

Victim Personal Statements

A Review of Empirical Research

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Principal Findings

This research review was requested by the Commissioner for Victims and Witnesses in England and Wales to summarise the empirical research into the use of victim statements. Summarised below are the principal findings from this review.

- Witness and Victim Experience Survey (WAVES) data derived from victims interviewed in England and Wales reveal that only a minority of victims submit a Victim Personal Statement (VPS). Over the last 3 years, less than half (42%) of the victims interviewed for the WAVES survey recalled being offered the opportunity to make a VPS.
- Of all victims who recalled having been offered a VPS, 55% stated that they completed a VPS.
- Of all respondents who reported having submitted a VPS, less than half (39%) held the view that the statement had been fully taken into account.
- WAVES data reveal considerable variability in the proportion of victims who recalled having been offered the opportunity to make a VPS across different Local Criminal Justice Board areas. The percentage of victims reporting having been offered a VPS varied from a low of 29% in London to a high of 63% in Northumbria -- a range of 34%.
- Victims who do submit a statement often have multiple reasons for participating. The desire to communicate a message to the court and the offender is the most frequent reason given; however, some victims wish to influence the severity of the sentence imposed.
- Victims of serious crimes of violence are more likely to submit a VPS.
- Victims who submit a statement appear more satisfied with the sentencing process than those who do not submit a statement.
- The vast majority of victims who have submitted a VPS for the purposes of sentencing report that they would do so again if victimised in the future.
- There is evidence of some confusion on the part of victims as to the purpose of VPS schemes, the use made of the VPS by criminal justice agencies and the courts; and the difference between the VPS and other documents submitted to the police or the court.
- Victim statements at sentencing seldom contain prejudicial material such as recommendations for sentence – unless the information provided to victims encourages them to do so.
- Although legal professionals such as prosecutors and judges may have been initially ambivalent towards the use of victim statements, the most recent research reveals a more positive attitude.

- Judges – in other jurisdictions -- report finding victim input statements useful for the purposes of sentencing, either in terms of calibrating the seriousness of the offence or in identifying compensation for the crime victim.
- Research from other jurisdictions suggests that victims appreciate judicial recognition of the harm they suffered, and for this reason courts often acknowledge the contents of the statement in reasons for sentence.

Future Research Priorities

- Since the WAVES survey has been discontinued it is important to activate an alternative source of regular information about victims' needs. It is important to understand why rates of VPS submission are relatively low, and why rates of awareness of having been offered a statement vary so much across local justice areas.
- Almost nothing is known about the attitudes towards, and experiences of magistrates with respect to the use of VPS. Accordingly it would be useful to conduct focus groups or a survey of the magistracy;
- Finally, it would be helpful to bring together recent judgments in which VPS have been cited, to better understand the role of VPS at sentencing from the perspective of the judiciary.

Introduction

Crime victims and victims' advocates have for many years called for greater input into the criminal process, and in particular at the stage of sentencing. Today, victims in almost all common law countries have the opportunity to participate in the sentencing process. Participation principally takes the form of providing information about the impact of the crime. Victim impact evidence is usually placed before a sentencing court in the form of a Victim Impact Statement (VIS) or Victim Personal Statement (VPS) as it is known in England and Wales. The first victim impact statement was deposited in a criminal proceeding in California in 1976 and the concept was placed on a statutory footing in that state six years later (Alexander and Lord 1994). All US states now provide victims with the right to be heard at sentencing. Other common law jurisdictions soon followed the U.S. example.¹ Victim impact statements at sentencing were introduced in New Zealand in 1987 (Church et al. 1995), while South Australia was the first jurisdiction in that country to enact legislation permitting victim input into sentencing. Canada introduced impact statements in 1988 (Roberts 2003).

Policy Context and Purpose of Report

This research review was requested by the Commissioner for Victims and Witnesses in England and Wales. This is an opportune time to conduct a review of the literature, ten years on from the introduction of the Victim Personal Statement scheme in October 2001. The Government's recent Green Paper identified the need to improve the VPS scheme – a move endorsed by a number of agencies in their responses to the Green Paper "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders".

For example, Victim Support called for the greater use of VPS and suggested a number of reforms to the way that VPS are collected and used within the criminal justice system (see Victim Support 2011). The Victims' Commissioner also recognised the importance of VPS (Commissioner for Victims and Witnesses 2010). Further, the Judiciary of England and Wales welcomed the desire to look again at the use of (VPS, but noted that the expectations of the alleged victim must be managed (Judiciary of England and Wales 2011, p. 4). Many other organisations have responded to the Green Paper, but not all have mentioned the VPS scheme in their comments. In its response to the Green Paper Consultation, the government has announced a further consultation to ensure that the opportunity to make a Victim Personal Statement is "routinely offered to victims" (Ministry of Justice 2011, p. 8).

The report summarises empirical research into the use of victim statements at sentencing, with a view to evaluating the principal claims and critiques that have been made by advocates and critics of victim input at sentencing. There is a two-fold need for a systematic review of the empirical research in this and other jurisdictions. First, the only previous review was conducted over a decade ago², and a great deal of additional work has

¹ Victims of crimes prosecuted at the International Criminal Court and at ad hoc international tribunals also have the right to submit a statement documenting the injury, loss, or harm that they sustained (see International Criminal Court 2008).

² Sanders (1999) reviewed research published to 1998.

been published since then, and second, because much of the commentary on the use of victim impact statements – by advocates and critics alike – has failed to engage with the research. Many – but by no means all -- of the debates about the use of impact statements can be resolved by careful socio-legal research. To take but one example, critics suggest that VPS threaten consistent and principled sentencing because the statements may contain the victim's views on sentencing which may influence sentencers. The veracity of these assertions can be resolved through systematic research.

Scholarly Literature on Victim Input at Sentencing

Scholarship on Victim Personal Statements generally addresses one of two questions:

1. *Is there a place for victim input within an adversarial model of justice?*
2. *What advantages and disadvantages are associated with the use of VPS at sentencing?*

The first question cannot be resolved by reference to empirical research. Scholars have aligned themselves on both sides of a divide; some affirm that victims should have service rights throughout the criminal justice system, but not procedural ones. According to this view, victims should be kept informed of all important developments and dates during the prosecution of the offender in their case, but should have no special standing, or right to provide input into key decisions (such as whether to appeal a sentence³). This perspective reflects a view that a criminal prosecution in the adversarial system of justice involves only two parties: the State and the accused or offender.

In contrast, victim advocates argue that there is a role for victims to provide input without affecting the interests of the offender, and indeed that information about the crime derived from the victim helps ensure a sentence which is more accurately calibrated to reflect the harm caused.⁴ Victim advocates also note that victim input carries benefits for both the victim and the offender. Victims benefit by being able to describe the harm they sustained; offenders may benefit from hearing directly from the victim about the harm caused by the crime. This may not be possible without direct victim input (see Guilfoyle in Hungerford-Welch et al. 2011; Roberts 2003).

This report focuses upon the second of the questions noted above which is empirical in nature. A decade after the creation of the VPS scheme in England and Wales we evaluate the evidence relating to victim personal statements. The review draws principally upon research conducted in this country. However, we also examine the experience in other common law jurisdictions. The reason for enlarging the scope of the project is two-fold. First, the experience in other countries contains important lessons for England and Wales. Second, the research in other countries provides context in which to evaluate findings from this jurisdiction. We restrict our review to common law jurisdictions in which victim statements have been implemented in a way that is consistent with the VPS program in

³ See for example, Ashworth (1993); Sanders (2004); for a contrasting view, see Spencer (2004). For an interesting discussion of the use of VPS *after* sentence has been imposed, see Hoyle (2011).

⁴ For publications discussing the use of victim statements see Erez (1994); Cassell (2009) Walklate (2002). For victims more generally see Bottoms and Roberts (2010).

England and Wales. For the most part we exclude US jurisdictions where many states allow victims to make sentence recommendations or comment on sentence submissions by the State or the offender. Our focus is upon victim input programs in which the victim is restricted to documenting the impact of the crime. We address victim input at sentencing; although victims in most countries also submit impact statements to parole authorities such as the Parole Board of England and Wales (for discussion of the role of the victim in parole hearings, see Roberts 2009; Padfield and Roberts 2010).

Overview of Report

Part I of the report summarises the origins and scope of the VPS scheme in England and Wales⁵ and makes some limited comparisons with representative victim impact statement arrangements in four other common law jurisdictions (Canada; Western Australia; Victoria and New Zealand). This section identifies important differences between these schemes and the one in England and Wales. Part II reviews the empirical research into the use of victim statements at sentencing and summarises recent trends from the Witnesses and Victim Experience Survey (WAVES). In Part III we draw some conclusions and make some suggestions for future research.⁶ The Appendix contains summary descriptions of the victim statement schemes in other countries.

⁵ We do not include the *Family Impact Statement* (FIS) scheme which was introduced in 2006 because there is only one relevant research study (see Sweeting et al. 2008) and because analogous schemes in other jurisdictions for homicide victims are rather different. In addition the FIS scheme has not been rolled out across the country. Sweeting et al. report that families were in favour of the FIS although practitioners' reactions were mixed – possibly in the same way that some practitioners were opposed to the VIS when first introduced.

⁶ For further academic writings on the role of the victim at sentencing and in particular the VPS see Ashworth 2010; Edwards (2001); (2002); (2004); (2009); Roberts (2003). Discussion of policies and practices in other jurisdictions can be found in Booth and Carrington (2007); Sanders and Jones (2007).

Origins and Scope of the VPS Scheme

Origins

The Victim Personal Statement Scheme in England and Wales first emerged from commitments under the *Victims' Charter* introduced by the Home Office in 1996. Under this Charter, victims were given the opportunity by means of the VPS to “explain how the crime has affected [them], and [to have their] interests to be taken into account” (Home Office 1996, p. 3). Police were required to ask victims about their fears of re-victimisation and collate details about the extent of their “loss, damage or injury”.

This information was meant to serve broader aims, namely informing decisions taken by the police, Crown Prosecution Service (CPS), magistrates and judges at various stages of the criminal process. Initially, however, it was unclear whether these statements were also meant to inform sentencing decisions. Different opinions were expressed about the role of the VPS at sentencing. For example, the organisation *Victim Support* favoured a scheme under which the statement would be taken into account during prosecution and bail decisions as well as informing the police in establishing victims' needs for information, compensation and protection (see *Victim Support* 1995). Others, however, argued that victim statements should have wider aims and also be taken into account at sentencing (see discussion in *Rock* 2004). The exact role and function of VPS at sentencing remained somewhat ambiguous, but in any event, pilot projects were set up to implement the Charter's commitment. In October 2001, the Home Office rolled out the VPS Scheme nationwide.

In contrast to victim impact schemes in most common law jurisdictions, the VPS is not implemented by means of legislation and therefore has no statutory foundation. This is an important distinction which sets England and Wales apart from other schemes and we shall return to this issue later in this report. The *Victims' Charter* was replaced in 2006 by the *Code of Practice for Victims of Crime* (hereafter *Code*), but the provisions on VPS were not subsequently integrated in the Code. The previous Charter suggested the following:

“you can expect the chance to explain how the crime has affected you, and your interests to be taken into account... The police will ask you about your fears about further victimisation and details of your loss, damage or injury. The police, Crown Prosecutor, magistrates and judge will take this information into account when making their decisions... you should be given the chance, if you wish, to explain more generally how the crime affected you” (Home Office 1996, at 3).

