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# VICTIM PERSONAL STATEMENTS

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A Review of Recent Research and Developments

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Freya Rock  
University of Cambridge

February 2024

# EXECUTIVE SUMMARY

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- A Victim Personal Statement (VPS) is submitted by the victim of a crime to the sentencing court to document the physical, emotional, financial, or other impact of the crime. Victim impact statements have become a key element of the sentencing process, although concerns remain about a number of implementation challenges.
- The VPS scheme was introduced in England and Wales in 2001 following a commitment in the Victims' Charter of 1996. The right to submit a VPS is contained in the Victims' Code. In contrast to other jurisdictions, the right is not currently based in statute. This is set to change with the coming into force of the *Victims and Prisoners Bill* that is currently passing through Parliament.
- Research, including the Victims' Commissioner's (2015) study of the VPS scheme in England and Wales, suggests that victim impact statements may improve the proportionality of sentencing outcomes because judges find them helpful in determining the nature and extent of the harm caused. A more accurate calibration of the seriousness of the crime should lead to a more proportionate sentence.
- Recent empirical data on the use of VPS are very limited. This restricts the conclusions which may reasonably be drawn about the benefits and burdens/disadvantages of victim impact statements. No data on the volume of victim statements are currently collected by either the Government or the Ministry of Justice, and questions about the VPS have not featured consistently on the Office for National Statistics' National Crime Survey.
- Roberts and Pina-Sanchez's analyses of Crime Survey for England and Wales (CSEW) data found that across the most recent administrations of the CSEW only 13% recalled receiving an offer. Of the victims who recalled being offered the opportunity to submit a statement, about half (53%) stated they had submitted one. Those who reported having submitted a VPS were asked whether in their opinion the VPS 'was taken into account by the CJS'. Approximately one-third responded 'yes, completely', 30% chose 'yes, to some extent' and 34% responded 'no'.
- VPS research should document the reasons behind the low notification and uptake rates. Police officers' understanding of, and attitudes towards, the VPS should be explored further to ascertain what needs to be done to ensure that the opportunity to submit a VPS is offered to all victims.
- Research should explore how Victim Personal Statements are used by sentencers in England and Wales, particularly magistrates. Little is currently known beyond the Victims' Commissioner's (2015) finding that sentencers in England and Wales find the statements useful because they help to determine the nature and extent of the harm.
- Another priority for future VPS research should be to undertake in-depth qualitative exploration of the reasons why victims in England and Wales choose to submit a VPS and their experiences of doing so. This would involve interviews with victims who have submitted a VPS, ideally before and after the sentencing hearing, to understand their hopes and expectations.
- Researchers should also explore the impact the VPS has on the offender. Research has suggested that offenders may appreciate the full consequences of their criminal acts when the victim describes the impact of the crime. Hearing from the person most directly affected may be more meaningful than listening to a prosecutor's description of the crime.

## CONTENTS

|   |    |
|---|----|
| 1. Introduction   | 04 |
| 2. Input: The Role and Nature of Victim Personal Statements | 05 |
| 3. Key Research Findings 2013-2023                          | 07 |
| 4. Data Gaps and Research Priorities                        | 10 |
| 5. Proposals for Reform                                     | 13 |
| 6. Conclusion   | 16 |
| References  | 17 |

# 1. INTRODUCTION

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Victim participation is vital to maintaining the legitimacy of the sentencing process, as well as public confidence in sentencing. One way that victims' interests are incorporated into sentencing decisions is through the sentencing guidelines. Victim impact plays an important role in the definitive sentencing guidelines issued by the Sentencing Council. Factors relating to the impact of the crime on the victim appear at both steps of the guidelines' methodology.<sup>1</sup> More directly, crime victims provide input through their individual impact statements.

A *Victim Personal Statement (VPS)* is submitted by the victim of a crime to the sentencing court to document the physical, emotional, financial, or other impact of the crime. Victim impact statements have become a key element of the sentencing process, although concerns remain about a number of implementation challenges. The statement may also be submitted to the Parole Board, but this report focuses on the role of the VPS in the sentencing context. The opportunity for victim input at sentencing exists in all common law jurisdictions, although elsewhere the name Victim Impact Statement (VIS) is used (Roberts, 2009). Since the introduction of the first victim input schemes in the 1980s,<sup>2</sup> the role and consequences of victim impact statements have been debated extensively by academics.

