative justice, some will have strong desires for punishment, and others simply want to be able to raise their voices – what satisfies one victim's expectations may not satisfy the next. These different views in terms of outcomes are a challenge for systems of remedy and this needs to be considered in a review of the system. However, what is essential is clarity of expectations, communication, and listening in the process.

Recommendation:

Introduce an Independent Public Advocate

The sheer complexity of the situation that victims, survivors and their families can experience, and the multiple agencies with whom they must engage, is a strong reason for considering the introduction of an Independent Public Advocate. This person would act as a single port of call for the provision of support to those affected. The role, responsibilities and remit should be distinct from the Victims' Commissioner and the availability of resources must be examined. Consideration should also be given to the introduction of trauma-informed training to those responding to victims, survivors and families of those suffering significant harm.

When reviewing systems of remedy and considering both process and outcome of any new system, due consideration should be given to principles of restorative and procedural justice in responses to victims, survivors and their families

Recommendation:

Offer alternative systems of remedy such as restorative justice and an independent body for victims of non-recent harm

Different forms of remedy available to victims of non-recent harms have different aims and desired outcomes, but one process which has gained momentum in other areas of the criminal justice system, and has not been considered in a systematic fashion in responding to victims of non-recent harm in England and Wales, is that of restorative justice. It has been used in truth and reconciliation commissions in other countries but has been largely absent in the events discussed during the webinars and the conference. If a review of current systems of remedy were to be undertaken, the value offered by restorative justice principles should be considered.

The role of the media in exposing non-recent harm

Part I set out the complex nature of the relationship between the media and the state as well as the media's relationship with victims, survivors of serious harm and their families. Listening to high profile journalists discussing their experiences of exposing harm, and giving a voice to those previously ignored and unheard, highlighted the difference between looking at the media from the outside as a monolith and from the inside as a plural, divergent mix of organisations sitting across a spectrum of entertainment and monitoring and campaigning.

Victims and survivors of harm reported being victims of press intrusion and dominant media narratives, most prominently when blame was assigned to the victims of the Hillsborough disaster. The conference highlighted further instances where victims, survivors and their families were hounded by the press, narratives of blame and culpability were perpetuated, and vilification drove people into a state of despair. The origin of some of these narratives raised questions about the closeness between political journalists, politicians, and the police, and the suggestion that certain media narratives were driven by political and state interests. One the one hand, there are concerns that the interdependency between different agencies remains and that partisan editorship can greatly influence media positions on certain events and harms and dictate media narratives, despite the Leveson Inquiry and its recommendations. On the other hand, investigative journalists can act to turn such dominant narratives on their head and bring aspects of events to light that would otherwise have gone unnoticed. At times, journalists can be the *justice of last resort* for those who feel ignored by the state authorities meant to protect them.

Operation Midland, a police investigation touched on above in relation to the debates surrounding police belief in allegations of harm, was used as an example of how the media can follow the

dominant narratives supported by police briefings. By naming suspects of serious allegations and speaking to witnesses, media activity threatened the integrity of ongoing police investigations and caused significant harm to individuals named by the media as suspects of non-recent child sexual abuse.[48] Subsequently, however, other journalists[49] exposed the failings of the police and the media to investigate Carl Beech's allegations fully and independently, causing untold harm to the wrongfully accused, significant financial costs due to lengthy police investigations as well as compensation costs, and significant reputational damage to the Metropolitan Police. It highlights the *light and shade* in the media landscape, the importance of a plural media landscape, and the need to fiercely protect its independence whilst ensuring effective regulation and accountability.

Traditional views of the messy relationship between state, media, the police and the public need to incorporate a changing media landscape and, in particular, the role of social media, which allows members of the public to drive news stories themselves, forcing mainstream media to respond and investigate issues that matter to the public. Another important facet of the changing media landscape is the decline of local media, which coincides with a significant increase in police press and communications officers. Concern was thus raised about the impact on local democracy and accountability.

