



**ASSOCIATION OF
CHIEF POLICE OFFICERS**



JUDICIARY OF
ENGLAND AND WALES



**HM Courts
& Tribunals
Service**



A Working Protocol between ACPO, the Crown Prosecution Service (CPS), Her Majesty's Court & Tribunals Service (HMCTS), the Witness Service and the Senior Presiding Judge for England and Wales on Reading Victim Personal Statements in Court

The Association of Chief Police Officers with all other parties has agreed to this Protocol being circulated to, and adopted by, Police Forces in England and Wales.

It is Official under the Government Protective Marking Scheme and any referrals for advice and rationale in relation to Freedom of Information Act disclosure, should be made to the ACPO Central Referral Unit at acpo.advice@foi.pnn.police.uk.

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This protocol has been produced and approved by the National Policing Criminal Justice Business Area. The document was approved by Chief Constables' Council on 18th July 2014. The purpose of this document is to set out working arrangements between ACPO, CPS, HMCTS, and the Witness Service for the reading of Victim Personal Statements in criminal proceedings. The working arrangements are designed to comply with the duties on service providers as set out in the Code of Practice for Victims of Crime 2013 and are endorsed by the Senior Presiding Judge for England and Wales. It will be updated and re-published as necessary.

Any queries relating to this document should be directed to either the author detailed above or the ACPO Programme Support Office on 020 7084 8959/8958.

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1. SECTION 1 – INTRODUCTION

- 1.1 The purpose of this agreement is to set out the working arrangements between the Association of Chief Police Officers (ACPO), the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS) and the Witness Service for the reading of Victim Personal Statements (VPS) in criminal proceedings.
- 1.2 The working arrangements are designed to comply with the duties on service providers as set out in the Code of Practice for Victims of Crime 2013 and are endorsed by the Senior Presiding Judge for England and Wales.

2. SECTION 2 – POLICE INVESTIGATION AND PRE-CHARGE PROCEDURE

- 2.1 On receiving a report of a crime, the police will offer the opportunity to make a VPS to the following people, as per the requirements of the Code of Practice for Victims of Crime 2013:
 - Any victim at the time they should complete a witness statement about what has happened;
 - Victims of the most serious crime (including bereaved close relatives), persistently targeted victims, and vulnerable or intimidated victims, irrespective of whether or not they have given a witness statement about what happened;
 - The family spokesperson for victims of crime who have a disability or for victims who have been so badly injured as a result of criminal conduct that they are unable to communicate;
 - A parent or carer of a vulnerable adult or of a young victim under the age of 18, unless it is considered not to be in the best interests of the child or vulnerable adult.
 - A victim in any other case where the police deem it appropriate.
- 2.2 A VPS must be in the form of a statement made under section 9 of the Criminal Justice Act 1967, whether as a written statement or by way of video interview.
- 2.3 When obtaining the VPS the Ministry of Justice guidance '*Making a Victim Personal Statement: A guide for all criminal justice practitioners*' should be followed.¹
- 2.4 When taking the VPS, the police must ask the victim whether he or she wants their VPS to be read aloud or played (if recorded) in court, if their case results in court proceedings. The police must also ask the victim whether they would prefer to read the statement aloud themselves or whether they would like the CPS prosecutor to do so on their behalf.
- 2.5 It is a matter of judicial discretion as to whether a victim can read out all or part of their VPS in court.
- 2.6 The police must also explain to the victim:
 - That their VPS does not have to be read aloud if they do not want it to be. It should be explained to the victim that they can change their mind and choose not to have their VPS read aloud;
 - That the victim may be questioned on their VPS in court, for instance if the defence wish to clarify or challenge particular aspects;

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264622/practitioners-vps-guidance.pdf

- The risk to the victim's privacy by all or part of their VPS being read in open court;
- That the contents of the VPS may be reported by the media;
- That ultimately it is a matter of judicial discretion as to whether the statement is read out (and by whom) or played (where recorded), in full or in part, in court; and
- That the victim may receive limited notice of the need to attend court and read their VPS, particularly in guilty plea cases.

