



Victim Personal Statement and road crash victims

This information sheet clarifies the purpose and content of the Victim Personal Statement (VPS) for those bereaved or seriously injured in road crashes where there is a criminal prosecution.

Introduction

In 1996, the Victim's Charter stated the standards of service that victims or their families could expect from the criminal justice sector agencies¹. This included the chance to explain to the court how the crime has affected them and for their interests to be taken into account.

The Home Office conducted VPS pilot projects for three years (these did not include road crash victims) and their evaluation confirmed the desire for VPS.

In October 2001, the Home Office introduced the Victim Personal Statement (VPS) scheme. Its main purpose was to allow victims a formal opportunity to inform the court how the crime had affected their lives.

This information sheet discusses the VPS submitted to the court by road crash victims.

Frequently asked questions

What difference does a VPS make?

It allows victims the chance to let the court know the devastation caused by the crime on the victim and their family. In the past, victims often felt that they were overlooked and their suffering forgotten by the criminal justice system.

A VPS is not intended to influence sentencing. Along with other factors such as the seriousness of the crime, the courts may consider the **impact** on the victim in determining sentencing. For instance, courts may, as an act of mercy, reduce a sentence if the victim or victim's relatives request a lesser punishment. Courts will prefer to avoid aggravating the suffering of a victim but this will not be their only consideration.

In the 1999 Court of Appeal case of Roche, Chief Justice Lord Bingham stated *The court is not swayed by demands for vengeance and has to be very cautious in paying attention to pleas for mercy.*

Who can write a VPS?

A VPS can be written by the bereaved relatives or partner of someone who has been killed in a road crash, and those seriously injured in crashes where a driver is being charged with the following offences:

- Causing Death by Dangerous Driving
- Causing Death by Careless Driving while under the influence
- Dangerous Driving
- Drink Driving

¹ The Victim's Charter excluded all road crash victims, even those bereaved from crashes where a driver was charged with causing the death.

- Driving without Due Care and Attention
- Aggravated Vehicle Taking

The two new charges of Causing Death by Careless Driving and Causing Death by Unlawful Driving are also expected to be included.²

What should it contain?

It should state the impact on you and your family from the crime. This can include longer term effects such as health or social problems and financial losses.

Remorse is considered to be a mitigating factor that warrants a reduction in sentencing and defendants often claim remorse. RoadPeace suggests that victims include any reason why they think remorse is lacking or insincere as they should assume the defendant will be seeking to have their sentence reduced on account of their remorse.

As remorse or lack of remorse can have a separate impact on the victim and their family from the crash, it is appropriate to mention it in the VPS.

What should it not include?

You should not give your views and opinions on the appropriate sentence; that is for the judges and the magistrates alone to decide. They will disregard any comment you make on how the offender is to be punished.

Will it make any difference if I do not submit a VPS?

No, it will not affect the prosecution at all.

What is the role of the police Family Liaison Officer with the VPS?

Your FLO can give you general advice on the VPS but they cannot alter or amend it. They are also to provide the victim with a copy of the government's Victim Personal Statement leaflet.

² The current VPS scheme excludes those slightly injured in culpable crashes. In 2006, the police estimated over 10,000 slight injury crashes involved speeding or drink driving. The victims of these crashes will not be offered the opportunity to make a VPS, unlike those slightly injured by other crimes.

They are responsible for ensuring the VPS is handed over to the CPS for inclusion in the case papers.

When should it be written?

It should be written if and when you are able to make it. As a VPS is only used if a driver is charged with causing the crash, there is no need to produce one in the first few weeks after the crash.

Can I change it?

You cannot alter or withdraw a VPS if it has already been submitted but you can make a new VPS that includes an update or clarification on the previous statement. If you are providing an update, the new VPS should begin with by stating that this is in addition to what was stated in the previous VPS.

Can I keep a copy?

You should keep a copy of any VPS given as it can be difficult to get a copy back from the courts.

Who will see it?

VPS are treated as witness statements and are part of the case papers. They must be shared with the defence team. This means the accused can see the VPS before any magistrate or judge. As the accused is considered innocent until proven guilty, it is important that they see all the evidence against them, and this includes any VPS. It is possible, but we believe very rare, for the victim to be cross-examined on the content of the VPS during the trial.

When will the judges see it?