The current *Code* does not explicitly mention these victims' expectations and duties upon criminal justice agencies.

A Note on Terminology

In all other jurisdictions, victim statements at sentencing are called ‘Victim Impact Statements’ (VIS); in this report we use the acronyms VIS and VPS interchangeably, although VIS more accurately conveys the purpose of the statement – to document the *impact* of the crime and not the *personal* views of the victim about the offender or the appropriate

sentence to be imposed.⁷ The term ‘victim personal statement’ was adopted and remains in use today to distinguish the English scheme from ‘victim impact statements’ in other jurisdictions that are associated with giving victims the right to express an opinion about sentencing. There was a clear desire to avoid the victim impact statement regimes that have evolved across the United States and which have attracted controversy and criticism.

Expressive and Instrumental Models of Victim Input

Two competing models of VPS exist. According to one model the purpose of the statement is primarily expressive and communicative; it serves to *express* the victim’s view of the harm created by the offence – a view which is *communicated* to the court and possibly also the offender. There is no link in this model between the victim statement and the appropriate sentence that should be imposed (see Roberts and Erez 2010). We shall refer to this model throughout this report as the *Expressive* model of victim input. A competing model is *Instrumental* in nature. Under this model, popular in the United States, the victim statement is made with the intention of influencing the court’s sentencing decision by allowing victims to express an opinion about the appropriate sentence.

Thus we can see two models operating: the US-based version where victims may directly influence the sentence imposed, and the model in other common law jurisdictions such as England and Wales. Under the English system the VPS only affects the sentence imposed to the extent that it informs the court about the harm inflicted by the crime, or if it contains other information which is relevant to the sentencing decision – for example with respect to restitution.

Treating Victims as Individuals

At sentencing, defence advocates make submissions to the court in mitigation. This important element of the sentencing process enables the court to treat offenders as individuals, and to calibrate the severity of the sentence to reflect personal mitigation where this is appropriate. Without this individualisation of sentencing – which lies at the heart of sentencing in England and Wales – important differences between offenders would be obscured, resulting in a loss of justice. The same argument may be made on behalf of the crime victim. There is no such thing as a generic robbery or burglary; these offences are committed against individuals, and the extent of the harm inflicted varies widely from case to case. The use of a VPS helps ensure that a sentencing court has the most accurate account of the harm in the case being sentenced (see Bottoms, 2010). Without a clear understanding of the impact of the crime, a court is sentencing on the basis of the generic level of harm associated with a legal category, and this too results in a loss of proportionality and hence justice.

Scope of VPS Regime in England and Wales

(i) Aims and content

Victim personal statements in England and Wales provide an account of the impact of the offence from the perspective of the person most affected by the crime: the victim. In addition to describing the harm they have sustained, victims can express their concerns

⁷ When the government introduced trial pilots of a scheme for relatives of murder victims, it used the name *Family Impact Statement*.

regarding bail and voice any fears of intimidation or vulnerability arising from racial, cultural or disability issues. Thus, VPS are meant to be made early on in the case to inform all criminal justice agencies, including the police and CPS of any special needs or sensitivities about which they should be aware. Victims can also include in the VPS whether or not they wish to be informed by criminal justice agencies about various aspects of their case, receive assistance from organisations, as well as their desire to apply for compensation or protective measures if the case goes to court.

The aims and uses of the VPS are found in a range of diverse non-legislative documents, including judicial directives, CPS and Home Office guidance, as well as Operational Circulars. According to the CPS's web-based guidance, VPS are meant to accomplish the following aims:

- provide victims with an opportunity to describe how the crime affected them physically, emotionally, financially or any other way;
- provide victims with the chance to express their concerns regarding bail or the fear of intimidation by or on behalf of the defendant;
- provide victims with a means by which they can ask for information, for instance about the progress of the case;
- provide victims with the opportunity to claim compensation or request assistance from Victim Support or any other support agency;
- provide criminal justice agencies, including the police, the prosecutor and the court, with information on how the particular crime has affected the victim.⁸

The information contained in the VPS can therefore be used to inform not only sentencing decisions, but also decisions taken at other stages of the process, including bail. More specifically, with regards to bail, victims can mention in the VPS if they are worried about the defendant being granted bail, as they may have specific concerns over their safety.⁹ This information is meant to clarify victims' protection needs and thus inform prosecutorial and court decisions on whether to grant the defendant bail and determine the conditions on bail. For example, some victims may know the defendant and thus the VPS can inform criminal justice agencies about this, which can in turn facilitate the crafting of restraining orders as part of a bail condition. Official documents and guidelines are not very clear on how exactly these statements will be used and their exact limits with regards to bail.¹⁰

⁸ CPS, Victim Personal Statements Legal Guidance CPS, see: http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/ (updated 15 June 2010).

⁹ Criminal Justice System, Making a Victim Personal Statement, http://sussex.police.uk/media/219924/making_a_victim_personal_statement_leaflet.pdf

¹⁰ For example, legal guidance provided to prosecutors suggests that 'the VPS may contain information that will assist the prosecutor and the court when bail is considered' (see CPS, Victim Personal Statements Legal Guidance CPS, http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/); The Serious Fraud Office suggests that 'The courts may use the information in your statement when deciding if a defendant should be given bail' (see Serious Fraud Office, Making a victim personal statement, <http://www.sfo.gov.uk/witnesses/making-a-victim-personal-statement.aspx>).

The organisation 'Liberty' suggests that the prosecution should take victims' concerns about a suspect being granted bail or conditions of bail into account which should then be taken into account in deciding whether to make an application for a remand to custody. Further, if concern was expressed with regards to bail or conditional bail and a defendant who was in custody is granted bail, the police can then use the information in the VPS to notify the victim as a matter of urgency.¹¹

This report focuses on sentencing where the court should consider the circumstances of the offence and the offender, and take into account the VPS, insofar as the court considers it appropriate.¹² Victims' opinions regarding the sentence that should be imposed are not relevant, and policy documents clearly state that the appropriate sentence must be left entirely to the discretion of the court.¹³ This limitation is specified in the Consolidated Criminal Practice Direction by the Lord Chief Justice (CCPD), as well as the Court of Appeal in *R v. Perks*.¹⁴ According to the CCPD, "if, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them."¹⁵

(ii) The administration and delivery of VPS

How, when, and to whom do victims deliver their statement? Under the VPS scheme, statements are not completed by the victim but rather are taken down in writing by the police. The officer who initially interviews the victim asks whether they want to make a personal statement. The decision about whether or not to make a VPS therefore rests entirely with the victim. If a victim decides to make one, the police officer transcribes the VPS at the end of their MG11 witness statement which is added to the public file and then made available at all stages of the criminal process.

All victims -- whether or not they decide to submit a VPS at that time -- are provided with a leaflet stating that they are entitled to make a VPS at a later date, or update the one they have already made. This can be done at any time prior to the disposal of the prosecution case. Once a VPS is made, it cannot be withdrawn or changed (although it may be updated). This is another important difference between the VPS in this and other countries. A second VPS can be made (updating the previous one) at any time before the defendant is sentenced by the court. If the victim decides to make a statement at a later date, they can contact the police, who will arrange a meeting at a mutually convenient place (for instance, the victim's home or police station) in order to collect the statement. Additionally, unlike jurisdictions that allow victims to read their statement aloud in court, statements in England and Wales can only be made in writing.

¹¹ Liberty: Your rights: Bail, <http://www.yourrights.org.uk/yourrights/rights-of-victims-and-witnesses/your-rights-if-you-report-a-crime-to-the-police/bail.html>.

¹² Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2.c.

¹³ CPS, Victim Personal Statements Legal Guidance CPS see: http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/ (updated 15 June 2010).

¹⁴ [2001] 1 Cr App R (S) 19.

¹⁵ Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2.c.

(iii) Scope of the VPS Regime

All victims of crime¹⁶ (including some victims of road traffic offences) may make a Victim Personal Statement. More recently, the scheme's application has been extended to include victims of crime involving health and safety at work offences.

(iv) Evidentiary status of a VPS

Once a statement is made, it becomes part of the record and disclosure requirements ensure that the statement is disclosed to everyone involved in the case, including the defendant, police, prosecution, and the judge or magistrates. This permits the court or defence to question the victim about the content of the VPS to clarify or challenge certain points within that statement (Office for Criminal Justice Reform 2009).

(v) Guidance for Courts

The Lord Chief Justice's Practice Direction regarding the use of VPS states that VPS "should be considered and taken into account by the court prior to passing sentence (...) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender taking into account, so far as the court considers it appropriate, the consequences to the victim".¹⁷ This language is consistent with statutory provisions in other countries which direct courts to "consider" any statement submitted by the victim.¹⁸ In *R v Perks*¹⁹ the Court of Appeal highlighted the importance of victim information being accurate and verified prior to its usage by sentencers. This judgment confirmed a previous decision which stated that evidence of the harm to the victim adduced by the prosecution "must be available in proper form, whether as expert's report, witness statement or otherwise."²⁰

Additionally, regular rules of evidence apply to VPS, such as ensuring that a copy is made available to the defence in advance. The Lord Chief Justice's Practice Direction specifies that:

Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement, must be in proper form, that is a witness statement made under section 9 of the *Criminal Justice Act 1967* or an expert's report, and served upon the defendant's solicitor or the defendant.²¹

¹⁶ For an official definition of victims of crime, see Home Office, *Operational Circular: The victim personal statement (VPS) 130/12* (01/07/10); and Office for Criminal Justice Reform, *Making a Victim Personal Statement*, (VPS leaflet, October 2009).

¹⁷ Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2a, c.

¹⁸ See e.g. *Criminal Code of Canada*, R.S.C., 1985, c. C-46, s. 722(1).

¹⁹ [2001] 1 Cr App R (S) 19.

²⁰ *R v Hobstaff*, (1993) 14 Cr App R 605.

²¹ Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2 b.

(vi) Contrasting the VPS scheme in England and Wales with other jurisdictions

Appendix A contains summary descriptions of schemes available in six common law jurisdictions, England and Wales; Canada, Australia (Victoria and Western Australia) and New Zealand. It is also worth noting that Scotland has an independent scheme, which was rolled out nationally in April 2009, following the evaluation of the pilot mentioned in this report.

The Victim Statement Scheme in Scotland allows victims to inform the court, through a written statement made in their own words, about the physical, emotional and financial impact they have suffered as a result of the crime against them. Its purposes and aims are not as broad as the scheme in England and Wales and the VPS can only be made once a decision has been made to take the case to trial to inform sentencing decisions. The Judge or Sheriff can therefore consider the statement as part of the circumstances affecting the case and decide what weight it should be given. Further, in Scotland, the use of these statements is restricted to cases heard in a High Court or in cases where a Sheriff sits with a jury (courts of solemn jurisdiction).²²

In the section following here we contrast the scheme in England and Wales with the regimes in these other, representative jurisdictions.

1. Basis of Scheme

The VPS regime in England and Wales is the only one which is not based in statute and the information related to the scheme is dispersed across numerous documents, namely Home Office guidelines for victims, the CPS website, judicial Practice Directions and operational circulars. In contrast, the other jurisdictions' schemes are governed by legislation and most of the relevant information available is found in one document.

