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Description: This OC describes the purpose and application of the Victim Personal Statement (VPS) Scheme. The VPS is a voluntary scheme and this guidance provides practical advice on when and to whom it should be applied.

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The victim personal statement (VPS) scheme

OC 130/12

Summary

This OC describes the purpose and application of the Victim Personal Statement (VPS) Scheme. The VPS is a voluntary scheme and this guidance provides practical advice on when and to whom it should be applied.

Purpose

Background and policy

1 The VPS scheme was developed by the Home Office in consultation with Victim Support and reflects one of the key standards of the Victims Charter. It is intended to give victims of crime a formal opportunity to say how the crime has affected them and to express their interests in case progress. In court proceedings, the VPS allows the court to take account of the consequences of the offence for the victim. The police have adopted the scheme generally and they apply it to many victims of crime, including some victims of road traffic crime. HSE is now adopting the scheme to give equal opportunity to victims of crime involving health and safety at work offences.

Instructions to inspectors

2 Operational inspectors operating in England and Wales should follow the instructions contained in this OC from 30 May 2006 onwards. This means that victims should be offered the opportunity to make a VPS at any time prior to the disposal of the prosecution case.

Scotland

3 The Victim Statement Scheme, the equivalent scheme in Scotland, came into force on 1 April 2009. The scheme is only available to victims whose cases are heard in the High Court or in cases where a Sheriff sits with a jury (courts of solemn jurisdiction). At present, the scheme covers neither breaches of Health and Safety legislation nor breaches of the Corporate Manslaughter and Corporate Homicide Act

2007. If inspectors are asked about making a victim statement during the investigation, the victim should be informed that they will be invited to make a statement by the Procurator Fiscal once a decision has been made to take the relevant case to trial. A guidance leaflet is available on the [Scottish Government website](http://www.scotland.gov.uk/Publications/2008/12/24104530/0) (<http://www.scotland.gov.uk/Publications/2008/12/24104530/0>).

4 In accordance with HSE's Policy on working with victims, inspectors in Scotland should ensure that the victim's views are considered during the investigation and prosecution stages and that those views are recorded (OM 2003/106 refers). It is also important that these views are considered and commented on as part of the approval purpose to satisfy HSE's internal recording of enforcement decisions.

When to apply the VPS scheme

5 The VPS scheme should be applied where an incident or occupational disease:

- has been reported to HSE, or come to the attention of HSE through other means (including during preventative inspection), and
- has resulted in one or more victims (as defined in para 9 of this OC), and
- is selected for investigation by existing incident selection criteria, and
- is subject to criminal investigation

6 An incident under criminal investigation is one that is being investigated to ascertain whether there was a possible contravention of the Health and Safety at Work etc Act 1974 or any of the relevant statutory provisions (health and safety offences), for which a duty-holder should be prosecuted. This excludes conducting initial enquiries to inform the incident selection process. In essence, a criminal investigation will have entered at least stage 4 of the 'Investigation Procedure'.

7 In some cases, e.g. some rail or large-scale chemical incidents, the numbers of victims involved may mean it is not practicable to offer each and every victim the opportunity to make a VPS. In these circumstances inspectors should nevertheless seek to ensure, where possible, that there is sufficient information by way of VPS to address the matters mentioned in paragraph 14 of this OC.

8 For example, this could mean using one or more spokesperson to represent some or all of the victims. Such a spokesperson could provide the VPS themselves (if they are able to give first hand evidence of the matters), or nominate other suitable individuals who are able to provide a fair representation of the matters in question. A spokesperson should generally be nominated by, or in any event by agreement with, the victims concerned. Where this is not possible, a judgement will need to be taken by the investigating inspector on what is reasonable and practicable in the particular circumstances.

Definition of 'victim'

9 A victim can generally include anyone who has suffered as a result of a crime - including health and safety crime. This could be read very widely. In addition, in

some cases there will not be a clear demonstrable causal link between a specific offence and the harm suffered by a possible victim. Therefore we may not be able to show that the harm resulted from a crime. We also need to follow our incident selection criteria in deciding what cases we investigate and, therefore, which possible victims we engage with. For practical purposes, for adoption of the VPS scheme by HSE in relation to HSW offences, a victim is taken to include any person who:

- has suffered a major injury, as defined in RIDDOR Regulation 2, resulting from an incident arising out of, or in connection with, work¹, or
- has suffered, or is suffering from, an occupational disease that is reportable under RIDDOR Reg 5, or
- has suffered a major injury arising from a gas incident that is reportable under RIDDOR Reg 6(1), or
- has suffered injury, ill health or exposure, reportable under other health and safety legislation enforced by HSE, e.g. Ionising Radiations Regulations 1999, or
- is the partner (including same sex partner), carer, parent, child or other next of kin of a person killed in a work-related activity (see OM 2008/07), or
- is the partner (including same sex partner), carer, parent, child or other next of kin of a primary victim, where that victim is a child or vulnerable adult. This does not mean it should be assumed the primary victim is incapable of making a VPS, or
- has suffered a non-major injury or other harm and prosecution appears to be likely or has been approved.