In 2020 the Sentencing Academy published a review of recent empirical findings relating to uptake of the VPS.<sup>3</sup> This follow-up report summarises developments and research since the previous review. The report concludes by identifying research gaps and noting recommendations for reform.

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1 See: <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-sentencing-guidelines/>.

2 The first victim impact statement was submitted in California in 1976 and a statutory scheme was introduced in that state in 1982. They were subsequently introduced in jurisdictions including New Zealand (in 1987) and Canada (in 1988); see Roberts and Manikis (2011).

3 Available at: <https://www.sentencingacademy.org.uk/wp-content/uploads/2023/09/Victim-Personal-Statements-and-Sentencing-2-2.pdf>.

## 2. INPUT: THE NATURE AND ROLE OF VICTIM PERSONAL STATEMENTS

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### The VPS scheme in England and Wales

The VPS scheme was introduced in England and Wales in 2001 following a commitment in the Victims' Charter of 1996. The right to submit a VPS is contained in the Victims' Code (Ministry of Justice, 2021). In contrast to other jurisdictions, the right is not currently based in statute. This is set to change with the coming into force of the *Victims and Prisoners Bill* that is currently passing through Parliament. The Bill puts key entitlements from the Victims' Code, including that victims should have the opportunity to 'make their views heard' in the criminal justice process, into primary legislation. It also gives the Secretary of State the power to enact secondary legislation setting out the detail of the Code, including the VPS scheme.

Sources of information for victims and guidance for courts include the *Making a Victim Personal Statement* guide for victims (Ministry of Justice, no date); the Joint Agency Guide for practitioners (Crown Prosecution Service, 2018); decisions of the Court of Appeal, most notably the decision in *R v. Perkins, Bennett and Hall*;<sup>4</sup> and the relevant Practice Direction (Courts and Tribunals Judiciary, 2023).

A victim<sup>5</sup> of any offence has the right to submit a VPS. In cases of homicide, a VPS may be submitted by bereaved close relatives (Ministry of Justice, 2021, para. 7.2). The right to submit a VPS was first codified in the 2013 version of the Victims' Code. Victims may express a view as to whether the VPS is read aloud in court (by the victim or other designated person) but the court makes the final decision about how the VPS is received (Ministry of Justice, 2021, para. 7.4). The VPS should describe the harm suffered as a result of the offence but not the victim's opinions about sentencing. If they are present, the court must not have regard to such material (Courts and Tribunals Judiciary, 2023, para. 9.5.8). The Court of Appeal in *R. v Perkins, Bennett and Hall* emphasised that the VPS is a formal piece of evidence and therefore gives rise to disclosure obligations and the possibility of cross-examination.<sup>6</sup>

### The role of the VPS in the sentencing decision

The Victims' Code provides that the VPS will be 'considered' by the court at sentencing (Ministry of Justice, 2021, para. 7.1). The Joint Agency Guide notes that the information contained in the VPS can help the court to understand how the crime affected the victim (Crown Prosecution Service, 2018, para. 40). A sentencing court must consider the seriousness of the offence with reference to

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<sup>4</sup> [2013] EWCA Crim 323.

<sup>5</sup> A definition of 'victim' for the purposes of the Victims' Code is set out in the Code's Introduction. It includes any person who has suffered harm directly caused by a crime (Ministry of Justice, 2021).

<sup>6</sup> However, research with sentencers has revealed that cross-examination on the content of the VPS rarely occurs (Victims' Commissioner, 2015).

both the offender's culpability and the harm caused.<sup>7</sup> Culpability and harm are central determinants of a proportionate sentence. The VPS helps a court determine the extent of the harm caused. Sentencing guidelines contain levels of seriousness based on the harm caused and the offender's culpability for that harm. For example, the sentencing guideline for assault occasioning actual bodily harm (Sentencing Council, 2021) states that 'serious physical injury or serious psychological harm and/or substantial impact upon victim' places harm in Category 1. Combined with the court's assessment of culpability, this establishes a starting point sentence and a sentence range.