2. Duty of court regarding victim statement

Since there is no statutory basis for the VPS in England and Wales, courts are not statutorily *obliged* to consider a VPS (although the Practice Direction encourages them to do so). Nor are courts required to make any inquiry about the existence of the VPS or whether the victim has been apprised of the opportunity to submit a VPS. Elsewhere – in Canada for example – matters are quite different. Canadian courts have a statutory duty to inquire of prosecutors as to whether the victim has been informed of the possibility to make a VIS and to consider the victim's statement at sentencing.

3. The Aims of the Scheme

The objectives of victim impact schemes around the world are generally comparable. Victims provide a descriptive account of the impact of the offence for use at

²² The evaluation of the pilot showed that the take-up rate for lower tariff crimes was low and higher much higher for higher tariff offences. The national scheme was therefore made available only for higher tariff crimes. For further details, see Scottish Government, Victims voices to be heard, <http://www.scotland.gov.uk/News/Releases/2009/03/31105605>.

sentencing. However, as noted, the use of VPS in England and Wales is not limited to informing the sentencing judge; the information available in these statements can also be used during other stages of the criminal process by various criminal justice agencies, regardless of whether the case proceeds to court or not. Moreover, in England and Wales, it is stated that VPS can be used to inform agencies about victims' needs for support and to request compensation. In England and Wales, victims are also supposed to be able to detail their fears and concerns regarding racial, cultural or disability issues²³.

4. *Mode of completion*

In England and Wales, VPS are not completed by the victims themselves, but rather by a police officer who transcribes the victim's words. Elsewhere, the completion of victim statements is more direct. For instance, victims in Canada and Western Australia personally complete their statement.

5. *Mode of Delivery at Court*

Unlike the other four jurisdictions used as comparators, victims in England and Wales do not have the option to read their statement orally before the court. In other jurisdictions victims may deliver their statement orally at the sentencing hearing, as long as it is in accordance with the guidelines. In some countries victims may deliver their statement by means of a recording.

6. *Evidentiary status of the Statement*

As in most other jurisdictions, once the statement is made, it is part of the record and must be made available to everyone involved in the case, including the defendant. Moreover, victims can be cross-examined on the content of the VPS, and according to judicial directions, the court should pay no attention to irrelevant material such as opinions made by victims on the appropriate sentence. A flexible approach is usually adopted by courts -- whereby statements are rarely rejected when containing personal opinions on the sentence. Instead, the judge ignores the irrelevant sections of the statement.

²³ CPS, Victim Personal Statements Legal Guidance CPS, see: http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/ (updated 15 June 2010).

Research Findings

Participation Rates

Participation Rates in Previous Research

It is hard to generalise about the proportion of crime victims who submit a statement. Participation rates will vary according to the nature of the VPS regime. Moreover, as Leverick et al. (2007a) note: “information on response rates is rather patchy” (p. 18). However, several clear trends emerge from previous research. First, even for restrictive victim input schemes which target victims of the more serious offenses, only a minority of victims actually submit a statement.

The rates of statement submission have ranged from 15% in the most recent and systematic study to date (conducted in Scotland, see Leverick et al. (2007a,b), to 42% of a much more select sample of domestic violence victims (Tapley 2005). Hoyle et al. (1998) reported a VPS response rate of 30% in a broader sample of victims in England and Wales. Not surprisingly, victims of the most serious crimes are more likely to submit a statement. This is also confirmed by all empirical studies to date (e.g., Mastrocinque 2010; Leverick et al. 2007a,b; Victims’ Support Agency 2009).²⁴

Latest Trends²⁵ from WAVES survey in England and Wales

The Witness and Victim Experience Survey (WAVES²⁶) provides the most systematic data relating to the use of the VPS across England and Wales. Unfortunately, since the survey was discontinued in 2010, our review of trends is restricted to the three-year period from 2007/8 to 2009/10. WAVES contains 3 questions relating to the VPS:

(1) Since 2001 victims of crime have had an opportunity to explain to the police about how the crime affected them financially, physically or emotionally. This is called a Victim Personal Statement. It could either have been an addition to your written statement or taken as a separate statement after someone has been charged. Were you given this opportunity? (yes/no; don’t know);

(2) Did you make a Victim Personal Statement? (yes/ no; don’t know);

(3) Do you feel that your views as set out in the Victim Personal Statement were taken into account during the Criminal Justice System? (yes, fully; yes, to some extent; no, not really; no, not at all; don’t know).

²⁴ Direct comparisons between participation rates in different studies are not possible as the victim statement regimes are highly variable with respect to the offenses included, and rates will vary according to the profile of victims included in the program. Participation rates from studies in other jurisdictions include 23% in Canada (Giliberti 1990), 16% in Victoria (Mitchell 1996), 27% in the US (Tobolowsky 1999; Hall 1991) and 14% in New Zealand (Church et al. 1995). These rates are confirmed by the results of surveys involving judges in Australia, Canada and the United States (Roberts and Edgar 2006; O’Connell 2009; Texas Department of Criminal Justice 1997).

²⁵ Some limited WAVES data from 2005 are reported in Moore and Blakeborough (2008).

²⁶ WAVES was a national quarterly survey of victims and witnesses. Respondents were individuals involved in cases which resulted in a criminal charge and which have been closed through the determination of verdict or discontinued prosecution.

Some Limitations on WAVES data as a source of Information about VPS

(i) Nature of the Questions

The questions on the WAVES survey are not ideal as measures of victim participation in sentencing or indeed the utility of the VPS. First, there is no link in any question to sentencing per se; second, the question of whether the statement was considered in the criminal justice process could refer to bail or any stage of the process; third, this question asks whether victims' views were considered – which implies opinions rather than factual information about the effect of the crime.

(ii) Sample Biases

A second limitation concerns the sample of victims from whom data are derived. The WAVES data may not be representative of all crime victims. Victims of domestic violence or those deemed particularly vulnerable are excluded. This sample restriction needs to be borne in mind when interpreting the findings.

(iii) Validity of the Recall Data

WAVES data are based upon victims' recall of their experiences, rather than a file-based analysis. For example, if only 43% of victims recalled having been offered a VPS, this does not necessarily mean that the remaining 57% were not offered the opportunity, just that they did not *recall* being offered the chance to make a VPS. The participation rates provided in the tables below may therefore underestimate the extent to which VPS were actually offered to victims or the extent to which victims completed a VPS. The VPS is usually offered and taken by police at the same time and on the same form as the witness evidence statement, with the result that some victims may not have realised they were being offered a VPS when in fact they were given the opportunity.

It is hard to estimate the percentage of such cases. However, for three reasons the underestimation due to a failure of the victim's recall is likely to be small. First, it seems unlikely that many victims would be offered the opportunity to make a VPS only to later forget whether the offer had been made. It seems even less likely that a crime victim would complete a VPS and then fail to recall having done so – although there is some evidence in the international research of this happening. This failure to recall the statement may result from the administrative nature of the form in countries where the VPS may easily be confused with various other forms. The VPS in England and Wales is clearly labelled as such. Second, the percentages of victims in different local areas who recalled having been offered a VPS vary enormously (see below), and this suggests that the low proportions of victims who recall having been offered a VPS reflect something other than recall failure.²⁷ Third, participants who responded that they had not been offered a VPS clearly declined to choose the "don't know" response offered by the survey.

The WAVES data provide a relatively accurate view of the VPS usage in this country – subject to our observations about the nature of the questions themselves and the

²⁷ If significant numbers of victims were offered the opportunity to complete a VPS and yet failed to recall this fact it suggests that the justice system needs to make a much greater effort to distinguish between the witness statement and the Victim Personal Statement.

population of victims surveyed. The most recent data come from cases which were closed in 2009-10, although the interviews took place between September 2009 and July 2010.

Overall Trends

In 2009/10, 43% of victims interviewed recalled being offered a VPS. Over the 3-year period 2007-2010, less than half (42%) of the victims interviewed recalled being offered the opportunity to make a VPS; 45% explicitly responded that they had not been given an opportunity to make a VPS and 13% responded “don’t know” (see Table 1). There is evidence, over this brief period at least, of some improvement in the proportion of victims reporting having been given the opportunity: it rose from 40% in 2007/08 to 43% in 2009/10, a small but statistically significant difference.²⁸

As can be seen in Table 1, the increase in the percentage recalling having been informed about the VPS was mirrored by a decline in the percentage who recalled that they had *not* been informed (from 47% to 44%). However, there was no change over the three-year period in the proportion of victims who recalled having been offered a statement *and* who actually made a statement (stable at 55% of those who recalled being offered a statement).²⁹ There was a significant increase in the proportion of people who made a statement *and* who felt the views expressed in the VPS “had been taken into account”, from 65% in 2007-8 to 68% in 2009-10.³⁰

Public Opinion Evidence

Public opinion polls can also shed light on victims’ level of awareness of the VPS. A poll commissioned by the Home Office asked a sample of the general public to state how familiar they were with a number of victims’ rights such as the right to submit a VPS. This survey found that less than one respondent in five (19%) was fully aware of the right to give a VPS³¹ (Ipsos MORI, 2009). Exactly half the sample responded that they were “not at all aware of this right”. Respondents who had been victimised were more likely to report being aware of the right to give a VPS: 31% of victims compared to 18% of non-victims stated that they were fully aware of the right to make a VPS.³²

Two observations are worth making on these public opinion statistics. First, crime victims are members of the public drawn into the criminal justice system as a result of a crime. One way of increasing the likelihood of victim participation is to promote greater understanding of victim services among the general public. These data suggest that the general public need to be better informed. Second, although victims were more likely to acknowledge being aware of the VPS scheme, it is striking that over two-thirds of the *victims* interviewed were unaware of their ability to make a VPS.

²⁸ The percentage of victims recalling having been offered a VPS was even lower in 2005 (36%); see Moore and Blakeborough (2008).

²⁹ Moore and Blakeborough (2008) found that 54% of those recalling the offer of a VPS also reported completing one.

³⁰ The percentage reporting that their VPS had been taken into account fully or to some extent was comparable in 2005 (Moore and Blakeborough 2008).

³¹ A further 19% were “aware but not in detail” and 50% were not aware at all.

³² Recent research in other jurisdictions confirms these trends regarding public knowledge of victim services. For example, a nationwide survey conducted in Canada in 2011 found that almost three-quarters of the respondents reported having “only a little” or no knowledge at all of victim impact statements. Approximately half the sample reported no awareness at all (McDonald and Scrim 2011).

*Table 1
Percentage of Victims Recalling VPS by All Crime Victims, 2007/8- 2009/10*

	2007/8	2008/9	2009/10	3-year average
<i>Were you offered a VPS? (All respondents)</i>				
Yes	40	41	43	42
No	47	46	44	45
Don't know	13	13	12	13
<i>Unweighted base</i>	<i>18,593</i>	<i>19,447</i>	<i>19,032</i>	<i>57,072</i>
<i>Of those who recalled being offered: Did you make a VPS?</i>				
Yes	55	54	55	55
No	39	40	40	40
Don't know	6	5	6	5
<i>Unweighted base</i>	<i>7,582</i>	<i>8,109</i>	<i>8,417</i>	<i>24,108</i>
<i>Of those who made a VPS: Was the VPS taken into account?</i>				
Yes -"fully" or "to some extent"	65	68	68	67
No	19	17	18	18
Don't know	16	15	14	15
<i>Unweighted base</i>	<i>4,194</i>	<i>4,468</i>	<i>4,693</i>	<i>13,355</i>

Source: WAVES survey, Ministry of Justice

The WAVES statistics discussed so far are aggregate in nature and mask a degree of variation between categories of crime victims and areas of the country. At this point we explore some variation across crimes and between areas.