10 Inspectors should not feel strictly bound by the above definition and can use their discretion to apply the VPS scheme in other cases, where they consider it appropriate or where there are specific directorate/divisional instructions. However, the scheme should not be extended to indirect victims, (such as those who have suffered trauma due to witnessing an incident). In exceptional circumstances, a corporate entity may also be a victim. For example, this could be where a business has suffered due to a large-scale explosion originating from another business premises. If an inspector identifies a corporate victim, and it wishes to make a VPS, the corporate entity should nominate a representative to complete the VPS describing how the business has been affected by the incident.

Further guidance and information

11 Due to the nature of HSWA offences, any prosecution (or other enforcement action) that results from a criminal investigation by HSE will not require proof of a

¹ This includes incidents arising out of or in connection with work that are non-reportable under RIDDOR yet are subject to criminal investigation by HSE

causal link between either the incident and the injury, or the injury/incident/occupational disease and the alleged offence. Inspectors do not need to collect evidence beyond that which they require for a full and proper criminal investigation, and for the purpose of taking appropriate enforcement action. In practice, this means the strength of evidence of any causal link between a victim and an HSW offence may be fortuitous and will vary on a case-by-case basis. It will be necessary to take due account of this in the way each VPS is processed. Where prosecution results, and existing evidence shows a significant link, this should normally be presented to the court as an aggravating feature. In any event, any relationship between a victim and an offence being prosecuted should be clearly and accurately presented to the court.

12 Doubt regarding the extent of any causal link between a victim and an HSW offence being investigated should not prevent inspectors offering the victim an opportunity to make a VPS. At a later stage it will be necessary to decide the extent to which it is fair to take the VPS into account during the approval process and, if prosecution is approved, if and how it is fair to present the 'victim' to the court. To manage expectations, the victim should, from the outset, be made aware of the limitations of the scheme with respect to HSW offences. (para 11 refers).

How to operate the VPS scheme

13 The HSE VPS leaflet, which explains the scheme, should be given to the victim at the earliest appropriate opportunity. The inspector should ensure that the contact details (towards the back of the leaflet) are completed. The leaflet is available as a stationery item and can be ordered under Form Code: MVPSC120, MAKING A VICTIM PERSONAL STATEMENT - LEAFLET.

14 The victim is invited to make a formal victim personal statement (VPS) that can, for example:

1. inform investigating authorities and the court how they have been affected by the crime, e.g. physically, emotionally, psychologically, financially
2. make known their legitimate interests, such as their wish to be kept informed of case progress; concerns about intimidation; their wish to seek compensation, or to be given the contact details of Victim Support or other help agencies.

15 The opportunity to give a VPS is available during the investigation and prosecution stages and the victim can provide a VPS any time until the case is heard in court. Inspectors should use their discretion on when to take a VPS from the victim. Alternatively, the victim may wish to complete the VPS in their own time and send it to the inspector, having been left the HSE VPS leaflet. All victims have the opportunity to make a supplementary VPS adding to a previous VPS. Guidance on how to operate the VPS is given in Appendix 1.

Special categories of victim

16 Where the victim is vulnerable the VPS should be taken under the same conditions as the witness statement. (the 'Investigation' section of the Enforcement Guide refers).

17 An interpreter should be used where the victim has difficulty understanding English. The HSE VPS leaflet is being printed in English, and subsequently also in Welsh, and can be translated into a different language on request. (See the 'Translating and Interpreting' section of the 'Information' website on the Intranet).

Work related deaths

18 Where the police, or other enforcing authority, has primacy for an investigation under the Work-Related Deaths Protocol it will be necessary to liaise with them, and where appropriate the police 'Family Liaison Officer', to agree a strategy for applying the VPS scheme. It should not be necessary for the police and HSE to operate the VPS scheme twice in relation to the same victim. However, if the CPS don't take forward a case and it's subsequently referred back to HSE under the Work-Related Deaths Protocol, and HSE continues with the investigation and/or prosecution in relation to health and safety offences, then the VPS scheme should be followed as set down in this OC.

