

Taking account of the views of victims - Code for Crown Prosecutors and Prosecution Code

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All HSE Inspectors

This OM provides guidance on taking account of the views of victims when considering the public interest test in the [Code for Crown Prosecutors](#)^[1] in England and Wales - and, in Scotland, the public interest considerations in the Prosecution Code. It should be read in conjunction with OM 2008/07^[2], which gives advice on support available to staff who may be exposed to traumatising events^[3], and on communicating with bereaved families - and should also be read in conjunction with OC 130/12^[4], which gives guidance on the implementation of the Victim Personal Statement (VPS) scheme in HSE.

1 Paragraph 4.18 of the Code for Crown Prosecutors says:


"In deciding whether a prosecution is required in the public interest, prosecutors should take into account any views expressed by the victim regarding the impact that the offence has had. In appropriate cases, for example, a case of homicide or where the victim is a child or an adult who lacks capacity as defined by the Mental Capacity Act 2005, prosecutors should take into account any views expressed by the victim's family."

2 The Code applies in England and Wales to HSE, and to HSE Inspectors who are investigating possible offences and considering prosecuting. In Scotland, the need to take account of the views of victims is set down in para (v) of the public interest considerations in the Crown Office and Procurator Fiscal Service Prosecution Code. The principles and actions of this note are therefore applicable to Scotland, as they are to England and Wales.

3 Paragraph 4.18 of the Code refers to the 'views' of the victim or, in appropriate cases, the victim's family. In general, these should be taken to be injured persons and those who have been bereaved or the guardians of a child or adult lacking capacity under the Mental Capacity Act 2005. When making contact with them during an investigation we should enquire of the impact, both real and perceived, the incident has had on them. This will give them the opportunity to put forward their views should they wish to do so.

1. In considering the 'impact' we should focus on how the incident has affected the victim. We should not include any views on how our decision to prosecute may have an effect on possible future civil action, - such as whether a prosecution might assist a civil claim.
2. We should make a note of any views expressed by the IP or bereaved, and the substance of these views should be included in any report, e.g. a separate investigation report or prosecution report.

Further to point 1 above, although not expressly stated in the Code, inspectors should continue to notify victims, in a timely manner, of the decision whether or not to prosecute and to record their views in line with HSE's Policy Statement on working with victims.

4 Para 4.18 of the Code (and the Scottish Prosecution Code) requires us to 'take into account'. This means that we should give full and proper consideration to any views expressed, but it does not mean that we should be unduly influenced by them. HSE does not act for victims or their families in the same way as solicitors act for their clients, rather it takes cases on behalf of the public at large. Whilst the views of victims or their families are important, there are many other pieces of information that also have to be taken into account when deciding what course of action is appropriate. An overall view must be formed of the public interest taking all relevant factors into account. We should also ensure that any enforcement action follows the principles of the [HSE Enforcement Policy Statement \(EPS\)](#) ^[5], as guided by the Enforcement Management Model (EMM)^[6].

5 HSE has implemented the Victim Personal Statement (VPS) scheme, which is a non-statutory scheme for proactively seeking written views from victims. (OC 130/12^[7] refers). A VPS, if there is one, may provide information that assists in meeting the requirements of para 4.18 of the Code. However, whether or not the victim chooses to participate in the VPS scheme, the approval officer should still apply the Code for Crown Prosecutors (and the Prosecution Code), as set down above, and take account of any views expressed by the victim.