The media landscape is very complicated, and so is the system of accountability through libel legislation and the current Independent Press Standards Organisation complaints system, which may have rendered media organisations weaker and more risk-averse. For example, two recent judgements on expectation of privacy for individuals under criminal investigation (Cliff Richard v BBC 2018 case and ZXC v Bloomberg 2020) have made it extremely difficult to name those under active investigations. When considering protections for the privacy of those under investigation, thought should be given to inadvertent consequences such as potentially allowing the police to investigate individuals without independent scrutiny.[50]

The debate on the role of the media gives rise to strong emotions, as media narratives have great power over who is assigned victim status and thus who is publicly seen to be deserving of sympathy and support. However, it is clear that the complexity of the media landscape means there is no simple one-directional relationship and that the aftermath of non-recent harm presented in the media can move through a number of phases and narrative shifts.

Reflection:

Reflect on the role of the media

Investigative journalism and an independent and sustainable media system are essential in holding to account those in power and acting as the fourth power in a democracy. This needs to be protected. However, the role of the media in cases of non-recent harm is complex and includes below-standard reporting and the abuse of media power, causing harm to individuals in already vulnerable positions. Calls for changes to media practice need to reflect current standards and systems of media regulation and accountability.

The decline of local media is a threat to public accountability of local systems of power, including policing and local government. Supporting local news media is an important aspect of local democracy and thought should be given to how a healthy local news media could be maintained.

The increasing role of social media in disrupting existing relationships between state, media, the police and the public, and providing a platform for members of the public to make their voices heard, needs to be recognised.

Looking to the future and learning lessons from non-recent harms

One key aspect of the conference was not only to explore the important role for law enforcement in responding to non-recent harms, but also how to learn from the past and ensure that organisations – the police organisations in particular – can recognise past failings as opportunities for learning. There are structural as well as cultural aspects to learning from the past, and turning police services into learning organisations is interdependent with the notion of encouraging candour, challenging a culture of fear and blame, and encouraging some risk-taking.

The track record on responding to past harms both in terms of investigations and implementation of public inquiries, recommendations and police reforms has been mixed. Structurally, if police organisations are confronted with injustice caused by themselves or other institutions, the police should invite independent reviews and if these are conducted reasonably and appropriately, accept them. Being open to independent scrutiny and including independent panels into everyday work can open the organisations to independent thinking and challenges to decision making. Many forces now have ethics committees involving independent chairs, as well as evidence hubs and links with academic institutions through the Police Educational Qualifications Framework (PEQF). Using such externals in reviews of difficult operational matters may be a starting point in bringing some 'critical friends' into police organisations who routinely ask awkward questions and sense check police activities.

The conduct of investigations into police activities has to find a balance between speed and thoroughness. Lessons could be learnt from Rail Accident Reviews, with a clear emphasis

on learning from experience, swift accident reviews (72-hour reviews), and effective information sharing.[51] Police investigations of past harms need to remain independent from government and government-instituted reviews and inquiries. Public inquiries are an opportunity for establishing wider failings in checks and balances of public administration, in order to improve public services whilst respecting the different perspectives represented. Once recommendations have been made which affect police organisations, to support police learning, police organisations should proactively, candidly, and swiftly engage in the implementation of recommendations, as well as keeping implementation under review – both short term and longer term.

At a cultural level, police organisations need to consider learning and continued professional development as a core part of their mission, both in terms of systemic learning and individual learning. The introduction of the PEQF and varied voices into police training and education may offer an opportunity to address some of the blame culture identified as being introduced early in the training of police recruits. Accepting mistakes as part of the learning process is a vital part of this process, as is the recognition that behaviours and mistakes can range from blameworthy to praiseworthy, from preventable failures to complexity-related and intelligent failures or, in other words, from misconduct to developmental needs and innovation.[52] Tomkins, Hartley and Bristow highlight the complexity of leadership, organisational learning, and taking responsibility for failure in highly complex and often fast-moving situations. Genuine organisational learning is based on curiosity, permission to ask questions and challenge without being seen to undermine organisational goals. This requires leadership throughout the organisation and a willingness to hear uncomfortable truths.

Recommendation:

Develop learning organisations

Developing learning organisations – interorganisational learning to improve processes and practice and learn from past experiences – in the context of non-recent harms and law enforcement requires a thorough understanding of the particular conditions in which policing operates and the challenges this brings. Allowing for organisational learning and self-reflection requires a commitment by leaders to listen to challenging views that can be uncomfortable to hear and that may call into question an organisation's goals, strategies and expectations. This is not an easy top-down undertaking as it requires a significant shift in cultural and organisational practices, however, it could be supported by the new Police Education Qualifications Framework (PEQF).

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