How to process the VPS

19 The VPS becomes part of the prosecution case papers, is disclosable to the defence and is made available to the court for consideration after conviction.

Keeping the victim informed of case progress

20 Inspectors should explain the limitations with respect to disclosing information prior to the conclusion of any legal proceedings, and seek to agree reasonable arrangements for keeping the victim informed of case progress. Where the VPS contains information on how the victim wishes to be kept informed of case progress this should be taken account of, but this does not mean that inspectors are expected to adhere to unrealistic demands that the victim may choose to include in the VPS.

Assessing risk to the victim

21 Although the primary purpose of the VPS scheme is to give victims an opportunity to formally provide information to the criminal justice system, it is also intended to raise the profile of victims and victim care.

22 The VPS may assist in assessing risk to the victim, including risk arising from the criminal investigation process, e.g. risk of intimidation, and risk to the victim's personal health. Where risk is identified, the VPS scheme encourages the investigator to consider ways in which they may be able to help alleviate the distress or suffering of the victim. Whilst we are keen to do what we reasonably can it has to be accepted that there are limits on what we can do. Therefore, in addition to paragraphs 23 and 24 below, inspectors are only expected to consider this in the context of the way they go about conducting their investigation and the way the victim is kept informed of case progress.

23 In relation to personal health issues it is not intended that inspectors will do anything other than inform victims of some support groups that the victim may wish to contact. For example, Victim Support has specially trained volunteers who can provide practical and emotional support to victims of crime and to court witnesses. Contact details for Victim Support, and for other support groups, can be found in HSE's VPS leaflet and in HSE's leaflet for the bereaved.

24 Inspectors should discuss cases of possible witness intimidation with their line manager before deciding what action to take. Reliable evidence of witness intimidation may be referred to the police. (Guidance is in the Enforcement Guide). Victims of crime can also be given the contact details of Victim Support.

Case preparation and approval

25 Any VPSs completed by this stage should be added to the case papers to be considered during the assessment of the evidence and the prosecution approval process. It may help to inform decisions about the strength and credibility of evidence, the suitability of charge, and public interest factors.

Interface with the Code for Crown Prosecutors

26 Para 4.18 of the CPS code says that, "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." A VPS, if there is one, may provide information that assists in meeting the requirements of para 4.18. However, whether or not the victim chooses to participate in the VPS scheme, the approval officer should still apply the Code for Crown Prosecutors, as set down in OM 2003/106, and take account of any significant views expressed by the victim.

27 Where a case is listed for trial and the inspector forms the view that the appropriate course is to accept a plea before the proceedings commence or continue, the inspector should whenever practicable speak to the victim or the victim's family, so that the position can be explained. The views of the victim or the family may assist in informing the decision as to whether it is in the public interest, as defined by the Code for Crown Prosecutors, to accept or reject the plea.

Disclosure to the Defence, and how the VPS is used in Court proceedings

28 In court proceedings the VPS allows the judge/magistrates to take account of, so far as the court considers it appropriate, the consequences of the offence to the victim. This does not include any opinions of the victim as to what the sentence should be, which, if they are contained in the VPS, should be ignored. If the victim does not wish to make a VPS, no inference should be drawn from this.

29 The Lord Chief Justice has issued a practice direction to guide judges and magistrates how to use the VPS, available on the [Court Service website](#).

30 Advice on the disclosure of material, both used and unused, to the defence and the court is given in the Enforcement Guide. The facts of each case need to be considered, and the procedure can become complex, particularly in relation to

unused material. Case-specific advice may be obtained from the lawyer dealing with the case (in Legal Adviser's Office or the Solicitor Agent or counsel), or where there is no lawyer dealing with the case, from Legal Adviser's Office via your directorate legal liaison point. (It should be noted that even if a Solicitor Agent, or other legal adviser, is employed to advise and assist, responsibility for all aspects of disclosure remains with those appointed to fulfil the appropriate roles, e.g. disclosure officer).

31 The VPS should be provided to the defence before the hearing, and brought to the attention of the Court following conviction. Where appropriate the contents of the VPS should be referred to when opening the facts of the case.

32 Before forwarding to the defence, a check should be made to ensure that the VPS does not contain any "sensitive material", as defined in the CPIA Code of Practice. It is extremely unlikely that the VPS will contain any such sensitive material, however, if it does, then it should be edited before sending to the defence.

Compensation orders

33 The VPS scheme does not alter the procedure by which the Court can make an order for the convicted defendant to pay compensation for any personal injury, loss or damage resulting from the offence. The VPS may, however, provide additional information that is relevant to the Court's considerations on this matter. (Guidance is in the 'Compensation Orders' section of the Enforcement Guide).