Research, including the Victims' Commissioner's (2015) study of the VPS scheme in England and Wales, suggests that victim impact statements may improve the proportionality of sentencing outcomes because judges find them helpful in determining the nature and extent of the harm caused. A more accurate calibration of the seriousness of the crime should lead to a more proportionate sentence.

The use of impact statements in this and other jurisdictions has at times generated controversy. Critics have expressed concerns that giving victims the opportunity to submit a VPS may lead to disproportionately harsh and inconsistent sentencing outcomes due to the emotional and subjective nature of their content, including the issue of some victims being more articulate than others (Hoyle, 2011). Whilst empirical research in England and Wales has not addressed this issue, Roberts and Manikis' (2011) review of international research found little evidence to support these concerns.<sup>8</sup> They concluded that studies show little effect on sentence severity (Davis and Smith, 1994; Erez and Roeger, 1995; Leverick et al., 2007).

### The expressive function of the VPS

Victim statements may serve other purposes at sentencing. Roberts and Erez (2004) argue that in addition to informing sentencing decisions (their 'instrumental function'), VISs perform an *expressive* role by enabling victims to communicate with the court, the offender, and the wider community. In this way the victim can express the impact of the crime clearly and directly to the offender. This expressive role was the original purpose of the victim impact scheme at sentencing. International research exploring the expressive and communicative capacities of the VIS has found that victims use their statements for various purposes beyond describing the effects of the crime. For example, some victims wish to express their disapproval of the offender. In some cases statements provided by family victims of homicide are intended to recall or 'eulogise' the deceased (Booth, 2015; Rock, 2010; Szmania and Gracyalny, 2006).<sup>9</sup>

While little is known about the victims' desires or the content of the VPS in sentencing hearings in England and Wales, 5% of respondents to the Victims' Commissioner's (2015) survey reported that they had made a VPS for only cathartic or therapeutic reasons, whilst 14% had wished to

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7 Section 63 of the Sentencing Act 2020.

8 Differences between sentencing regimes means that caution should be exercised in extrapolating findings from research in other jurisdictions to the VPS scheme in England and Wales.

9 However, a key finding is that the nature of the VIS as a legal instrument with constraints on admissible content and delivered during formal proceedings places limits on its expressive potential (Booth, 2015).

communicate with the offender. In studies in other jurisdictions, expressive reasons have been cited as the most common motivation for submitting a VPS, over and above the opportunity to influence the sentence (Roberts and Manikis, 2011).

### 3. KEY RESEARCH FINDINGS 2013-2023

Over the last decade, little research has been conducted into the VPS scheme in England and Wales. The main sources of data were the annual Crime Survey for England and Wales (CSEW) which collected limited information about the VPS, and studies conducted by the Victims' Commissioner. Although researchers in other countries<sup>10</sup> have explored judicial perceptions and attitudes towards victim impact statements, there has been little such research in England and Wales. In 2015, the Commissioner published a review summarising findings from surveys and interviews with victims and practitioners (Victims' Commissioner, 2015).

Table 1 summarises magistrates' responses to a question about the effectiveness of the VPS for victims. As can be seen, perceptions are far from positive, with only approximately one respondent in ten believing that the VPS worked 'well' or 'very well' for victims.

**Table 1 Sentencers' Perceptions of the Effectiveness of VPS regime**

| <i>Q: How well do you think the victim personal statement process works for victims?</i> |      |
|--|------|
| <b>Very Well</b>   | 1%   |
| <b>Well</b>  | 10%  |
| <b>Average</b>   | 32%  |
| <b>Poor</b>  | 29%  |
| <b>Very Poor</b>   | 28%  |
| <b>Total</b>   | 100% |

Source: Office of the Victims' Commissioner for England and Wales, percentages rounded.

Other key findings from the survey include the following:

- During the previous year, almost two-thirds (62%) of magistrates surveyed reported that they see a VPS in fewer than half of the case files. Almost one-third of respondents stated they had sentenced without a single VPS the entire year.

<sup>10</sup> For example, Davies and Bartels (2021) and Roberts and Edgar (2003).

