

Court report: victims and sentencing



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Court Report: Victims and Sentencing

This court report concerns an ABH case that was dealt with at Manchester Crown Court on the 12th of December 2018. The focus will be on sentencing and the role of victims in the criminal justice system. Specifically, sentence reductions for guilty pleas, the purposes of sentencing and the use of victim personal statements (VPS) in court. Research reveals that in 2009/10, only 43% of victims recalled being offered a VPS, even though they are entitled to them (Roberts and Manikis, 2011). This issue will be analysed further within the report, alongside issues with deterrence sentencing.

The defendant was a 19-year-old white male, who has been charged with assault occasioning actual bodily harm (ABH), contrary to Section 47 of the Offences Against the Person Act 1861. The victim was a 33-year-old female. ABH is a triable either way offence, meaning it can be heard at either the magistrates' court or the Crown Court. The defendant pleaded guilty at Manchester Magistrates' Court, but his case was committed to Manchester Crown Court for sentencing. The prosecution stated that in November 2017, the defendant and the victim attended the same music event, but they did not attend together. The victim attended with her friend and her 16-year old niece, and so she was not drinking any alcohol because she was responsible for her niece. However, the defendant had been drinking excessive amounts of spirits which caused his disorderly behaviour that evening – and he admitted this was not uncommon behaviour for him after drinking spirits. The victim noticed the defendant's disorderly and aggressive behaviour to the point that she warned her friend and niece, telling them to keep away from him. The defendant ended up being stood in front of the victim with his

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back to her. When the defendant noticed the victim, in the victim's words "he spun around with a clenched fist and punched me with all the force he had", he punched the victim three times in total. The victim suffered with a broken eye socket and the defendant managed to flee the scene regardless of people trying to detain him. It was by chance that the defendant and the victim were both at Manchester Royal Infirmary at the same time waiting to receive medical attention. The victim's family noticed him and called the police, the defendant was arrested after receiving medical attention for the hand he punched the victim with. The defendant pleaded guilty at the earliest chance and received an automatic 1/3rd reduction on his sentence. He was sentenced to 21 months, half of which he will serve in custody and the other half in the community on licence. If he breaches his licence, he will serve the rest of his sentence in prison. A victim personal statement was read out in court on behalf of the victim.

There is an ongoing debate about the role that victims should have in the criminal justice system, whereby traditionally victims in common law jurisdictions have not been able to participate in criminal trials. However, in recent years there has been a major shift in the attitudes towards victims' roles in the criminal justice system and a breakdown in the public/private divide in criminal discourse (Doak, 2005). Now, in almost all common law countries, victims have the opportunity to take part in the sentencing process, and this participation is usually in the form of victim personal statements (VPS). Victim personal statements were introduced by the Home Office in 1996 as an experiment, and they were made nationwide in October 2001 (Roberts and Manikis, 2011). The Victim's Charter (replaced by the

Code of Practice for Victims of Crime in 2006) meant that victims should expect to be given the chance to explain how the crime has affected them and have their interests taken into account (Home Office, 1996, cited in Edwards, 2001). The Commissioner for Victims and Witnesses in England and Wales requested that a research review was to be done for the purpose of summarising the use of victim personal statements. Julia V. Roberts and Marie Manikis of the University of Oxford conducted the review. Within the review, it was stated that the Commissioner for Victims and Witnesses for England and Wales had conducted interviews, and the responding victims stated that they valued victim personal statements because they have them the chance to explain how a crime had affected them (Commissioner for Victims and Witnesses, 2011). This would suggest that even 10 years later, victim personal statements are sufficiently serving their intended purpose.

In the case of the victim, she was able to explain how the crime had affected her to the courts. The statement was read out on her behalf, stating the following; previously, she would attend music events monthly but has only been to one since the attack (the attack was a year ago), she has lost a significant amount of weight because of stress and anxiety, she has a visible scar that still causes her pain, she was fostering a 10 year old child but the attack stopped her from being able to do this and she was also made redundant from her job of 12 years (she believed this was an indirect result of the attack). This gave her the chance to make it clear to the judge and likely also to the defendant how much this attack has affected her life and wellbeing. To maintain the right to a fair trial (Article 6) (Human Rights Act, 1998), the court will only consider a VPS if the defendant pleads guilty or if

the defendant is found guilty by the courts (Ministry of Justice, 2015). This prevents the risk of the jury being biased towards the victim before a verdict has been reached.