- 2.7 If the victim wishes to read out their VPS, the Police must conduct an assessment to establish whether the victim would benefit from the use of special measures and submit an MG2 form where applicable at the pre-charge advice stage and with the 1st hearing file. Such an assessment is not required if the victim has already been assessed in relation to their witness statement and the VPS is obtained at the time the witness statement is taken.
- 2.8 If pre-charge advice is sought the police will provide the CPS with a copy of the VPS. The police will also indicate on the MG3 form that the victim has made a VPS and their wishes regarding it being read out in court. If the victim has declined to make a VPS, the police will also record this fact on the MG3.
- 2.9 In cases in which the victim has indicated a preference to read out their VPS personally, the CPS prosecutor will provide an indication to the police, as part of their written advice, as to whether the victim should be advised to attend the first hearing to potentially read out their VPS. This will be a judgement based on the likelihood of the defendant being sentenced at the first hearing. The prosecutor will consider factors including:
- The anticipated plea;
 - Whether the accused is likely to be sent to the Crown Court;
 - The likelihood of sentencing being postponed to allow pre-sentence reports to be prepared; and
 - The *Consolidated Criminal Practice Directions (2013) EWCA Crim 1631* which provides that 'Court hearings should not be adjourned solely to allow a victim to read the VPS'.
- 2.10 When the police update the victim that the suspect has been charged, in cases in which the victim has indicated a preference to read out their VPS personally, they will also provide advice regarding the need for the victim to attend the first hearing, based on the opinion provided by the prosecutor as per paragraph 2.9. The police will seek to establish whether the victim plans to attend the first hearing so that relevant preparations can be made.
- 2.11 In cases where CPS advice has not been sought, the police will provide advice to the victim based on their own assessment of whether the defendant will be sentenced at the first hearing, considering the factors at paragraph 2.9.
- 2.12 Unless there is no prospect that a case could proceed to sentencing at the first hearing, for instance because it is an indictable only offence, the victim should be made aware that their case could be finalised at the first hearing, however unlikely this may be. The victim can then make an informed decision about whether they wish to attend.
- 2.13 Example forms of words could include:
- **Likely to be sentenced at first hearing:** *'It is likely that the suspect will plead guilty at the first hearing and in the circumstances it is also likely that they will be sentenced at that hearing. If you wish to read out your Victim Personal Statement, I would therefore advise you to attend the first hearing in order to do so as you may not have another opportunity. You should be aware that there is always a possibility that the suspect will not plead guilty or that your case may be adjourned for a number of reasons. It is also the court's decision whether you will be allowed to read all or part of your Victim Personal Statement or not be allowed to read it at all.'*

Therefore it cannot be guaranteed that you will be able to read out your statement but it is likely that you will be able to do so. As an alternative, you can request for the prosecutor to read the statement on your behalf or the judge or magistrate can consider it without it being read aloud. Do you plan to attend the first hearing?'

- **Unlikely to be sentenced at first hearing:** *'It appears likely in the circumstances that the suspect will plead not guilty at the first hearing and the case will be adjourned for a trial. Even if the suspect pleads guilty, it is likely that the case would be adjourned to allow for reports to be prepared to assist the court in determining the appropriate sentence. In these circumstances it is unlikely that your case will be finalised at the first hearing and therefore you should not need to attend to read out your Victim Personal Statement. You should be aware that there is always the possibility, albeit unlikely in this case that the suspect will plead guilty and be sentenced at the first hearing and, if you are not present, there would not be another opportunity for you to read out your statement. As an alternative, you can request for the prosecutor to read the statement on your behalf or the judge or magistrate can consider it without it being read aloud. Do you plan to attend the first hearing?'*
- **No indication of likelihood of being sentenced at first hearing:** *'It is not clear whether the suspect will plead guilty or not guilty at the first hearing. It is possible that they may plead guilty and could then be sentenced at that hearing, in which case you would need to attend to have an opportunity to read out your Victim Personal Statement. If you choose not to attend the first hearing you may not have an opportunity to read out your Victim Personal Statement but you can request for the prosecutor to do so on your behalf or the judge or magistrate can consider it without it being read aloud. However, it is equally possible that the case will not be finalised at the first hearing and you will not be required until a later date to read your statement. Do you plan to attend the first hearing?'*

- 2.14 The victim should be advised that they will be entitled to claim expenses where they are required to attend court to read their VPS. However, it will be important to stress that a claim may be rejected if a victim attends of their own volition, particularly where they have been advised that there is no likelihood of the case proceeding to sentence. Victims can access information about the CPS policy on payment of expenses on the CPS website at:
http://www.cps.gov.uk/legal/v_to_z/witnesses_expenses_and_allowances/index.html
- 2.15 The victim should be advised that the court based Witness Service will endeavour to have a representative present at the court to assist them if they attend to read out their VPS and may contact them prior to the hearing. However, in some smaller courts, it may not be possible to make this provision.
- 2.16 If the victim informs the police, at the time the police update them that the suspect has been charged, that they are planning to attend the first hearing, the police will notify the Witness Service by e-mail. The police should include details of the date and time of the hearing, the charge, the witness' name and a contact telephone number, where available, and any other relevant special requirements that the victim may have, such as mobility issues. The Witness Service will provide the police with an appropriate e-mail address for this information to be sent to, currently detailed in the national Witness Service directory.
- 2.17 The police should e-mail the Witness Service, as per paragraph 2.16, at the earliest opportunity following notification by the victim, to provide the Witness Service with maximum notice of the victim's planned attendance. For non-remand cases, this should be at least 5 working days prior to the first hearing.
- 2.18 If the Witness Service is unable to provide a representative to support the victim they will, where possible, contact the victim in advance of the hearing to notify them, provide advice by phone about attending, and contact the court based Witness Liaison Officer to ascertain whether they can assist.
- 2.19 The victim should be advised to report to security on arrival at the court and ask to be directed to the Witness Service. If the Witness Service is not present, the victim should be advised to report to the court usher.