- If the VPS was missing, sentencers seldom asked if the victim had been given an opportunity to submit a statement.<sup>11</sup>
- Regarding the victim's request to read their statement in court, most sentencers had heard such requests. No sentencer reported having refused the request.
- Victims report benefiting from judicial recognition of their statement. However, only approximately a quarter of sentencers reported referring to the VPS in all cases. Most reported that they referred to the VPS in fewer than half the cases.
- Over two-thirds of the sample stated they had received no training or guidance about the VPS.

### Current usage trends

Recent empirical data on the use of VPS are very limited. This restricts the conclusions which may reasonably be drawn about the benefits and burdens/disadvantages of victim impact statements. No data on the volume of victim statements are currently collected by either the Government or the Ministry of Justice, and questions about the VPS have not featured consistently on the Office for National Statistics' National Crime Survey. Publications have analysed information from a range of sources, many of which are no longer available, for example the Witness and Victim Experience Survey (WAVES), which was discontinued in 2010. Thereafter, the CSEW became the principal source of information about victims' experiences and responses. All respondents to the CSEW who reported a crime to the police are asked whether the police gave them an opportunity to submit a VPS.

Roberts and Pina-Sanchez's analyses of CSEW data found that across the most recent administrations of the CSEW only 13% recalled receiving an offer.<sup>12</sup> Of the victims who recalled being offered the opportunity to submit a statement, about half (53%) stated they had submitted one. Those who reported having submitted a VPS were asked whether in their opinion the VPS 'was taken into account by the CJS'. Approximately one-third responded 'yes, completely', 30% chose 'yes, to some extent' and 34% responded 'no'.<sup>13</sup> Unfortunately, the VPS questions are no longer included in the CSEW. As a result, there is no source of data on the use of VPSs. England and Wales is likely the only jurisdiction in which usage data are unavailable.<sup>14</sup>

Other data sources confirm the CSEW trends. According to the latest (2022) annual survey by the Office of the Victims' Commissioner, fewer than one third of respondents said they were offered an opportunity to make a VPS (Office of the Victims' Commissioner, 2023). A telephone survey conducted by the Independent Victims' Commissioner for London in 2019 found that fewer than

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11 In some jurisdictions, e.g. Canada, courts have a statutory duty to inquire of the prosecution whether the victim has been offered the opportunity to submit a VPS. In the event that the victim has not been provided with the opportunity, the court may postpone the sentencing hearing until a VPS is available.

12 However, a victim failing to recall an offer of a VPS does not necessarily mean that they were not offered one (Roberts and Manikis, 2011).

13 13% chose 'no, not really;' and 21% responded 'no, not at all' (Windsor and Roberts, 2020).

14 The Victims' Commissioner published findings from an annual survey, but these are based on a relatively small and self-selected sample of crime victims.

half the respondents were offered the chance to complete a VPS (Independent Victims' Commissioner for London 2019, p. 13). Finally, a more recent survey by the Victims' Commissioner reported that fewer than half (39%) of all respondents recalled being offered the opportunity to submit a VPS (Victims' Commissioner, 2021). However, the figure was an encouraging 51% for cases reported since the pandemic began.

Why do victims not recall being offered the opportunity to submit a VPS (or why do they choose not to submit one)? Some insight may be gleaned from the Victims' Commissioner's (2015) review. The reasons provided by officers interviewed included a lack of awareness that a VPS had to be offered; not having the time or resources to take a VPS alongside a witness statement; and an opinion that the crime was not sufficiently serious to warrant one. This study also touched on the reasons why many victims choose not to submit a VPS, with some stating that they chose not to provide one because they lacked confidence in the justice system or did not see the point.

The Victims' Commissioner's review also documented confusion amongst victims about the nature and purpose of the VPS, including what to expect in court and how their statement may affect sentence. The Commissioner reported that, as a result of this confusion, 'many victims will have had their expectations about what the VPS can offer built up, only to be let down, often with devastating results' (Victims' Commissioner 2015, p. 5). Clarification of the role of the VPS at sentencing in the Joint Agency Guide (2018) may alleviate this by providing guidance to practitioners that helps them explain the role of the VPS and the meaning of 'take into account' to victims (Windsor and Roberts, 2020). Despite this, just 46% of CSEW respondents in 2018-19 felt that their statement had been 'taken into account', a sharp fall from a figure of 68% in the previous year (Victims' Commissioner, 2019).