There is some ambiguity in terms of the purposes of victim impact statements. When they were first introduced in 1996, the information police received from victims about their fears of re-victimisation and the extent of their loss, damage or injury was intended to be used at various stages of the criminal justice process, for the purpose of informing the decisions of criminal justice agencies (Edwards, 2001). At this time, it was unclear as to whether it was supposed to be used to inform sentencing decisions too (Roberts and Manikis, 2011). Regardless of this, the VPS scheme was made nationwide in 2001, and today, they are used to inform sentencing decisions – but the victim is not allowed to impose their opinions on the defendant's sentence (Ministry of Justice, 2015). The victim's personal statement in this case did not impose any suggestions as to what sentence she believed the defendant deserved. Something that could be regarded as an issue with the Code of Practice for Victims of Crime is that, it does not impose any obligations on sentencers to take the VPS into consideration (Edwards, 2009) – even though this is what the Victim's Charter proclaimed prior to it being replaced the Code of Practice for Victims of Crime in 2006. This could be a result of the fact that the provisions on victim personal statements from the Victim's Charter were not integrated into the new Code (Roberts and Manikis, 2011). Subsequent issues from this are that many victims are not offered the opportunity to make a VPS, even though they are entitled to this.

Over the 3-year period (2007-2010) the

Witness and Victim Experience Survey (WAVES) interviewed victims about their experiences with victim personal statements, only 42% recalled being offered a VPS. In 2009/10, this number had only gone up by 1% (43%).

Further, 45% ‘explicitly responded’ that they had not been offered a VPS (Roberts and Manikis, 2011). The percentage of victims being offered a VPS has only decreased over the years, in 2016/17 approximately every 1 in 6 victims (17% of all incidents) were given the opportunity to make a VPS (Crime Survey for England and Wales, 2017). This is a major issue, as victims are being deprived of their right to be offered a VPS and for it to be considered in court. Looking at these statistics, it could be argued that the victim was lucky to even be offered a VPS, let alone for it to be read out in court and to be considered by the judge. However, looking again at the review conducted by Roberts and Manikis, their data showed that 41% of victims of crimes of violence felt as though their VPS had been fully taken into account. This percentage was highest compared to victims of criminal damage, theft and burglary. Additionally, between the years of 2013/14 – 2015/16, 23% of victims of violence were offered a VPS, falling to 22% in 2016/17. Also in 2016/17, 50% of victims of violence made a VPS (Crime Survey for England and Wales, 2017). So, the reason why the victim was offered a VPS could be related to the type of offence she was a victim of (violence). Whereby in previous years, just under half of all victims of violence felt their VPS was fully taken into account and then later on, albeit having a lower offer rate (22-23%) – half of victims of violence did make a VPS. It is reasonable to say that the victim’s VPS was fully taken into consideration in this case, and this had an impact on the sentence imposed

on the victim. When giving justifying his sentencing decision, the judge referred back to the victim's VPS on numerous occasions, stating how severe the repercussions of the defendant's 'disgraceful, unprovoked attack' were, putting emphasis on the fact that the victim "thought he was going to kill her". The judge specified that he would be "failing public duty" if he did not impose an immediate custodial sentence, whereby he believed far too many intoxicated attacks are not sufficiently sentenced, suggesting that he imposed a deterrence sentence. The purposes of sentencing and the issues with deterrence sentences and sentence reductions will now be discussed.

The purposes of sentencing are set out in section 142 of the Criminal Justice Act 2003, they are as follows; punishment of offenders, reduction of crime (including its reduction by deterrence), the reform and rehabilitation of offenders, protection of the public and the making of reparation by offenders to persons affected by their offences (Criminal Justice Act 2003).

The sentencing guidelines for ABH show that it is a triable either way offence, with a range of a fine – 3 years' custody, with a maximum of 5 years' custody (Sentencing Council, 2011). The prosecution believed the defendant should be charged with a category two offence, ranging between a low-level community order to 51 weeks' custody. However, the judge felt that a category one offence charge was more appropriate, ranging between 1 – 3 years' custody. This demonstrates the fact that sentencing guidelines are discretionary, and ultimately, the courts decide what sentence is imposed and that judges can depart from sentencing guidelines if they have good reason. Prior to the proclamation of the Coroners and Justice Act 2009, courts in England and Wales simply had to 'have regard to' the Council's

guidelines, but now the language has changed to ‘ must follow’ (Roberts, 2011).