After the defendant pleads guilty or is found guilty, the prosecution team should ask the bereaved family to confirm the content of their VPS. It will be then shown to the judge before the defendant is sentenced. If the defendant is found not guilty, the judge will not see the VPS.

Can I read it out loud?

Victims do not have the right to read their VPS out loud in court. The judge does have the option to refer to the VPS and quote from it in their sentencing remarks.

Am I allowed to publicise my VPS?

Yes, you can share it with others, including the press or post it on the internet.

What happens to it after the trial?

It will be filed as part of the case papers.

What happens if the driver appeals?

The VPS will be included in the case papers for any appeal, and thus the appeal judge will also read it.

After sentencing, how will my VPS be used by the Parole Board?

A copy of the VPS will be sent to the Probation Service and to the Prison Service for their background information about the impact on the victim.

You can update your VPS and also submit an application through your Victim Liaison Officer if you do not want the offender to see your new VPS. If your request is refused, you have the option of withdrawing your new VPS or submitting one that you do not mind the offender seeing.

What is the difference between a Victim Personal Statement and a Victim Impact Statement?

In some countries like the United States, victims make Victim Impact statements and these can affect sentencing decisions.

Where can I see what other victims have written in their VPS?

Please contact RoadPeace if you would like to see copies of other statements by families bereaved by a road crash.

If you do decide to make a VPS, please consider sending a copy to RoadPeace to help future victims of crashes. Just on the day that you read this information sheet, another nine more families will be bereaved by a road crash.

References

Criminal Justice System (undated), The Victim's Charter.

Home Office (undated), *Making a Victim Personal Statement*,
<http://www.cjsonline.gov.uk/downloads/application/pdf/victimstate.pdf>

Office for Criminal Justice Reform (2006), The Victim Personal Statement Scheme; A Guide for Investigators.

Parole board (2008), *Making a Victim Personal Statement*,

http://www.paroleboard.gov.uk/victims_and_families/making_a_victim_personal_statement/

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Appendix A: Sentencing Guidelines Council and VPS

Three key statements pertaining to VPS by the Sentencing Guidelines Council are shown below.

Victim's wishes

R v Perks [2001] 1 Cr.App.R.(S) 19

Having reviewed existing authorities on 'Victim Impact Statements', the Court restated the following principles:

1. A sentencer must not make assumptions, unsupported by evidence, about the effects of an offence on the victim.
2. If an offence has had a particularly damaging or distressing effect upon a victim, this should be known to and taken into account by the court when passing sentence.
3. Evidence of the effects of an offence on the victim must be in proper form, a Section 9 witness statement, an expert's report or otherwise, duly served upon the offender or his representatives prior to sentence.
4. Evidence of the victim alone should be approached with care, especially if it relates to matters which the Defence cannot realistically be expected to investigate.
5. The opinions of the victim and the victim's close relatives on the appropriate level of sentence should not be taken into account. The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender subject to two exceptions:-
 - (i) Where the sentence passed on the offender is aggravating the victim's distress, the sentence may be moderated to some degree.
 - (ii) Where the victim's forgiveness or unwillingness to press charges provide evidence that his or her psychological or mental suffering must be very much less than would normally be the case.

Person Statements of Victims

II.28.1 This section draws attention to a scheme, which started on 1 October 2001, to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. It will also enable the court to take the statement into account when determining sentence.

III.28.2 When a police officer takes a statement from a victim the victim will be told about the scheme and given the chance to make a victim personal statement. A victim personal statement may be made or updated at any time prior to the disposal of the case. The decision about whether or not to make a victim personal statement is entirely for the victim. If the court is presented with a victim personal statement the following approach should be adopted:

(a) The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.

(b) 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, if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.

(c) 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. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

- (d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim.

Victim's wishes

R v Ismail [2005] EWCA Crim 397

For offences which appear to have had a significant impact on the victim, it is essential for sentencing judges to have victim impact statements, especially where a sexual offence has been committed against a young victim, so that that impact can be taken into account when determining the appropriate sentence.

Sources:

Sentencing Guidelines Council (2006),
Guideline Judgements Case Compendium,
<http://www.sentencing-guidelines.gov.uk/guidelines/other/courtappeal/default.asp?T=Cases&catID=1&subject=VICTIM'S%20WISHES>