Other problems identified by the Victims' Commissioner include a lack of empathy and sensitivity being shown to victims by those taking the statement, with some criminal justice staff treating it as 'a 'bolt on' to existing processes' (2015, p. 14), as well as problems with the timing of when the VPS is taken. The Commissioner observed that the VPS is sometimes taken at an early stage, well before the full (e.g. psychological) impact of the crime is apparent, and many victims are not offered the opportunity to submit an updated VPS, despite having the right to do so under the Code. Victims may feel frustrated when the VPS is taken in the immediate aftermath of the offence and they are not given the opportunity to update it (Independent Victims' Commissioner for London, 2019).

A related finding from the Victims' Commissioner's 2015 review was that victims may feel frustrated when they write a VPS but the offender is acquitted at trial and therefore the statement is never used at sentencing, without it having been explained to them that this might occur. The research also found that the VPS is often not used or referred to when the defendant pleads guilty, especially in the magistrates' courts where cases tend to proceed to sentence immediately after the plea has been entered. Further, whilst 37% of victims surveyed by the Commissioner had wanted to read

their statement aloud, 55% of this group said that they had not been allowed to do so, sometimes without a reason being given.<sup>15</sup>

The Victims' Commissioner's 2015 review made several recommendations and commitments, including a commitment to produce an analytical report investigating whether any particular categories of victim are less likely to recall having been offered the opportunity to make a VPS than others. Subsequently, the Commissioner published an analysis of CSEW data from 2013-16 which found that victims with certain characteristics were more or less likely to recall having been offered the opportunity to submit a VPS than victims overall (Victims' Commissioner, 2017). Older victims were less likely to recall being offered a VPS. No significant difference was found in relation to gender, disability, or ethnicity. Victims were also less likely to recall an offer in the East of England (and more likely in the South West), in rural areas, and if the incident was theft-related. These findings are consistent with Mastrocinque's (2014) analyses of data from the Witness and Victim Experience Survey. Mastrocinque found that females, Asian victims, and those who perceived the crime as more serious or who were injured as a result of the offence were more likely to submit a VPS.

The Commissioner also recommended that criminal justice agencies should consider how to provide victims with better opportunities to update their VPS. A recent report by His Majesty's Crown Prosecution Service Inspectorate (2023), focusing on the Crown Prosecution Service's (CPS) handling of domestic abuse cases, suggests that these problems persist. This report found that only half of the cases in the sample fully met the standards in the Victims' Code in relation to the VPS. The CPS was found rarely to request an updated VPS for a sentencing hearing in cases where the VPS had been taken months earlier and therefore the impact of the offence was likely to have evolved. The report also noted that victims' preferences about mode of presentation are often not conveyed to the CPS and are therefore ignored.

## 4. DATA GAPS AND RESEARCH PRIORITIES

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The Sentencing Academy's previous review of policy, operation and research into victim personal statements and sentencing (Windsor and Roberts, 2020) made various recommendations for future VPS research. These are incorporated into the following section, along with additional suggestions.

### i. Explanations for low and variable rates of notification and uptake

VPS research should document the reasons behind the low notification and uptake rates. Police officers' understanding of, and attitudes towards, the VPS should be explored further to ascertain what needs to be done to ensure that the opportunity to submit a VPS is offered to all victims. This

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<sup>15</sup> Reasons that victims interviewed by the Commissioner recall being given include that 'the judge and defence said it was too long' (Victims' Commissioner 2015, p. 32).

should evaluate explanations for the variation in recall of offer rates between victim characteristics, geographic area, and offence type. It would also be helpful to collect data on why victims' requests to read their VPS aloud tend to be refused. Moreover, because there is evidence of low uptake by victims once a VPS is offered, victims' attitudes towards the statements should be investigated to understand how uptake rates could be increased.

As well as exploring victims' attitudes towards the statements generally, this could involve reviewing the guidance that they are offered in relation to the VPS. Further, researchers should review the forms used to take the VPS. It has been suggested that using the same form to take the statement as is used for the witness statement might have the effect of understating its importance and discouraging victims from making a VPS. Research should also explore why some categories of victim are more (or less) likely to submit a statement.