Variation across Categories of Crime Victim

The WAVES data supplied for this report classify victims into one of four offence categories: criminal damage; theft/ handling of stolen goods; burglary and crimes of violence.³³ As can be seen in Table 2, victims of burglary and of crimes of violence were more likely than other categories of victim to report having been offered a VPS and also to state that they had actually made a VPS (Table 2). This finding is consistent with the international trends which reveal that victims of the more serious forms of offending are more likely to participate in victim input schemes (e.g., Mastrocinque 201). It is nevertheless surprising that even for these offence categories victims were more likely to state that they had *not* been offered the opportunity to complete a statement.

The most positive finding is found that approximately two-thirds of all victims held the view that their VPS had been taken into account to some degree. It is also worth noting that there was less variation between offence categories in responses to the question about whether the VPS had been taken into account.

Table 2
VPS Recall Trends by Crime Category, 2009/10

	Criminal damage	Theft/ handling stolen goods	Burglary	Crimes of Violence
% recalling being <i>offered</i> a VPS	40	37	46	46
% of those recalling being offered a VPS also <i>making</i> a VPS	52	47	56	58
% of victims who made a VPS and who felt that VPS was taken into account “fully” or “to some extent”	67	67	63	69

Source: WAVES survey, Ministry of Justice

A more detailed breakdown of responses to the question exploring perceptions of whether the statement had been taken into account can be found in Table 3. As noted, victims could respond by one of several options. Table 3 reveals a relatively consistent pattern of responses across different categories. For all categories of offending the percentage of victims believing that their statement had been *fully* taken into account was under 50%. Perhaps the most important lesson to be drawn from this table is the relatively high percentages of victims who did not feel that their statement had been taken into

³³ The “Crimes of violence” category includes all offences against the person except domestic violence and crimes involving a fatality.

account or could not recall whether their statement had been taken into account: almost one third of victims of violent crimes and approximately one third of all victims combined.³⁴

*Table 3
Victims' Perceptions of the use of VPS by Crime Category, 2009/10³⁵*

	Criminal damage	Theft/handling	Burglary	Crimes of Violence	Total
<i>Felt VPS fully taken into account</i>	39	38	37	41	39
<i>Felt VPS taken in account 'to some extent'</i>	28	29	26	28	28
<i>Did not really feel the VPS was taken into account</i>	8	8	7	9	8
<i>VPS not taken into account at all</i>	11	10	9	10	10
<i>Don't know</i>	14	15	20	12	14
	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

Source: WAVES survey, Ministry of Justice

Variation across Local Criminal Justice Board Areas

1. Recall of an offer to make a VPS

Table 4 summarises some local area variation in the proportion of victims recalling being offered a VPS during the latest (and last) administration of the WAVES (2009/10). This table illustrates the geographic variation by presenting the five areas with the lowest and highest rates of victim-based recall of having been offered a VPS. The aggregate statistic was that 43% of the sampled victims across England and Wales recalled having been offered a VPS. The percentage of victims reporting having been offered a VPS varied from a low of 29% in London to a high of 63% in Northumbria -- a range of 34%.

³⁴ When Leverick et al. asked victims in Scotland how much consideration had been given to their statement just over half responded "don't know" (2007a; Table 6.23).

³⁵ See text for exact question and response options.

*Table 4
Highest and Lowest Rates of Recall of VPS Offer, All victims, 2009/10*

	% of Victims recalling being offered a VPS
Northumbria	63
Staffordshire	58
Warwickshire/ Gloucestershire	56
Humberside	55
<i>England and Wales</i>	43
West Midlands/ Nottinghamshire	34
Gwent/ South Wales	33
London	29

Source: WAVES survey, Ministry of Justice

The degree of variation seen in Table 4 suggests that efforts to reach victims are not equally effective across the country. It might be thought that variation in recall of a VPS reflects a different mix of crime victims rather than variability in the likelihood that different police forces bring the VPS to the victim’s attention. For example, victims of more serious crimes might be more engaged in the criminal process, more interested in participating in the prosecution of the offender and therefore more likely to pay attention to, and later recall, documentation offered to them by the police. If some areas had a higher percentage of ‘high recall’ offences this would explain some of the variation in the data seen in Table 4. However, this does not appear to be the case.

If we focus on one particular category of victims, we can see that the mix of victims in different areas does not affect the percentage recalling being offered a VPS. Thus there was a comparable degree of variation between the areas with the highest and lowest rates of burglary and violence victims recalling having been offered a VPS – from 30% in London to 65% in Staffordshire, a range of 35%. This suggests that the differential rates of victims recalling the offer to make a VPS reflect variation in the effectiveness of the police to communicate the offer.

Recall of having actually participated

Table 5 lists the five areas with the highest and lowest rates of victim-recalled participation. The percentage of victims who recalled having made a VPS in 2009/10 varied from 41% (in Cumbria) to 71% in Cambridgeshire - a range of 30%. Again, the range is comparable once we control for the category of victim: isolating burglary and violence victims generates a range of 30% from the area with the lowest to the highest rates of recalling having made a statement (from 41% in Cumbria to 71% in Cambridgeshire).

*Table 5
Highest and Lowest Rates of Victims Recalling Making VPS, All Victims 2009/10*

	% recalling having made a VPS
Cambridgeshire	71
Humberside/ South Yorkshire	65
Gloucestershire	64
Gwent/ Greater Manchester	63
<i>England and Wales</i>	55
Lancashire/ Wiltshire	48
Suffolk/ West Yorkshire	46
Cumbria	41

Source: WAVES survey, Ministry of Justice

Whether victims believed the VPS had been taken into account

The next table (Table 6) identifies the areas with the highest and lowest percentages of victims perceiving that their statement had been taken into account “fully” or “to some extent”. There is significantly less regional variation in responses to this question. The range was 18%, from 59% in Bedfordshire and Warwickshire to 77% in Avon and Somerset. The degree of variability is once again comparable when we extract only the burglary and violent crime victims. The percentage of victims who felt that their VPS had been taken into account varied from 59% in Staffordshire to 77% in Cleveland - a range of 18%.

*Table 6
Highest and Lowest Rates of Reporting that VPS was Considered³⁶,
All victims 2009/10*

Avon and Somerset	77
Cleveland	75
Wiltshire	74
Hertfordshire/ West Midlands	73
<i>England and Wales</i>	68
Cambridgeshire/ Northamptonshire/ South Yorkshire	62
Leicestershire	61
Essex	60
Bedfordshire / Warwickshire	59

Source: WAVES survey, Ministry of Justice

³⁶ Percentage of victims stating that VPS was taken into account “fully” or “to some extent”.

*Explaining Low Rates of Participation in VPS schemes*³⁷

What should we conclude about these response rates? The data from the Witness and Victim Experience Survey suggest that the system could do a better job of informing victims about the VPS scheme. While we cannot be sure that all those victims who did not remember having been offered a statement were accurate in their recall, it seems unlikely, as noted, that large numbers of victims would be offered a statement only to forget this offer within a few months.

We do not know, on the basis of the WAVES data, why approximately half the victims who recalled having been offered a statement declined to make one. As with the decision to report a crime to the police, victims will have a range of reasons for wishing to submit a statement or not (see below). A number of impediments exist in terms of victim participation (these are discussed later in this report). Additional research is necessary to determine how many victims fail to submit a statement because they are not offered the opportunity. We need to know why such a high percentage of victims declined the offer to participate.

One reason for the low participation rate is that some crime victims may wish to minimise their engagement with the criminal justice system. Unlike non-reporting— where some victims fail to report crimes to the police out of a lack of confidence or apprehension about poor treatment— non-participation in victim input schemes may reflect the victim’s perception that the seriousness of the crime did not warrant this level of engagement with the criminal process. For example, Leverick et al. (2007a) found that in Scotland the most frequent reason for not submitting a statement was “simply that the crime was not perceived as serious” (p. 84).

However, the participation rate is also likely to be affected by the attitudes of criminal justice professionals to victim input schemes at sentencing, and the existence of any mandatory requirement to inform victims about participation schemes such as the VPS. In this respect we note that there is no statutory duty on police, prosecutors or any other justice professionals to inform victims of the VPS scheme in England and Wales. Elsewhere, as noted in Part I of this report, there is a clear duty on legal professionals to ensure that victims are apprised of their right to submit a statement.

Victims’ Reasons for Submitting an Impact Statement

Why do victims submit a personal statement?

Research suggests that no single objective is uppermost in victims’ minds when they elect to submit a VPS. Victim impact statements serve different purposes for different people and, for some victims, several objectives. Differences in the wording of questions posed to victims make it hard to make comparisons across studies. In addition, since victims’ opinions on this issue are generally solicited only *after* they have been given information about the program in their jurisdiction, their views may in part reflect the “official” objectives described in materials provided to them, or what they have been told by criminal

³⁷ Technically, low rates of recall of participation.

justice professionals. Nevertheless, a consideration of victim responses across studies does reveal some consistent trends.

First, there is more support for the expressive rather than the utilitarian purpose of victim input. Thus Leverick et al. (2007a) found that just over a third of victims gave the reason: “To express my feelings/ get my point across”, whilst 5% cited “To influence sentencing”. Indeed, this study of victims in Scotland provides strong support for the Expressive function of victim input: Fully half the participants who had submitted a statement acknowledged that they did not know whether the court had considered their statement, yet were still intending to submit a statement in the future in the event of further victimisation. This suggests that influencing the court’s sentencing decision was not uppermost in their minds.

The responses of victims who declined to submit a statement make the same point: only 6% responded that they declined to participate because they believed it would not make a difference to the sentence (Leverick et al. 2007a,b; see also Chalmers et al. 2007). Over half (60%) of the victims interviewed by Hoyle et al. (1998) cited expressive reasons for submitting a statement.³⁸ Interviews recently conducted by the Commissioner for Victims and Witnesses in England and Wales revealed that many victims valued VPS, because it gave them the opportunity to *express* to the court the way the crime affected them (Commissioner for Victims and Witnesses 2011). We also note a finding from a recent survey of crime victims commissioned by *Victim Support*. A diverse sample of crime victims were asked to rate the importance of key aspects of the court experience. Having “the opportunity to have a voice heard in court” was the aspect rated as important by the highest percentage of crime victims: 75% of the sample rated this as being very important and 18% as being fairly important.³⁹ This question does not explicitly relate to sentencing, but it seems reasonable to assume that sentencing is important in this respect.

Other Jurisdictions

Erez et al. (1997) found that only 5% of victims in their Australian study sought to influence the sentence imposed on the offender—suggesting Expressive and Communicative motives were more important. Miller (2008) found that all her sexual assault victims had been primarily motivated to communicate a message to the offender and to the judge. The most frequently cited reasons for submitting a statement among victims in Canada were to help the court understand the effect of the crime *and* to make the offender understand the effect of the crime. One of these two reasons was cited by over 90% of the sample (Prairie Research Associates 2004). Australian research has demonstrated that although victims wanted to affect the sentence imposed, they did not submit an impact statement in order to enhance the severity of the sentence (Justice Strategy Unit 2000).

³⁸ A survey in South Australia found that communicating with the offender was the most frequent reason offered by victims for completing an impact statement (Justice Strategy Unit 2000).

³⁹ Victim Voice Survey, Victim Support, June 2011. Findings from this survey will be published by *Victim Support* later in 2011.

