



## Not fit for purpose?

Significant & immediate investment is needed across the board to ensure the criminal justice system serves everyone, says **Mark Cotter QC**



Superficially, legally enforceable rights and/or minimum standards for ‘victims’ being served by the Criminal Justice System seem laudable. However, it is worth remembering that a major part of the function of the Criminal Justice System is to determine whether there is a ‘victim’ at all and, if so, who it is.

In a case of proven burglary, there is an identifiable ‘victim’. However, where an allegation of rape is made and consent is asserted by the accused, the person making the allegation remains a ‘complainant’ until and unless the defendant admits guilt, or a jury convict. Only then does the ‘complainant’ become a proven ‘victim’. In this case the issue is whether a crime actually occurred at all. To put it another way, is the complainant the victim of rape, or is the accused the victim of a false allegation? To answer those questions, a fair trial is required with competent lawyers and a properly trained judge. That trial should occur within a reasonable period of time to ensure that fading recollections do not prejudice either side within the process. A trial should be a search for the truth.

I was taught these linguistic and practical distinctions 25 years ago in my first weeks of pupillage. They emphasise the true nature of what is taking place within the criminal justice process.

These distinctions have been brought into sharp focus with the tragic death of Caroline Flack. Her boyfriend clearly suffered injury and was a ‘victim’ in that sense. However, he did not support the process intended to decide whether Caroline Flack was criminally responsible for the injury. That process places a great strain on all defendants and more so when there is intense media scrutiny. It is understandable that a swathe of public opinion views Caroline Flack as a ‘victim’. I have represented high-profile defendants in serious criminal cases and witnessed

first-hand the intense pressures that criminal proceedings can bring to bear on an individual. But pressure is felt by defendants from all backgrounds. A child defendant from a council estate can be ruthlessly scrutinised on social media just as a celebrity can receive intense and intrusive examination from the press.

In real life, cases don’t just involve ‘goodies’ and ‘baddies’, they are often very complicated and highly nuanced. They can involve intricate factual disputes, sometimes about the most personal and sensitive aspects of people’s lives. They often involve emotional conflicts that can further exacerbate an already charged and stressful process.

The simple reality is that our criminal justice system is intended to serve everyone. That includes accusers, the accused, other witnesses and the public at large. Recent figures demonstrate that it is significantly failing in that purpose. In 2019, 23% of cases were dropped due to the ‘victim’ not supporting the prosecution (up from 8.7% in 2015).

Criminal cases are simply not being prosecuted. Accurately monitoring crime levels, on a statistical basis, is fiendishly complex. However, what can be said with absolute certainty, is that there has been no significant dropping off in crime over the last five or ten years. Yet court rooms the length and breadth of the country sit empty on a daily basis and many court centres have been closed down permanently.

Various explanations are advanced. First, the public choosing, in increasing numbers, not to report crime in the first place. Second, the inability of the police to investigate many crimes, due to lack of resources. Third, the diversion of cases away from courts for alternative disposals. Fourth, the removal of investigatory time limits for those under suspicion leaving thousands of suspects languishing in the limbo that is ‘Released Under Investigation’. While

these suspects wait, so do their accusers. Many suspects will eventually plead guilty or be convicted after trial and yet they walk the streets for extended periods waiting to be prosecuted. Many others are innocent and will either be acquitted or have the cases against them dropped. Yet they are expected to carry on under huge stresses for the same extended periods of time while their lives are on hold.

The majority of represented defendants who enter the system will be legally aided. They will be represented by a legal professional whose morale is at rock bottom and whose funding allows only for an increasingly basic service. Their cases will be prosecuted by an equally under-funded Crown Prosecution Service.

Those who can afford to pay privately are now at a distinct advantage within the system. All defendants will be processed through understaffed courts operating in dilapidated buildings. How can anyone be expected to respect the process of criminal justice in its current state?

The reality is that everyone who is served by the criminal justice system—victims, complainants, witnesses, defendants and the public at large—are entitled to minimum standards.

If the government really wants to create a system that removes delays and keeps all those involved properly and accurately informed as to the progress of their case, then it must first stop the system from collapsing beyond repair. For that to happen, significant and immediate investment is needed across the board, rather than sound bite sticking plasters. If the owner of a roller coaster told you it hadn’t been serviced in 20 years, but not to worry as it has just been fitted with brand new seat belts, would you get on? **NLJ**

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