Plea-bargaining can be described as a process in which an offender agrees to plead guilty in order to receive a lesser sentence (Newburn, 2017). Whilst it is not as well-established as it is in the American criminal justice system, plea bargaining is now a significant part of criminal procedure in the United Kingdom (Garoupa and Stephen, 2008). In this case, the defendant received a 1/3rd reduction from his total sentence, being sentenced to 21 months in total (half to be served in custody, half to be served in the community on licence). Although he did not receive the reduction as a result of negotiations between the prosecution and defence (plea bargaining). This process has now been formalised in s. 144 of the Criminal Justice Act 2003, whereby when a defendant has pleaded guilty, the court must take into account the stage in the proceedings that the defendant did so. It is important to question the ethics behind this process, especially in this case. This is because it is undeniable that the defendant committed this crime. The victim has clear physical injuries (photographs of her injuries have been shown to the judge, alongside the medial report from Manchester Royal Infirmary) and the attack was witnessed by a crowd full of people at the music event. It would have been nonsensical for the defendant not to plead not guilty, so the reduction on his sentence only really benefited him. This is a known criticism of sentence discounts whereby “ the discount constitutes a benefit, a departure from the sentence he deserved” (Grossman, 2018: 775). As previously mentioned, although it was not a result of negotiations between prosecution and defence, the defendant still received a discount for this

undeniable offence. The defendant was benefited by the Criminal Justice Act 2003 provisions, receiving a lesser sentence to what he deserved.

A common argument in favour of plea bargaining is that “ it reduces costs” (Garoupa and Stephen, 2008) and makes the process simpler. However, due to the fact that a jury was not required to reach a guilty or not guilty verdict, which is what can sometimes cause the court process carry on for a while – how justified was the sentence reduction in this case? In terms of the cost benefit, it could be argued that this should not be the focus of the court process, it should be to punish the offender and to ensure justice is served to the victim. Thus, the aims of sentencing are not being fully achieved here. The judge mentioned that he would be “ failing public duty” by not imposing an immediate custodial sentence, and that far too many intoxicated attacks are not sentenced sufficiently. This does indeed suggest that the judge decided to pass a sentence with the aim of general deterrence, which aims to prevent the offender and other potential offenders from acting in the same way (Pereboom, 2018).

“ Deterrence by its very nature is concerned with the future...which is... unknowable” (Cockburn, 2012: 4). Thus, a potential argument against deterrence is that defendants should be dealt with appropriately in the present and their sentence should fit the crime they have committed – not the crime they might commit. In discussion of deterrence, the Home Office stated:

“ Much crime is committed on impulse, given the opportunity presented by an open window or unlocked door...It is unrealistic to construct sentencing

arrangements on the assumption that most offenders will weigh up the possibilities in advance”

(Home Office, 1990, para. 2. 8, cited in Newburn, 2017).

However, one of the aims of sentencing is to reduce crime (Criminal Justice Act 2003) and so deterrence sentences can be appropriate, because they aim to act as an example to others and can potentially prevent future offending, which will reduce crime. Yet again, statistics show that prison has a poor record for preventing reoffending (48% of adults are reconvicted) (Ministry of Justice, 2018, cited in Prison Reform Trust, 2018). Reoffending rates are high for offenders sentenced to 12 months custody or less (63% reoffended within a year) (Prison Reform Trust, 2018). The defendant was sentenced to 10. 5 months in prison and 10. 5 in the community on licence. So, potentially, this sentence may not deter him from acting in the same way in the future – but this is unknowable. Regardless, the judge deemed it appropriate to pass this sentence, because this offender needed to learn that his behaviour was “ completely inexcusable”.

To conclude, this case highlights some of the ethical and moral issues surrounding sentence reductions for early guilty pleas. In this case, it would have been extremely unlikely that the defendant would not have been found guilty, given that there were eye witnesses and the there is evidence of the victim’s injuries (photographs of the injuries and a medical report). So, as stated by Grossman (2018), sentence reductions can often present as a benefit to the offender, whereby they are given a departure from the sentence they deserved. This goes against the purposes of sentencing,