Improving uptake, and equity in relation to uptake, is important because, as well as enabling victims to benefit from the scheme, better and more consistent information would be provided to sentencers. This would lead to more proportionate sentencing as the court would benefit from a more comprehensive understanding of the seriousness of the crime. In addition to conducting qualitative research in relation to these questions, quantitative data could be gathered via an annual survey similar to the discontinued WAVES, or by re-introducing and adding further questions concerning the VPS to the CSEW (Windsor and Roberts, 2020). Windsor and Roberts also suggested that data collection should focus on victims of crimes of mid to high seriousness because victims of less serious crimes may not need to submit a VPS if the crime was relatively minor and/or the loss has been recompensed. A cohort study would be useful to determine the percentage of victims who are offered and who submit a VPS and the reasons why some decline to participate. This would also permit comparisons between the attitudes towards the criminal justice system of participants and non-participants (Windsor and Roberts, 2020, p. 15).

## ii. How statements are used by sentencers and the material they contain

Research should explore how Victim Personal Statements are used by sentencers in England and Wales, particularly magistrates. Little is currently known beyond the Victims' Commissioner's (2015) finding that sentencers in England and Wales find the statements useful because they help to determine the nature and extent of the harm. Points that would usefully be addressed in future research include:

- sentencers' overall understanding of the nature and purpose of the VPS;
- the ways that VPSs are used when applying the sentencing guidelines;
- whether VPSs add information of which the sentencer would not already be aware given other material such as witness statements are available in the case; and
- whether and in what circumstances a VPS would have a material impact on the sentence, such as by moving the case from one harm category to another.

Having a clearer picture of judicial use of the VPS would help develop better guidance for victims and practitioners. This guidance would address the way that the statement will be used by the court

and may help to clarify this for victims. Researchers could develop this guidance by conducting qualitative interviews with judges and magistrates, perhaps using vignettes, and by analysing how VPSs are referred to in sentencing remarks.

Further, multivariate analyses of quantitative sentencing data could resolve the question of whether the statements sometimes lead to disproportionately harsh sentences. Judges taking part in qualitative research could be asked to explain how they deal with any inadmissible material that is contained in the VPS they receive, and how they account for potential inequities due to differences in the extent to which victims are able to articulate their experiences of harm. As suggested by Windsor and Roberts (2020), researchers should also conduct a content analysis of statements to ascertain what information they contain, including whether they contain inadmissible material. This would contribute to an understanding of what kind of material survives pre-hearing scrutiny by counsel and how the VPS supplements other sources of information available to sentencers.

### iii. In-depth, qualitative research with victims of crime

Another priority for future VPS research should be to undertake in-depth qualitative exploration of the reasons why victims in England and Wales choose to submit a VPS and their experiences of doing so. This would involve interviews with victims who have submitted a VPS, ideally before and after the sentencing hearing, to understand their hopes and expectations. It would also be helpful for researchers to observe sentencing hearings. Whilst there is some indication that the primary reason why victims submit a VPS is to express themselves, little is known about what precisely they want to get out of the experience and how the opportunity to submit a VPS affects their experiences of the criminal justice process and of coming to terms with the offence. These are vital questions to ask in order to understand how the VPS scheme could be developed in ways that benefit victims.

Research should focus on the VPS experiences of specific groups, including homicide-bereaved families and victims of sexual offences, which could lead to special protocols relating to the VPS being devised for particular categories of victim. It should also focus on specific aspects of the scheme such as the opportunity to read the VPS aloud which was introduced for all victims in 2013 and is currently underexplored. Before this, the oral delivery of impact statements by homicide-bereaved families in the form of a Family Impact Statement was trialled in five Crown Courts in 2006-08 as part of the Victim Focus Scheme (Rock, 2010).