- 2.20 The police should advise victims who indicate that they will not attend the first hearing or who are uncertain about attending that if they do decide to attend and would like support from the court based Witness Service, they should contact the relevant court directly. Contact information for all courts can be found at <https://courtribunalfinder.service.gov.uk>. The police should direct victims to this website if appropriate or, where victims have no internet access, should endeavour to provide the contact information to them on request.
- 2.21 The police must submit an MG6 form with the initial hearing file. The police will indicate on the MG6 form that the victim has made a VPS, their wishes regarding it being read out in court and whether they are planning to attend the first hearing, if the victim's intention is known. If the victim has declined to make a VPS, the police will also record this fact on the MG6. The MG6 should be included even if the information has previously been recorded on the MG3.
- 2.22 In certain cases, the full impact of a crime on the victim may not initially be apparent when the crime is reported and may change over time. The police and CPS should be cognisant of this and give consideration as to the most appropriate time to obtain the VPS, bearing in mind the obligations in paragraph 2.1, and also to affording the victim the opportunity to provide a supplementary statement if appropriate.
- 2.23 Where a VPS is taken after the initial hearing file has been submitted, it should be forwarded to the CPS as soon as possible, either as part of the file upgrade or via an MG20.

3. SECTION 3 – JUDICIAL CONSIDERATIONS

- 3.1 The CPS will provide a copy of the VPS to the court upon receipt and serve a copy on the defence. HMCTS court staff will then provide it to the Bench/Judge for consideration at the hearing.
- 3.2 At the first hearing, the prosecutor will inform the court whether or not the victim has made a VPS and whether they wish to read it out. The prosecutor will also notify the court if they are intending to apply for special measures to assist the victim in doing so.
- 3.3 The presumption is that a victim should be allowed to read the VPS in full if they are present and have previously indicated that they wish to do so. Factors that might displace the presumption include:
- A. The statement includes inadmissible evidence and it will not be practicable to ask the victim to give evidence without referring to those aspects;
 - B. The statement includes inappropriate content and it will not be practicable to ask the victim to give evidence without referring to those aspects; for example, if it includes a request that the court imposes a particular sentence or expresses views that are offensive;
 - C. The likely negative impact of the VPS being read (or played) in the manner proposed; for example, if its reading would be likely to result in public disorder or have an adverse impact on the victim or a third party;
 - D. The impracticability of the VPS being read (or played) in the manner proposed; for example, the court may conclude that it is inappropriate to adjourn a case to enable a victim who is not present to read it or where the victim wishes special measures to be provided, such as the use of a video link, and those measures cannot be made available;
 - E. Any delay to the conclusion of the proceedings that will be occasioned;
 - F. Any other relevant consideration.
- 3.4 Where allowing the victim to read their VPS in full would be contrary to the interests of justice the court may direct that:
- A. The VPS shall be deemed inadmissible;
 - B. The VPS shall be read by the prosecutor, played to the court or read by some other person;
 - C. The VPS shall be read in part by the victim;
 - D. The VPS shall be read in part by the prosecutor;
 - E. The VPS will be considered by the court but not read out loud.

- 3.5 Where the victim is not present, in addition to the factors above, the court will have to consider whether it would be in the interests of justice to adjourn for that purpose and will take account of the guidance in the Practice Direction (paragraph 2.9 above).
- 3.6 The court should bear in mind that the victim may derive benefit from being able to present their VPS personally and where the court is faced with a statement which includes elements that are inappropriate, it should consider directing that those parts of the statement that are not inappropriate are read.
- 3.7 Where the court gives directions other than to permit the victim to read the VPS in full it should give its reasons.
- 3.8 Where the accused objects to the statement being tendered in evidence, in accordance with the provisions of the 1967 Act, the court will have to decide, having received representations from the parties, whether the evidence should be adduced, in which case the victim must be called to give evidence.²
- 3.9 If the witness is not called in such circumstances, the court may not rely on those parts of any statement that are disputed. If the victim is called to give evidence they may be cross-examined.

4. SECTION 4 – CASES FINALISED AT THE FIRST HEARING

- 4.1 In guilty plea cases, which are to be sentenced at the first hearing, the court should make a determination whether the victim may read all or part of their VPS, as per paragraphs 3.3 and 3.4.
- 4.2 If the case is to proceed to sentencing at the first hearing and the victim has requested special measures to assist them in reading out their VPS, the prosecutor will make an oral special measures application to the court at the first hearing. The court may direct the use of special measures without an application.
- 4.3 The parties recognise that the expedited times for remand cases may make it more difficult for a victim to attend a first hearing to read out their VPS. All parties should endeavor to facilitate a victim's wish to read their VPS in these circumstances.

5. SECTION 5 – ADJOURNED MAGISTRATES' COURT CASES (INCLUDING NG PLEAS)

- 5.1 In 'not guilty' plea cases that are to be dealt with in the Magistrates' Court or those adjourned for sentencing in the Magistrates' