

<b>Health and Safety Executive</b>		<b>Operational Minute</b>	
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Target Audience:  
All HSE Inspectors

## **TAKING ACCOUNT OF THE VIEWS OF VICTIMS - CODE FOR CROWN PROSECUTORS AND PROSECUTION CODE**

This OM provides guidance on taking account of the views of victims when considering the public interest test in the Code for Crown Prosecutors in England and Wales - and, in Scotland, the public interest considerations in the Prosecution Code. It should be read in conjunction with OM 2002/105, which give advice on support available to staff who may be exposed to traumatising events, and on communicating with bereaved families – and should also be read in conjunction with OC 130/12, which gives guidance on the implementation of the Victim Personal Statement (VPS) scheme in HSE.

1 Paragraph 5.12 of the Code for Crown Prosecutors says :-

"The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or 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 There are 2 issues in para 5.12 of the Code, i.e. 'consequences' for the victim, and 'views' of the victim or victim's family. In general these should be taken to be injured persons and those who have been bereaved. When making contact with them during an investigation we should let them know what action we are proposing to take. This will give them the opportunity to put forward their views on, and comment on the consequences of, our action, should they wish to do so.

- (i) In considering the 'consequences' we should not include any effect on possible future civil action, - such as whether a prosecution might assist a civil claim.
- (ii) 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.

4 Para 5.12 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 (or any suggested consequences), but it does not mean that we should be unduly influenced by them (whether they are for or against prosecution). Whilst any such views/consequences 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. Any case is taken on behalf of the public at large and, overall, it's this general public interest that must be considered when we decide whether or not to prosecute. We should also ensure that any enforcement action follows the principles of the HSC Enforcement Policy Statement (EPS), as guided by the Enforcement Management Model (EMM).

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/?? refers). A 'Stage 1' VPS if there is one, may provide information that assists in meeting the requirements of para 5.12 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.

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