Victim Satisfaction and VPS

Do victims benefit from submitting an impact statement at sentencing?

This question has been addressed by researchers almost since the inception of VIS schemes in the US in the early 1980s. Promoting victim welfare has long been an important reason for allowing victims to depose an impact statement at sentencing. In reviewing the relevant research we assume that the victim is best placed to determine whether, and to what extent they benefited from the experience and that victim surveys are therefore the most appropriate source of information on this issue.⁴⁰ There are two clear and direct ways of evaluating the benefit to victims: (i) to compare satisfaction levels of victims who submit and others who do not; and (ii) to ask the former whether, if they were victimised again, they would submit another statement.

(i) Victim Satisfaction Levels

The most comprehensive analysis of victim reactions confirms the generally positive response of victims to the experience of submitting a statement. Leverick et al. (2007a) found that 86% of their Scottish victims who had submitted a personal statement expressed the view that it was “the right thing to do”⁴¹, and almost two-thirds affirmed that making the statement had made them feel better.⁴² In the earlier study in England, Hoyle et al. (1998) report that three-quarters of victims who completed the form were pleased that they had participated in this way. Since this is a critical question relating to the use of victim statements, we have extracted the key finding from previous studies. Table 7 summarises the principal findings relating to victim reactions from all published studies since 1990 (including both quantitative and qualitative approaches) - eight independent research projects in all, conducted in several jurisdictions. These studies used different methodologies but the common finding is that most victims who submit statements report being satisfied that they had done so.

⁴⁰ Some studies have asked prosecutors and judges whether victims benefit from submitting a statement, but this seems at best an indirect way of answering the question.

⁴¹ Almost two thirds (63%) responded that it was “definitely”, 23% “probably” the right thing to do.

⁴² In their criminal justice text, Sanders, Young and Burton discuss victims’ reactions from the Scottish study and claim that “38% [of victims making a statement] said that making the VPS made them feel worse” (p. 740). If this were true it would be troubling; however, the Table 6.21 from Leverick et al. (2007a) to which they refer notes that 38% responded that making a VPS had not made them feel better, which is not quite the same. The finding does demonstrate that a significant minority of victims do not report feeling better, even if the majority do.

Table 7
Relationship between Statement Submission and Satisfaction: International Findings

<i>Jurisdiction and citation</i>	<i>Outcome Regarding victim satisfaction</i>
1. Canada <i>Giliberti (1990)</i>	“Participants reported a high level of satisfaction with VIS programs” (p. 17)
2. United States <i>Sobieski (1997)</i>	56% of victims who submitted a VIS expressed satisfaction with system compared to 14% who did not submit (p. 1)
3. South Australia <i>Erez et al. (1997)</i>	45% of victims submitting a VIS felt satisfied; 49% felt it made no difference; 7% felt worse (p. 49).
4. England and Wales <i>Hoyle et al. (1998)</i>	75% of victims who completed form were “pleased that they had done so” ⁴³
5. Canada <i>Meredith and Paquette (2001)</i>	79% would submit statement again; victims were “generally very positive in their views of their experience with VIS” (p. 13).
6. Canada <i>Prairie Research (2005)</i>	82% of victims who completed a statement said that they were pleased they had (p. 31)
7. England and Wales <i>Graham et al. (2004)</i>	“Respondents positive about participation in VIS scheme; no participant felt that VIS not a valuable outcome” (p. 20; 30)
8. Scotland <i>Leverick et al. (2007a)</i>	63% state “definitely the right decision to submit a VIS; 20% probably the right decision” (Table 6.16)

(ii) Intention to Submit a Victim Impact Statement in the Future

Do victims who submit a statement intend to do so again?

Asking victims if they would submit another statement in the event of subsequent victimisation represents a clear measure of victim reaction to the VPS. Several researchers have put this question to crime victims, and the outcome is consistent: most victims respond that they would submit a statement in the future if they were victimized again.

In England and Wales, the 1998 Home Office study found that fully three-quarters of the participating victims said that they would submit another statement if they were victimised again (Hoyle et al. 1998). A comparably positive outcome emerged from the more recent study in Scotland which found that most victims who had submitted a statement reported that they would submit a statement again in the event of further victimisation, while only 9% responded that they would not (Leverick et al. 2007a). More tellingly, perhaps, Scottish victims who had *not* submitted a statement were significantly more likely to state that they *would* submit a statement in the future: over half (57%) stated that they would submit a statement if they were victimised again, compared to only one third who

⁴³ Fewer respondents held this view in the second of two interviews (Table 9).

predicted that they would not submit in the future (Leverick et al. 2007a).⁴⁴ Overall, more than three-quarters of the victims in the Scottish study expressed the intention to submit an impact statement in the event of further victimisation.

Other Jurisdictions

These findings are consistent with research conducted in other jurisdictions: Meredith and Paquette (2001) found that four-fifths of a sample of victims in Canada said that they would submit again. In the same jurisdiction Miller (2008) reports the reactions of a small number of victims of sexual aggression; her qualitative study found that victims were “steadfast in their support for the victim impact statement” (p. 51). Victims clearly see sufficient merit in victim impact statement schemes to want to repeat the experience.

Victim Satisfaction Findings in Context

Research findings on victim satisfaction also need to be evaluated with some recognition of the ways in which input schemes are administered. Whether victim statements promote, weaken, or have no effect on victim satisfaction will depend upon victims’ expectations of the purpose of these statements and the use to which they will be put. Indeed, regardless of their perceptions of the utility of impact statements, scholars and practitioners agree that raising unrealistic expectations may result in lower, not higher levels of victim satisfaction (e.g., Hungerford-Welch et al., 2011). Empirical support for this interaction between expectation and satisfaction emerges from Erez and Tontodonato (1992) who demonstrated that victims who submitted an impact statement expecting to have an impact on the sentence imposed ultimately reported lower levels of satisfaction – presumably because they were disappointed when their statement did not have the desired (from their perspective) effect. This all underlines the importance of providing crime victims with clear, comprehensible instructions about completing a VPS.⁴⁵

Before leaving the issue of victim satisfaction, we highlight one other finding related to the use of impact statements at sentencing. Public opinion surveys routinely demonstrate that to many members of the public, sentencing is complicated and can be confusing. People often believe that offenders receive what appears to be a lenient sentence. Many victims share these general perceptions of the sentencing process. Although few victims attend the sentencing hearing of their offender, when they do, there is evidence from Canada that they appreciate judicial recognition of their suffering (Roberts and Edgar 2006; Young and Roberts 2001).⁴⁶ Conversely even if victims choose not to attend the hearing, if victims are able to read reasons for sentence which acknowledge the role of the VPS this may have a positive effect on victim satisfaction. The VPS enables a court to recognise, in its reasons for sentence delivered orally or later in writing, the harm inflicted on the crime victim. This recognition carries no adverse consequences for the offender; it is simply a way of enhancing victim welfare.

⁴⁴ It is also worth noting that a quarter of the victims who had not submitted a statement stated that they would have submitted one had they been allowed to change their minds about the decision to submit a statement (Leverick et al. 2007a).

⁴⁵ Information provided to crime victims should express as clearly as possible the purpose and limits of a victim personal statement. Some of the materials currently distributed may confuse victims. For example, the VPS booklets distributed by the Home Office and the Serious Fraud Office note that the sort of information victims can provide can include “anything else [they] think may be helpful or relevant”. This wording may encourage some victims to stray beyond the statement’s limits.

⁴⁶ The judicial respondents to the survey reported that they referred to the victim impact statement in their reasons.

Victim Awareness of the Nature and Purpose of Statements

A common finding across jurisdictions is that victims are often confused about the nature and purpose of a VPS. This confusion is hardly surprising; few victim impact regimes provide much clarity about the statement – either for victims, criminal justice agencies or sentencers. In countries such as Canada -- where there is a statutory foundation for the statement scheme -- courts are simply directed to “consider” any statement submitted by a victim in accordance with the scheme. The statutory provisions do not specify why or how the statement is to be used. Moreover, victim impact forms and ancillary information provided to victims is often vague and confusing. Some victims may see the VPS as an opportunity to recommend a sentence to the court. Graham et al. (2004) conducted a small (n = 28) study in England and Wales which found that victims were often unclear about the uses of VPS. More recently, Victims’ Commissioner’s consultation with victims confirmed this tendency and revealed that victims had a range of different views about their role and received a range of different advice from criminal justice agencies about their purpose (Commissioner for Victims and Witnesses 2010).⁴⁷

Victim impact statement regimes which prohibit views on sentencing may seem, to the public at least, counter-intuitive. Informing a victim that it is important to complete a statement, but also that the statement is unlikely to change the sentence conveys a potentially confusing message. The less obvious, communicative purposes of submitting an impact statement are harder to explain. The consequence - borne out by research in a number of jurisdictions - is that some victims have unrealistic expectations of the role of a personal statement at sentencing; victims may believe that submitting a statement will result in a harsher sentence, or a sentence closer to the victim’s position on sentencing. This misperception constitutes a major impediment to promoting the Expressive and Communicative purposes of introducing victim impact evidence (see introduction).

Victims’ expectations in this regard reflect more basic misunderstandings about the structure of the adversarial system of justice.⁴⁸ Most people have little accurate idea of the true role of the VPS, and may be confused about the purpose and function of these statements. The criminal justice professionals who assist victims in completing these forms face a challenge in explaining the scheme to victims; this task is not helped by the conceptual confusion that surrounds the use of the victim impact statement at sentencing. Finally, the data on victim satisfaction must be considered within the context of victim impact schemes, some of which appear to have been poorly implemented. Evidence for this comes from victims themselves.

For example, studies have found that victims are at times confused about the purpose of the statement, not knowing whether they were obliged to complete the form or whether the form had actually been used by the prosecution or the court. Some research found that victim did not even know whether they had in fact submitted an impact statement. Hoyle et al. (1998) found that 90% of the victims did not know at the end of their

⁴⁷ See Englebrecht (2011) for the importance of clarifying the nature and purpose of victim input.

⁴⁸ Survey research has revealed that many members of the public misperceive the role of the prosecutor, believing that the prosecution represents the crime victim rather than the State (see Roberts 2001). Similarly in England and Wales, the Commissioner for Victims and Witnesses reported that some victims regarded the prosecutor as their representative (see Casey 2011).

case what had happened to their victim personal statement. Similarly, in the research reported by Erez et al. (1994) and Davis and Smith (1994) almost half the victims did not remember whether they had submitted a statement (see also Tapley 2005; Graham et al. 2004; Meredith and Paquette 2001; Erez and Tontodonato 1992).

Other Jurisdictions

Judges in South Australia, Canada, and Victoria have noted that victims are sometimes confused about the role of the VPS. For example, when asked how well victims understood the role of the VIS almost two-thirds of the Victoria magistrates responded “not very well” (Victoria Victims Support Agency 2009). The evaluation of VIS in Victoria concluded that “Our research indicates that both stakeholders and victims have varying and at times low levels of understanding about the role and purpose of VISs in sentencing” (Victoria Victims’ Support Agency 2009; p. 49).

Now we turn to examine the claim that victim input increases the severity of sentencing patterns in a way that may disadvantage offenders.

Content of Victim Impact Statements: Relevant, Prejudicial or Redundant?