### iv. The impact of the VPS on the offender

Researchers should also explore the impact the VPS has on the offender. Research has suggested that offenders may appreciate the full consequences of their criminal acts when the victim describes the impact of the crime. Hearing from the person most directly affected may be more meaningful than listening to a prosecutor's description of the crime. Studies should consider whether the VPS can play a restorative role or contribute to a restorative justice outcome (Roberts and Erez, 2004) by influencing offenders' understanding of their behaviour and serving rehabilitative goals by

contributing to desistance. Whilst proponents of VIS schemes suggest that the statements may have this effect,<sup>16</sup> there has been little research on this issue.<sup>17</sup>

#### v. The VPS at parole

Lastly, whilst this review has focused on the role of the VPS at sentencing, future research ought to explore how the statements are used by the Parole Board. The Victims' Code sets out that victims have a right to submit their VPS (or an updated version explaining how the crime continues to affect them and the impact that the offender's release may have) to a parole or tariff-review hearing (Ministry of Justice, 2021, para. 7.9). Parole Board members interviewed by the Victims' Commissioner (2015) said that they find the statements useful when setting licence conditions and determining whether proposed measures to manage the offender are feasible. However, they also said that they rarely see a VPS other than in the most high-profile cases. Further research on the VPS at parole would be useful to develop an understanding of why statements are seldom submitted at parole; victims' experiences of the VPS at this stage; and the role that they play in the Parole Board's decision-making process.

## 5. PROPOSALS FOR REFORM

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#### i. 'Rebranding' the Victim Personal Statement

Several academics and agencies have proposed that VPS should be re-named 'Victim Impact Statements' (Roberts and Manikis, 2011; Victims' Commissioner, 2015). The rationale is that the name 'Victim Impact Statement' would more accurately convey to victims that the role of the statement is to inform the court about the *impact* of the crime rather than to convey their *personal* opinions about the offence, the offender or the sentence.<sup>18</sup> When the scheme was first introduced in England and Wales, the name 'Victim Impact Statement' was avoided in order to distance the scheme from its counterparts in some American states where victims are permitted to make sentence recommendations in their VIS (Rock, 2004). Given this, if such a change is considered, researchers should conduct focus groups with victims and practitioners to explore the effect that a name change is likely to have on overall understanding of the nature and role of the scheme. Related to this issue, in 2019 the London Victims' Commissioner urged the government and all statutory agencies to take further steps to inform the public about their entitlements under the Code, including the Victim Personal Statement.

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<sup>16</sup> See Guilfoyle in Hungerford-Welch et al. (2011).

<sup>17</sup> A study by Booth (2013) in New South Wales considered whether the submission of a VIS in the homicide sentencing hearings she observed led to the offender expressing remorse. She found such expressions to be rare, regardless of whether a VIS was submitted.

<sup>18</sup> Judges in England and Wales already tend to refer to 'impact statements' in their sentencing remarks. For example, the VPS was referred to in this way by Mr Justice Bryan in the publicly televised sentencing in the case of *R. v Dennis McGrory* (2023).

## ii. Guidance, monitoring, and accountability

In addition, to deal with the various problems with implementing the VPS scheme, including victims not being offered the opportunity to make or update their VPS, better guidance, monitoring, and accountability is imperative. The Victims' Commissioner's (2015) recommendations included that all criminal justice agencies should ensure that staff involved in the VPS process are properly trained to take the statement effectively, and that an agreed script should be produced to establish a common understanding of the purpose of the VPS and how to explain 'take into account/consideration' to victims. The Independent Victims' Commissioner for London (2019) suggested that one reason for victims' lack of clarity about the purpose of the VPS is that the officer taking the statement does not always present them with the VPS proforma (Form MG11) which provides this information. Therefore, one of her recommendations was that efforts should be made to ensure that this explanatory material, which should be revised to ensure clarity, is consistently provided to victims when making their VPS. She pointed to the opportunity offered by the enhanced use of technology by the police to ensure that the document is readily available to officers online.

The Victims' Commissioner's (2015) recommendations also included that all agencies should monitor to assure compliance with the Code. The *Victims and Prisoners Bill* (2023) incorporates accountability by placing a statutory duty on criminal justice agencies to comply with the Victims' Code; to promote awareness of it; and to collect and review data on compliance. The first version of the Bill was criticised in Parliament for lacking 'the teeth to deliver meaningful change' (Leadbeater, 2023). One of the reasons for this being that it fails to detail any consequences for criminal justice agencies in the event of non-compliance. The current version of the Bill fails to address these concerns.