APPENDIX 1

Guidance to inspectors on taking a VPS

1 Before a statement is taken the following points should be emphasised:

- making a VPS is entirely voluntary and no inferences will be drawn from whether or not a VPS is made;
- it is a means by which the victim can tell the enforcing authority and the courts how the incident has affected them. It can say as much or as little as the victim wishes to say;
- a VPS will be subject to a declaration of truth and once completed and signed it cannot be altered or withdrawn. It is possible for a further VPS to be submitted offering clarification or correction of anything said;
- a VPS will form part of the investigation papers and will be disclosable to the defence if an offender is prosecuted;
- a VPS will be available to all within the criminal justice system who subsequently deal with the case. It will be taken account of where it is considered in the public interest to do so, however it may not be acted upon at all, or any action that is taken may not be obvious;

- while the court can take into account the effect a crime has had on the victim, it will not take into account any opinion the victim expresses as to how the offender, if convicted, should be punished. Sentencing is a matter of public policy and remains the prerogative of judges and magistrates.

2 If the victim chooses not to make a VPS this should be recorded in the inspector's notebook.

3 Where the victim is making a witness statement and wishes to make a VPS, the VPS should be taken on a separate statement form (LP70). This applies whether or not the witness statement is voluntary (LP70), or taken using our s20 powers (LP7). The VPS will normally be recorded by the inspector and should start with the following words or similar:

4 I have been given HSE's victim personal statement (VPS) leaflet and the VPS scheme has been explained to me. What follows is what I wish to say in connection with. [Note : see para 5 below]. I understand what I say may be used in various ways and may be disclosed to the defence, if this investigation leads to a prosecution.

5 It should be possible for anyone reading a VPS in isolation to understand exactly which event or offence is being referred to. The statement should therefore contain the necessary details to ensure this is the case, e.g. relevant dates, times, locations.

6 It is important that the VPS is recorded in the victim's own words and that ultimately the victim decides what information to include. The inspector can give general advice but should take care not to lead the victim in a way that might subsequently prejudice the integrity of the statement. The Home Office has formulated the following prompts to suggest what information the victim might wish to include:

- any medical, physical or psychological damage, if then known, and any social effects, and effects on ability to work, with appropriate supporting evidence if available. (advise that evidence may be required if such information is to be given in court);
- what further information they want about the progress of the case;
- has the victim any special communications needs, e.g. due to language/reading difficulties, hearing/visual impairment etc?
- details about vulnerability as a victim, or any concerns about being a witness (consider reminding the victim about the help that Victim Support can offer);
- the feelings and effects of any racial element to the crime, beyond the evidential aspects already covered in the main witness statement;
- the feeling and effects of victimisation due to gender, sexuality, faith, cultural background or disability, beyond the evidential aspects already covered in the main witness statement;

- whether compensation might be sought;
- which parent or carer should be used for future contact if the victim is a child or vulnerable adult;
- anything else the victim wishes to add.

7 The inspector should take care not to raise hopes that the scheme will deliver any more than is promised in the leaflet.

8 If it becomes clear that the victim's primary purpose for making the statement is to try to influence sentence the victim should be reminded that sentencing is a matter of public policy and, in deciding upon sentence, the court may take into account the effect of the crime upon the victim, but will not take account of the victim's opinion as to sentence.

9 Where the victim indicates that they do, or may, wish to make a VPS, but wish for time to consider it, the inspector should provide the victim with a copy of the VPS leaflet and a LP70 statement form with the introduction already filled in (see paragraph 4 above) and ask the victim to return the completed VPS to the inspector at the address provided.

10 A supplementary VPS, if requested, allows the victim to:

- describe the longer-term effects the crime may have had;
- add to or update anything in a previous VPS.

11. Where the victim has made a previous VPS, the supplementary statement should normally include explanation of why they are making a second statement, for example because longer term health problems have only become apparent since making the first statement, the victim has suffered greater financial loss or been harassed or threatened by the offender. A supplementary statement should start with the following words or similar:

12 I have been given HSE's victim personal statement (VPS) leaflet and the VPS scheme has been explained to me. What follows is what I wish to say in connection with [the incident], in addition to what I said in my previous victim personal statement dated [date]. I understand what I say may be used in various ways and may be disclosed to the defence, if this investigation leads to a prosecution.

[*This includes incidents arising out of or in connection with work that are non-reportable under RIDDOR yet are subject to criminal investigation by HSE.](#)