Critics of victim impact statements argue that they contain irrelevant information prejudicial to the defendant, or material that has already emerged at trial (e.g., Abramovsky 1992; Paciocco 1999) and that this may result in harsher treatment of offenders (Coen 2006). Does the research evidence support these criticisms? In light of the ambiguous or misleading directions victims in some countries are given, it would not be surprising if prejudicial information made its way into the statements, or testimony at hearings in jurisdictions in which oral delivery is permitted. Independent of any benefits to victims accruing from the expression of their views in a public forum, do impact statements carry any probative information—or rather any legally-relevant material which might not emerge at trial or from sentencing submissions from the prosecution? Further to this, do impact statements ever or often contain information prejudicial to the defendant?

There are two principal sources of data relevant to these questions: content analyses of victim statements, and surveys or interviews with prosecutors and judges. Research suggests that the instructions provided to victims affect the nature of the input provided by victims. Leverick et al. (2007a) found that in only 3% of 160 victim statements had the victim disregarded the instructions and expressed an opinion about the sentence that should be imposed. This suggests that it is possible to provide victims with a clear communication about the purpose of the statement – even if this clarity is not present in all jurisdictions. Similarly, in Victoria fully 86% of magistrates observed that victim impact statements never or almost never include victims’ wishes regarding sentence (Victoria Victims’ Support Agency 2009).⁴⁹

⁴⁹ Elsewhere, findings suggest that schemes have been less effective in ensuring that the victim impact statement does not include extraneous or prejudicial material. In Canada, almost half of the prosecutors and approximately one third of defence lawyers interviewed for research by the Department of Justice identified the presence of inappropriate material as a problem with the victim impact statements that they had encountered (Prairie Research Associates 2005⁴⁹). For this reason prosecutors in that jurisdiction review the statement before it is submitted as evidence, and occasionally edit out inappropriate material – such as appeals for a severe sentence. Unsurprisingly, this sometimes creates conflict with crime victims, who usually expect to be allowed to tell their story directly, not in an edited version following review by the prosecutor.

A number of studies have examined the content of victim statements at sentencing with a view to determining whether they add anything to other sources of information relevant to sentencing. The results suggest that they do. Research conducted in Canada found that victim impact statements contained useful sentencing related material unavailable from other sources such as police records (Department of Justice Canada 1990). In England, Hoyle et al. found that in the majority of cases the victim impact statement added information beyond that which was found in the victim's evidential statement (1998).

Impact of Victim Statements on Sentencing Practices

Does the use of victim statements make sentencing harsher?

Determining whether the introduction of victim impact regimes creates a drift towards more punitive sentencing, or whether on an individual level the presence of a statement renders certain disposals such as custody more likely is methodologically challenging. Nevertheless, enough tests of the hypothesis have been conducted to draw the conclusion that sentencing practices do not become harsher following the introduction of victim impact statement regimes. A number of jurisdictions have introduced impact statements at different times over the last two decades, and they may serve as natural experiments to evaluate the impact of this victim-related legal reform.

- *South Australia*

Erez and Roeger (1995) conducted a careful time series analysis of sentencing patterns found no change in custody rates or sentence lengths following the introduction of victim impact statements.

- *Victoria*

Analysis of court statistics reported by the Victims' Support Agency found that the introduction of VIS in early 1989 had no effect on the percentage of cases receiving custody (Victoria Victims' Support Agency 2009).

- *Canada*

The same point can also be made by looking at national sentencing patterns in Canada. Victim impact statements were introduced in 1989 when courts were permitted to consider them at sentencing. In 1996 the statutory provisions were amended to make consideration of impact statements mandatory, while in 1999 further amendments raised still further the profile of impact statements at sentencing⁵⁰ (Roberts 2003). Despite these developments, no increase in sentence lengths or the proportion of custodial sentences has been observed over this period (Webster and Doob 2007).

⁵⁰ The reforms included codifying a statutory obligation on courts to enquire of the prosecution whether the victim had been apprised of his or her right to submit a statement, and giving victims the right to deliver their statements orally at the sentencing hearing.

- *Scotland*

Leverick et al. (2007a) found no evidence that the introduction of victim statements at sentencing had made sentencing harsher.

- *England and Wales*

The prison population has risen in this jurisdiction over the past decade, but there is no evidence that this was in any way related to the introduction of Victim Personal Statements in 2001 (see Ministry of Justice 2009).

An alternative method of determining the effect of victim input involves comparing sentencing outcomes in cases in which impact statements were present to cases in which they were absent. Drawing causal inferences here is problematic, as a large sample and a multivariate analysis controlling for all potentially relevant variables is necessary, and these research requirements are almost never fulfilled. For example, cases in which a statement was submitted are likely to be the more serious ones which would naturally result in a harsher sentence. Nevertheless, here too the evidence suggests that the presence of a statement has little impact on sentencing outcomes (e.g., Vilemoare and Neto 1987; Douglas et al. 1994; Walsh 1992⁵¹; Erez and Roeger 1995; Davis and Smith 1994; Leverick et al. 2007a⁵²). Finally, in his review of research conducted up to 1998, Sanders (1999) concluded that “There is little evidence that statement schemes influence sentencing significantly” (p. 34).

Views of Legal Professionals

Insight into the effects of victim impact statements on sentencing trends can also be gleaned from research involving legal professionals. Morgan and Sanders conducted interviews with a small sample of prosecutors and sentencers in England and Wales in 1998 and concluded that: “[victim statements] seldom influence sentencing decisions in any direction” (1999, p. 18). Judges in a number of other jurisdictions also hold the view that impact statements have little influence upon sentencing outcomes (e.g., Schuster 2006, p. 6; Erez and Roeger 1995; Morgan and Sanders 1999; Erez and Rogers 1999). Fears that the introduction of victim impact statements would result in harsher sentencing appear to have been groundless.

⁵¹ The Walsh finding of no relationship between victim input and sentence outcome is particularly interesting because the study concerned cases of sexual aggression where the seriousness and emotional nature of victim reaction might be expected to have an impact on sentencers.

⁵² Leverick et al. (2007a) report an association between the presence of a VPS and court-ordered compensation, but this is a salutary rather than an adverse effect of VPS on sentencing outcomes.

Explaining why victim statements do not result in overall increases in sentence severity

There are five principal explanations why sentencing patterns do not change greatly following the introduction of victim statements.

- First, emotional appeals for harsher sentences are ignored by judges who are trained to set aside material that carries no probative value and which may be prejudicial to the defendant.
- Second, in countries where prosecutors screen victim impact statements this kind of material would be excised from the statement and would not reach the court.
- Third, crime victims in this and other countries do not generally seek to make sentences harsher and in any event are prohibited from making recommendations about sentencing.
- Fourth, most VPS confirm, albeit from the victim's perspective, findings about victim harm of which the court was already aware.
- Finally, some victims, for a variety of reasons, appeal for leniency from the court at sentencing.⁵³

Legal Professionals' Perspectives on the VPS

The reactions of criminal justice practitioners are critical to the success of any victim input regime. If police officers, solicitors, prosecutors, magistrates and judges are opposed to the concept of victim input, any scheme is likely to fail. The earliest research into victim input at sentencing suggested considerable ambivalence or hostility to the concept (see discussion in Erez and Roberts 2007). However, recent surveys of criminal justice professionals reveal a more positive picture. Morgan and Sanders noted that the small number of sentencers in England and Wales that they interviewed were "broadly in favour of a [victim impact statement] system" (1999; p. 22). Leverick et al. (2007a) conducted interviews with a range of legal professionals in Scotland and concluded that "there were very few objections to the victim impact statement scheme among criminal justice professionals" (p. 90). Judges, in particular, reported finding victim impact statements to be useful way of learning about the seriousness of the crime.

Other Jurisdictions

No larger research study has been conducted on the issue of victim personal statements with magistrates or judges in England and Wales. This is an important oversight which we feel should be addressed by future research. However, judges in other countries report finding victim statements useful. For example, in Canada approximately half the judges surveyed⁵⁴ responded that impact statements were useful for the purposes of

⁵³ On the question of why victim personal/ impact statements have not resulted in overall increases in the severity of sentencing, see also discussion in Sanders (1999); Sebba (1996).

⁵⁴ It is hard to determine response rates for judicial surveys since they are generally expressed as a percentage of the number of judges in the jurisdiction, when the appropriate denominator should be the number of sitting judges – often much lower. The samples of judges who participate in these surveys may not be representative of the entire bench.

sentencing in all or most of the cases in which they were submitted (Roberts and Edgar 2006). Judges noted that statements were particularly useful for crimes of violence, property offenses where the extent of loss was unclear, or cases in which the harm to the victim was unusual, exceptional or “not clearly manifest to an objective observer” (Roberts and Edgar 2006, p. 15). Judges also agreed that victim statements contained information unavailable from other sources such as prosecutorial submissions.

The Canadian survey instrument has been replicated with the judiciary in Victoria and South Australia, and the results were comparable. Thus three quarters of the magistrates in Victoria⁵⁵ stated that they always or almost always found VIS useful at sentencing (Victoria Victims’ Support Agency 2009). The published account summarises attitudes in the following way: “The views of the judiciary and magistracy in Victoria indicate that VISs clearly have a value and purpose in the sentencing process” (Victoria Victims’ Support Agency 2009, p. 41). Similarly, in South Australia (O’Connell 2009) found “widespread support for impact statements” (p. 57).⁵⁶

Research with legal professionals including judges and prosecutors sustains two important conclusions: first, that they respond positively to the concept of impact statements; and second, that they see no support for the critiques made by academics that VPS result in harsher sentencing or create a lack of fairness. The conclusion reached by Leverick et al. (2007a) following their interviews with Scottish professionals captures the experience in many jurisdictions: “there were very few objections to the victim statement scheme among the criminal justice professionals” (p. 90).

Summary

The research we have reviewed has been generally favourable to the VPS scheme. Although only a minority of victims submit a statement, of those who do, most of those who do appear to benefit from the experience, and express a desire to submit a statement in the future. At the same time, VPS do not seem to make sentencing harsher across the board⁵⁷, and their use is generally supported by legal professionals. Judges and magistrates in different jurisdictions report finding VIS useful in determining sentence.

⁵⁵ Magistrates in Victoria are legally-qualified professionals in contrast to their counterparts in England and Wales who are lay persons assisted by a legal advisor.

⁵⁶ This positive reaction on the part of the judiciary was shared by prosecutors (in Canada at least): two-thirds of Crown counsel held the view that statements were useful to the courts “in most cases” (see also Cole 2003; D’avignon, 2001). Similar reactions are recorded by Miller (2008) in her research upon justice personnel. Even defence barristers, who might hold negative views of victim impact statements, appear untroubled by the introduction of impact statements -- as long as they have the right to cross examine the victim on the contents of the statement (e.g., Prairie Research 2005).

⁵⁷ Although the evidence demonstrates that sentencing patterns do not get harsher, we lack research to know whether the use of VPS has affected consistency of sentencing outcomes.