If the provisions are enacted in their present form, further thought ought to be given to how to strengthen accountability mechanisms to ensure compliance with the VPS provisions in the Code. For example, it was suggested in Parliament that the Victims' Commissioner could be given the power to initiate some kind of enforcement action (Edwards, 2023). One way of addressing the issue of victims not being offered the opportunity to submit a VPS would be to impose a statutory duty on the court to inquire whether a VPS has been offered if they do not see one on the case file, with the possibility of the court adjourning the case in order for one to be taken, as is the case in Canada (Windsor and Roberts, 2020).

## iii. Further flexibility in relation to when the VPS is taken

Flexibility could be introduced in terms of the point in the life cycle of a case when the VPS is taken. This was one of the recommendations made by the Victims' Commissioner (2015) who raised concerns that the statement is often taken before the impact of the crime is fully apparent. Victims may feel distressed when they make a VPS before a trial which is then not used if the offender is acquitted. On a related note, the Independent Victims' Commissioner for London (2019) observed that victims are sometimes disappointed when asked to produce a VPS in a case which does not proceed beyond an initial police report. She made the recommendation that, in order to avoid this, victims should not be asked to make a VPS when it is highly likely that the case will not be taken any further.

The newest update to the Victims' Code in 2021 introduced more flexibility in this respect. Previously, victims of the most serious crimes (including bereaved close relatives) and persistently targeted or vulnerable or intimidated victims had the right to make a VPS at any time prior to sentencing, whether or not they also gave a witness statement. However, other victims only had the right to make a VPS at the same time as making their witness statement (Ministry of Justice, 2015). The updated Code gives all victims the right to make a statement at any time prior to sentencing but limits this, stating that 'you may not have an opportunity to make it once the court hearing has started, especially if the defendant pleads guilty'. More flexibility still would be afforded to victims if, when a court intends to proceed to sentence immediately following a guilty plea, the victim had the right to request an adjournment for a VPS to be submitted.

#### iv. Other possible reforms

Other miscellaneous reforms include the use of technology to facilitate the VPS process (Victims' Commissioner, 2015). The Government had been intending to trial the use of body-worn cameras by the police to record impact statements in order to better capture the impact of the crime in a 'living document' and to avoid victims having to produce a written statement with multiple updates (Windsor and Roberts, 2020).

Organisations other than the police could assist in the production of the VPS, a possibility that is already provided for in the Code. Victims and practitioners interviewed by the Victims' Commissioner (2015) suggested that this would help to minimise the impact of police resource constraints on the VPS process and would elicit better information from victims if they are assisted by somebody, such as an Independent Domestic Violence Advocate (IDVA), with whom they are more comfortable discussing the impact of the crime. Similarly, the Independent Victims' Commissioner for London (2019) suggested that the opportunity should be explored for advocates or family members to submit a VPS on behalf of the victim in the event that they are too traumatised to do so.

This review also pointed out the risk of personal information contained in the VPS, including information about the victim's vulnerability following the offence, being read aloud in open court and publicised in the media. In certain cases, such as those involving stalking or domestic violence, this could enable the offender to find ways to continue to target the victim. Therefore, thought should be given to in what circumstances the information relayed in the VPS should be kept from the public, how this can be balanced with the principle of open justice, and how it can be ensured that details that are not supposed to be conveyed to the offender are not conveyed accidentally.

Finally, the VPS plays, or should play, a particularly important role at sentencing in cases involving fatalities. Recent research in other jurisdictions confirms that victim statements are most likely to be used in homicide offences, and particularly murder (Dufour, Ternes and Stinson, 2023). The State owes a heightened duty of care to relatives in homicide offences. In addition, these victims are more likely to attend the sentencing hearing to deliver their statements orally. The standard VPS form is inadequate to address the needs of these victims. Consideration should be given to developing a bespoke form and protocol for engaging with secondary homicide victims. In devising such a

protocol, it would be important to consult individuals recently bereaved who have participated in the sentencing process.

## 6. CONCLUSION

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The now very limited statistics as well as anecdotal evidence suggest that the VPS scheme in England and Wales is failing to fulfil its potential to assist victims and inform courts at sentencing. This is perhaps unsurprising given the limited critical scrutiny and absence of systematic research since the introduction of the regime in 2001. The loss of national statistics on the VPS alone requires addressing. A comprehensive and independent review of the current scheme with a view to improving this key element of effective sentencing is a criminal justice priority.

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