whereby the offender has not been sufficiently punished and it risks failing retribution for the victim. Furthermore, there is a major issue within the criminal justice system, which is that victims are being deprived of their rights as a victim. Nearly half of the time, victims are not offered a VPS, and so the victim in this case was fortunate to be able to be offered a VPS, to make one and have it read out on her behalf and for the judge to take it into consideration, when deciding on a sentence. This is an area that needs reform in order to ensure victims are being offered what they are entitled to as victims of crime. Although statistics show that short custodial sentences (12 months or less) are not massively efficient in terms of preventing reoffending, the judge claimed he would be failing public duty if he did not give an immediate custodial sentence. The judge seemed to be more concerned with imposing a sentence with a focus on general deterrence, stating that far too many intoxicated attacks are not sufficiently sentenced. Yet, this again poses issues, whereby some believe that deterrence sentences are too focussed on the future which is unpredictable. This view suggests that the courts should be focussed on appropriately sentencing those who have already offended, not those who may offend in future. In terms of the sentence, the judge did follow the sentencing guidelines. The prosecution suggested that the defendant should be charged with a category 2 offence, but the judge disagreed. He sentenced the defendant with a category 1 offence of 21 months (after the automatic 1/3rd reduction). The case remains that there are some clear issues within the criminal justice system, especially with the rights of victims and also with the ethics behind sentence reductions for early guilty pleas, which need to be addressed to ensure equality and justice is maintained within the criminal justice system.

Word Count: 3, 000

Bibliography

- Cockburn, A., 2012. Deterrence as a Strategy in the Twenty-First Century. *SSRN Electronic Journal* .
- Commissioner for Victims and Witnesses , 2011. *Annual report 2010-2011*, s. l.: justice. gov. uk.
- Doak, J., 2005. Victims' Rights in Criminal Trials: Prospects for Participation. *Journal of Law and Society* , 32(2), pp. 294-316.
- Edwards, I., 2001. Victim Participation in Sentencing: The Problems of Incoherence. *The Howard Journal of Criminal Justice* , 40(1), pp. 39-54.
- Edwards, I., 2009. The Evidential Quality of Victim Personal Statements and Family Impact Statements. *The International Journal of Evidence & Proof*, 13(4), pp. 293-320.
- Garoupa, N. & Stephen, F., 2008. Why Plea-Bargaining Fails to Achieve Results in So Many Criminal Justice Systems: A Framework for Assessment. *Maastricht Journal of European and Comparative Law*, 15(3), pp. 323-358.
- Grossman, S., 2018. Making the Evil less Necessary and the Necessary less Evil: Towards a More Honest and Robust System of Plea Bargaining. *Nevada Law Journal*, 18(3), pp. 769-810.
- Legislation. gov. uk, 1998. *Human Rights Act 1998 (c. 42)*. [Online] Available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/5?view=extent> [Accessed January 5 2019].

- Legislation. gov. uk, 2003. *Criminal Justice Act 2003 (c. 142)*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/2003/44/section/142>
[Accessed 5 January 2019].
- Legislation. gov. uk, 2003. *Criminal Justice Act 2003 (c. 144)*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/2003/44/section/144>
[Accessed 5 January 2019].
- Ministry of Justice, 2015. *GOV. UK*. [Online]
Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF
[Accessed 5 January 2019].
- Ministry of Justice, 2018. *Education and Employment Strategy*, London: HM Stationery Office.
- Newburn, T., 2017. *Criminology*. 3rd ed. London, England; New York, New York: Routledge.
- Newlove, H. M., 2017. *Victim Personal Statements 2016/17 Analysis of the offer and take-up of Victim Personal Statements using the Crime Survey for England and Wales, April 2013 to March 2017*, s. l.: Victim's Commissioner .
- Pereboom, D., 2018. *Incapacitation, Reintegration, and Limited General Deterrence, Neuroethics*. [Online]
Available at: <https://link.springer.com/content/pdf/10.1007%2Fs12152-018-9382-7.pdf>
[Accessed 6 January 2019].

- Prison Reform Trust, 2018. *Prison: the facts, Bromley Briefings Summer 2018*, London: Prison Reform Trust.
- Roberts, J., 2011. Sentencing Guidelines and Judicial Discretion: Evolution of the Duty of Courts to Comply in England and Wales. *British Journal of Criminology*, 51(6), pp. 997-1013.
- Roberts, J. V. & Manikis, M., 2011. *Victim Personal Statements: A Review of Empirical Research*, London: Office of the Commissioner for Victims and Witnesses of England and Wales.
- Sentencing Council , 2011. *Assault Definitive Guidelines*. London : Sentencing Council .

Table of Legislation

- Offences Against the Person Act 1861
- Criminal Justice Act 2003
- Human Rights Act 1998
- Coroners and Justice Act 2010