Summary and Future Research Directions

- The WAVES survey found that over the period 2007-20010, 42% of victims surveyed recalled having been offered the opportunity to make a VPS;
- Of all victims who recalled having been offered a VPS, 55% stated that they completed a VPS;
- Of all respondents who reported having submitted a VPS, less than half (39%) held the view that the statement had been fully taken into account;
- WAVES data reveal considerable variability in the proportion of victims who recalled having been offered the opportunity to make a VPS across different local criminal justice board areas.
- Victims who do submit a statement often have multiple reasons for participating. The desire to communicate a message to the court and the offender is the most frequent reason given; however, some victims wish to influence the sentence imposed.
- Victims of serious crimes of violence are more likely to submit a VPS.
- Victims who submit a statement appear more satisfied with the sentencing process than those who do not submit a statement;
- The vast majority of victims who have submitted a Victim Statement for the purposes of sentencing report that they would do so again if victimized in the future.
- There is evidence of confusion on the part of victims as to the purpose of VPS schemes, the use made of the VPS by criminal justice agencies and the courts; and the difference between the VPS and other documents submitted to the police or the court.
- Victim statements at sentencing seldom contain prejudicial material such as recommendations for sentence – unless the information provided to victims encourages them to do so (as is the case in some other jurisdictions).
- Although legal professionals such as prosecutors and judges may have been initially ambivalent towards the use of victim impact statements, the most recent research suggests a far more positive attitude.
- Judges – in other jurisdictions⁵⁸ -- report finding victim input statements useful for the purposes of sentencing, either in terms of calibrating the seriousness of the offence or in identifying compensation for the crime victim.
- Victims in other jurisdictions⁵⁹ appear to appreciate judicial recognition of the harm they suffered, and for this reason courts often acknowledge the contents of the VPS in reasons for sentence.

⁵⁸ No surveys have been conducted with the judiciary or the magistracy in England and Wales.

Future Research Directions

1. WAVES Survey

Although it has now been discontinued, this survey is the single most useful source of information about the experiences of crime victims in England and Wales. At present the research outputs have been limited to periodic reports of aggregate trends – such as the percentage of victims who recalled having been given the opportunity to submit a VPS. In this report we have provided some rudimentary univariate and bivariate analyses based upon data supplied to us, but much more research could be conducted using the survey and this would shed important light upon victims' experiences. Multivariate analyses would permit researchers to explore the relationship between submission of a VPS and responses to the criminal justice system, having controlled for confounding variables such as the nature and seriousness of the crime, victim characteristics etc.

It is our understanding that the Ministry of Justice is planning to deposit the WAVES data on the UK data archive later in 2011, and this will permit researchers to explore a number of hypotheses regarding the VPS. However, as noted earlier, the three VPS questions are likely to prove of only limited use to explore the effects of the VPS in promoting victim welfare. It is important to conduct additional survey research with victims to understand why some victims elect to submit a statement while others decline. The British Crime Survey is an obvious candidate for future research on victims. A module dedicated to exploring the issue of victim personal statements would go a long way towards answering some of the questions raised by the limited release of WAVES data. Some research has already been conducted using the BCS to test a number of hypotheses relating to the VPS (e.g., Mastrocinque, 2010), but much more could be done. Ideally a new module focusing in some detail on the use and effects of the statement should be developed.

2. Research involving Magistrates and Judges

As noted, the views of sentencers are critical both to understanding how the VPS scheme operates, and where the problems lie. While some research has been conducted with small numbers of judges in this country, there has been no systematic survey of the magistracy or the judiciary about this issue. This is regrettable; it would be useful to conduct research with these groups; as noted earlier, a significant body of research in other jurisdictions has focused on the experiences and attitudes of sentencers.

3. Case Law Review

The judiciary constitute perhaps the most important constituency in the debate on victim input at sentencing; they are best placed to determine which contents are relevant for sentencing. In other jurisdictions⁶⁰, reviews of legal judgments are regularly conducted and updated, yet as far as we are aware, no such similar exercise has been conducted in England and Wales. A review of reported and unreported judgments in which reference was made to a VPS would provide a unique insight into the way that victim input is incorporated into the sentencing process.

⁵⁹ Interviews reported by the Commissioner for Victims indicated similar results (see Casey 2011).

⁶⁰ See Policy Centre for Victim Issues (2008); Roberts and Manikis (2012).

4. Effects of Victim Impact Information on Offenders

A central theme of the government's recent Green Paper is the reduction of re-offending. Victim Personal Statements may have a role to play in contributing to lower re-offending. In the US, a number of states have introduced Victim Impact Panels. These panels are composed of groups of offenders and victims. During the meeting, the latter explain to the former how they were affected by the crime. Victim impact panels are rather different from VPS/ VIS schemes – for examples the victims do not meet “their” particular offender, but rather discuss their experiences with offenders unknown to them. However, there are important parallels; one goal of the Victim Impact Panel is to sensitise offenders to the harm created by offending. Although the research is not vast, it has shown that offenders who participate in VIPs are less likely to re-offend, presumably in part because they are more aware of the consequences of crime (e.g., Fulkerson 2001). We know almost nothing about the impact of VPS on offenders. Accordingly it would be worth exploring whether offenders who hear a VPS read in court are changed in any way by the experience.

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Appendix A

Representative Victim Input Schemes for Sentencing: England and Wales, Canada, Western Australia, Victoria and New Zealand

1. England and Wales

(i) Aims and content

- The aims and uses of the VPS are found in a range of diverse non-legislative documents, including judicial directives, CPS and Home Office guidance, as well as Operational Circulars.
- VPS are meant to be made early on in the case to inform all criminal justice agencies, including the police and CPS of any special needs or sensitivities about which they should be aware.
- Victims can also include in the VPS whether or not they wish to be informed by criminal justice agencies about various aspects of their case, receive assistance from organisations, as well as their desire to apply for compensation or protective measures if the case goes to court.
- To provide victims with an opportunity to describe how the crime affected them physically, emotionally, financially or any other way;
- To provide victims with the chance to express their concerns regarding bail or the fear of intimidation by or on behalf of the defendant, or vulnerability arising from racial, cultural or disability issues;
- To provide victims with a means by which they can ask for information, for instance about the progress of the case;
- To provide victims with the opportunity to claim compensation or request assistance from Victim Support or any other support agency;
- To provide criminal justice agencies, including the police, the prosecutor and the court, with information on how the particular crime has affected the victim.⁶¹

(ii) The administration and delivery of VPS

- Under the VPS scheme, statements are not completed by the victim but rather are taken down in writing by the police. The officer who initially interviews the victim asks whether they want to make a personal statement.

⁶¹ CPS, Victim Personal Statements Legal Guidance CPS, see: http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/ (updated 15 June 2010).

- The decision about whether or not to make a VPS therefore rests entirely with the victim. If a victim decides to make one, the police officer transcribes the VPS at the end of their MG11 witness statement which is added to the public file and then made available at all stages of the criminal process.
- All victims -- whether or not they decide to submit a VPS at that time -- are provided with a leaflet stating that they are entitled to make a VPS at a later date, or update the one they have already made. This can be done at any time prior to the disposal of the prosecution case.
- Once a VPS is made, it cannot be withdrawn or changed (although it may be updated) – another important departure from schemes in other countries. A second VPS can be made (updating the previous one) at any time before the defendant is sentenced by the court. If the victim decides to make a statement at a later date, they can contact the police, who will arrange a meeting at a mutually convenient place (for instance, the victim’s home or police station) in order to collect the statement.
- VPS in England and Wales can only be made in writing.

(iii) Scope of the VPS Regime

- All victims of crime⁶² (including some victims of road traffic offences) may make a Victim Personal Statement.
- More recently, the scheme’s application has been extended to include victims of crime involving health and safety at work offences.
- A second scheme, Victim Focus, was recently created, which permits family members of certain victims to make a family impact statements (FIS).⁶³

(iv) Evidentiary status of a VPS

- Once a statement is made, it becomes part of the record and disclosure requirements ensure that the statement is disclosed to everyone involved in the case, including the defendant, police, prosecution, and the judge or magistrates. This permits the court or defence to question the victim about the content of the VPS to clarify or challenge certain points within that statement (Office for Criminal Justice Reform 2009).

⁶² For an official definition of victims of crime, see Home Office, *Operational Circular: The victim personal statement (VPS) 130/12* (01/07/10); and Office for Criminal Justice Reform, *Making a Victim Personal Statement*, (VPS leaflet, October 2009).

⁶³ This scheme is available to family victims where the offender has been charged with murder, manslaughter, corporate manslaughter, familial homicide, causing death by dangerous driving, causing death by careless driving while unfit through drink or drugs, aggravated vehicle taking where death is caused. This scheme is not covered in this report (see Edwards 2009; Kirchengast 2011).

(v) *Guidance for Courts*

- The Lord Chief Justice’s Practice Direction regarding the use of VPS states that VPS “should be considered and taken into account by the court prior to passing sentence (...) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender taking into account, so far as the court considers it appropriate, the consequences to the victim”.⁶⁴
- In *R v Perks*⁶⁵ the Court of Appeal highlighted the importance of victim information being accurate and verified prior to its usage by sentencers. This judgment confirmed a previous decision which stated that evidence of the harm to the victim adduced by the prosecution “must be available in proper form, whether as expert’s report, witness statement or otherwise.”⁶⁶
- Additionally, regular rules of evidence apply to VPS, such as ensuring that a copy is made available to the defence in advance. The Lord Chief Justice’s Practice Direction specifies that:

Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement, must be in proper form, that is a witness statement made under section 9 of the *Criminal Justice Act 1967* or an expert’s report, and served upon the defendant’s solicitor or the defendant.⁶⁷

⁶⁴ Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2a, c.

⁶⁵ [2001] 1 Cr App R (S) 19.

⁶⁶ *R v Hobstaff*, (1993) 14 Cr App R 605.

⁶⁷ Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statements; Pleas of Guilty in the Crown Court; Forms) III.28.2 b.

2. Canada

(i) Aims and content

- The right to submit a victim impact statement (VIS) is provided in statute under the *Criminal Code of Canada*, R.S.C 1985, c. C-46, s. 722 (CrC).
- Under the CrC, courts are required to consider these statements when determining the sentence to be imposed.⁶⁸
- The statement is meant to describe the harm (physical, emotional and financial) done to, or loss suffered by the victim as a result of the offence.⁶⁹
- The victim impact statement in Canada is one factor among others that should be considered by the court.

(ii) Administration and delivery of VIS

- Canada is a federal state. The federal government creates criminal law, and the provinces have jurisdiction over administering the justice system. The administration of VIS falls under the jurisdiction of provinces, and consequently each province has in place a different scheme with specific guidelines and forms that govern various aspects of that regime.⁷⁰ For example, some provincial forms specify that victims can be cross-examined, while others do not mention that possibility.⁷¹ Different VIS forms are available in provinces for victims to complete.
- In order to be considered by the court, the statement must respect the following requirements:
 1. be made in writing in the relevant provincial form, following the procedural guidelines and
 2. must be filed with the court.⁷²
- The VIS is considered after conviction prior to sentencing.
- The *Criminal Code* explicitly states that victims can deliver their statement in writing and most notably, provides victims with the option to read that statement aloud before the sentencing court.⁷³

⁶⁸ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 722(1)

⁶⁹ *Ibid*

⁷⁰ See Roberts and Manikis (2011).

⁷¹ The forms and guidelines used in some provinces explicitly mention the possibility that victims may have to testify or be cross-examined.

⁷² *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 722(2).

⁷³ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 722(2.1).

(iii) Application

For the purposes of this regime, victims include the following individuals:

1. The direct victim of the crime, in other words, the person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence, and
2. Family members (spouse or common-law partner or any relative, any dependant or person who has custody or is responsible for the care and support) of the direct victim in cases where the victim is dead, ill or otherwise incapable of making a VIS.⁷⁴

(iv) Evidentiary matters related to VPS

- The Criminal Code does not explicitly suggest that victims can be cross-examined on their VIS, but under certain guidelines and forms victims are informed that this may be the case.⁷⁵
- To respect due process and proper disclosure, the court provides this statement to the offender as well as the prosecutor.⁷⁶
- There is no separate duty to verify the statement's accuracy prior to its usage by sentencers.

(v) Duty to inquire as to whether victim has been apprised of her right to submit a statement

- To ensure implementation of this measure, there is an explicit obligation on the court to inquire on whether the victim has been advised of the opportunity to prepare a statement.⁷⁷ This inquiry is made to the prosecutor or the victim and the court can decide to adjourn proceedings to allow victims to prepare a statement.⁷⁸ This duty however is not legally enforceable and thus no recourses or remedies are provided for victims in cases of breaches.

⁷⁴ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 722(4); for more information see Roberts and Manikis (2011).

⁷⁵ See the forms and guidelines used in Newfoundland, Alberta, Manitoba, and Ontario.

⁷⁶ *Criminal Code of Canada*, R.S.C. 1985, c. C-46, s. 722.1 CrC.

⁷⁷ s. 722.2(1) CrC.

⁷⁸ s. 722.2(2) CrC.

2. State of Victoria (Australia)

(i) Aims and content

- In Victoria, the right to make a victim impact statement can be found in the *Sentencing Act 1991*, Part 6, Division 1A and is one of the main principles outlined in the *Victims' Charter Act 2006*.
- Under this legislation, victims can provide details of the impact of the offence and particulars of any injury, loss or damage they suffered that directly relate to the offence.⁷⁹ More recently, in 2011, the law was amended to allow victims to make a more expressive account of the harm by including photographs, drawings or poems and other material related to the harm caused to the victim.⁸⁰
- VIS forms in Victoria specify that victims can only comment on the impact of the crime, which is the subject of the charges for which the offender has been found guilty.

(ii) Administration and delivery of VIS

- According to legislation, victim statements can be made in writing by statutory declaration and read orally by sworn evidence in court if the direct victim decides to do so.⁸¹ Upon request, the statement can be read by⁸²:

The person making the request; or

1. A person chosen by the person making the request; or
2. By the prosecutor

Special arrangements can be requested to the court to facilitate the reading of the statement.⁸³

- Statements are made when the person is found guilty and are meant to assist the court in determining the sentence.⁸⁴

(iii) Application

VIS made by family members are not mentioned in the legislation, but a VIS can be made on behalf of a victim namely, when the victims is under the age of 18; or when the victim is

⁷⁹ *Sentencing Act 1991* s 95B(1).

⁸⁰ *Sentencing Act 1991* s 95B(1A).

⁸¹ *Sentencing Act 1991* s 95A(2).

⁸² *Sentencing Act 1991* s 95F.

⁸³ These include the reading of the statement from a place other than the court room by means of a closed-circuit television, the use of screens, etc. (See 95G).

⁸⁴ *Sentencing Act 1991* s 95A(1)

mentally ill or for any other reason that renders her incapable of making the statement and finally when the victim is not an individual.⁸⁵

- In the *VIS information booklet* provided to victims, family members of homicide victims or parents of sexually assaulted children can also provide a VIS.

(iv) Evidentiary matters related to VIS

- Prior to sentencing, the victim must file a copy of her VIS to the court and to the offender as well as the prosecutor.⁸⁶
- Additionally, at the request of the offender or the prosecution, victims can be called to give evidence and may be cross-examined on their VIS.⁸⁷ Alternative arrangements, such as an examination and cross-examination from a place other than the court room, the use of screens or having someone beside the victim, can be made upon request by the victim to facilitate the examination.⁸⁸
- The law suggests that the court can declare that the entire statement or certain parts of it are inadmissible.⁸⁹ However, a flexible approach to the content of VIS was adopted by the courts in Victoria with regards to irrelevant or prejudicial information in VIS. Judges should expect such statements and be flexible however this information should not be relied upon when determining the sentence.⁹⁰ This approach acknowledges the ability of judges to use their discretion and reach appropriate decisions that respect both victims' and the defendants' rights.

⁸⁵ *Sentencing Act 1991* s 95A(3)

⁸⁶ *Sentencing Act 1991* s 95C

⁸⁷ *Sentencing Act 1991* s 95B(2)

⁸⁸ *Sentencing Act 1991* s 95H

⁸⁹ *Sentencing Act 1991* s 95B(2). Grounds of inadmissibility are not specified within this law, however, normal rules of evidence would be expected to apply. For instance, normal rules include the exclusion of VIS on the grounds that it would be irrelevant, unreliable or based on hearsay: see Victoria Victims Support Agency (2009) p. 30.

⁹⁰ *R v Dowlan* [1998] 1 CR 123; *R v Swift* [2007] VSCA 52.

~~(i) Aims and content~~ **3. Western Australia** ~~victim impact statements in Western Australia can be found in the *Sentencing Act 1995*, Part 4, Division 4.~~

- The legislation suggests that the VIS is made 'to assist the court in determining the proper sentence for the offender'; its aim is therefore informative rather than expressive.
- It is intended to give particulars of any injury, loss or damage suffered by the victim as a direct result of the offence and can describe the effect of the offence on the victim.⁹¹ It is only used at sentencing.
- It can be accompanied by a report made by a person who has treated the victim in the connection with the effects of the offence.⁹²
- The information provided to victims in this legislation explicitly specifies that VIS is not to address the way in which, or extent to which the offender is sentenced.⁹³

~~(ii) Administration and delivery of VIS~~

- Victims write their own statement and must be made in their own words.⁹⁴
- The prosecutor presents the written impact statement to the court during sentencing. Usually the statement can also be made verbally after a prosecutorial request before the judge or magistrate.⁹⁵

~~(iii) Application~~

- If the victim is under eighteen or incapable and the court is satisfied it is appropriate, another person may make a VIS on behalf of the victim.⁹⁶

~~(iv) Evidence matters related to VIS~~ ~~The prosecutor and the offender receive a copy of the VIS.⁹⁷ Discretion is given to the court to decide whether certain conditions must be made before making the statement available to the prosecutor and the offender.⁹⁸~~

- The court has the discretion to rule inadmissible the whole or any part of a VIS.⁹⁹

⁹¹ *Sentencing Act 1995*, Part 4, Division 4, s. 25(1).

⁹² *Sentencing Act 1995*, Part 4, Division 4, s. 25(3).

⁹³ *Sentencing Act 1995*, Part 4, Division 4, s. 25(2).

⁹⁴ Victim Support and Child Witness Service, *Preparing a Victim Impact Statement* (Department of the Attorney General: September 2009).

⁹⁵ Department of Justice guide, www.courts.dotag.wa.gov.au/v/victim_impact_statement_print.aspx.

⁹⁶ *Sentencing Act 1995*, Part 4, Division 4, s. 24.

⁹⁷ Department of Justice guide.

⁹⁸ *Sentencing Act 1995*, Part 4, Division 4, s. 26(1).

⁹⁹ *Sentencing Act 1995*, Part 4, Division 4, s. 26(2).

4. New Zealand

(i) Aims and content

- The regime governing victim impact statements in New Zealand can be found in the *Victims' Rights Act 2002*, ss. 17-27.
- The impact statement in this jurisdiction is used during the sentencing phase and provides information on the physical, financial and emotional harm. Victims can also describe 'any other effects of the offence'¹⁰⁰ and share their views with the prosecutor on whether he/she should apply for orders, directions, or conditions of that kind.¹⁰¹
- The legislation explicitly states that the VIS's aim is to *inform* the judicial officer.
- Information provided to victims in NZ advises victims that their statement should not include any opinion on sentence.¹⁰²

(ii) Administration and delivery of VIS

- The legislation describes an explicit obligation upon the *prosecutor* to 'make all the reasonable efforts to ensure that information is ascertained from the victim to the judicial officer sentencing the offender.'¹⁰³
- This information ascertained by the prosecutor must be put into writing or recorded (for instance, on audiotape or videotape)¹⁰⁴ and submitted to the judicial officer sentencing the offender.¹⁰⁵
- The information is normally submitted to the judicial officer by the prosecutor, in the form in which it was recorded, however requests can be made by either the prosecutor or the victim to have it read by the prosecutor or the victim or a person named by the victim.¹⁰⁶
- VIS can take many forms, including any recording, summary, transcript, or other copy of information of that kind.¹⁰⁷

¹⁰⁰ *Sentencing Act 1995*, Part 4, Division 4, s. 17(1).

¹⁰¹ *Sentencing Act 1995*, Part 4, Division 4, s. 18(c).

¹⁰² Victoria Victims Support Agency (2009).

¹⁰³ *Sentencing Act 1995*, Part 4, Division 4, s. 18.

¹⁰⁴ *Sentencing Act 1995*, Part 4, Division 4, s. 17(1).

¹⁰⁵ *Sentencing Act 1995*, Part 4, Division 4, s. 21(1).

¹⁰⁶ *Sentencing Act 1995*, Part 4, Division 4, s. 21(2).

¹⁰⁷ *Sentencing Act 1995*, Part 4, Division 4, s. 22(b).

(iii) Application

- Direct victim of all offences.
- For the purposes of submitting a VIS, the prosecutor has the discretion to decide to treat as a victim a person who is not a victim or part of proceedings, but who has been disadvantaged by the offence.¹⁰⁸
- Any other person can also provide a VIS if submitted with leave from the court¹⁰⁹

(v) Evidentiary matters related to VIS

- The information can be verified by being submitted to the victim for signature or if not possible, by the prosecutor.¹¹⁰
- When additional elements are added to the VIS by the victim or the prosecutor, the information contained in the VIS can be verified by the victim and the prosecutor.
- To determine the weight (if any) to give to the information in the VIS, the judicial officer should examine whether it was verified in the way described above.¹¹¹
- The prosecutor or the offender's lawyer must show the VIS to the offender if requested by him. Exceptions to this provision are explicitly recognised in cases where the statement or parts of it are withheld from the offender to protect the victim's physical safety.¹¹² If the offender did not see the statement, it cannot be taken into account by the judicial officer at sentencing.
- Additionally, the judicial officer has the discretion to give directions, or impose conditions related to the disclosure or distribution of a VIS.¹¹³ Additionally, no person, other than the victim, can decide whether the offender gets to keep the VIS.¹¹⁴
- After the end of the proceedings, every person who receives or makes a copy of a VIS, except the victim, a member of court staff, police employee, probation officer or prosecutor, must return it to a member of the court staff.¹¹⁵
- The judicial officer cannot take into account in sentencing the offender a part of the statement that was withheld from the offender for security reasons.¹¹⁶

¹⁰⁸ *Sentencing Act 1995*, Part 4, Division 4, s. 20.

¹⁰⁹ *Sentencing Act 1995*, Part 4, Division 4, s. 20(1)(c) and 21(1).

¹¹⁰ *Sentencing Act 1995*, Part 4, Division 4, s. 19(3)(4).

¹¹¹ *Sentencing Act 1995*, Part 4, Division 4, s. 21(3).

¹¹² *Sentencing Act 1995*, Part 4, Division 4, s. 25.

¹¹³ *Sentencing Act 1995*, Part 4, Division 4, s. 27.

¹¹⁴ *Sentencing Act 1995*, Part 4, Division 4, s. 23(2).

¹¹⁵ *Sentencing Act 1995*, Part 4, Division 4, s. 24(1)(2).

¹¹⁶ *Sentencing Act 1995*, Part 4, Division 4, s. 26.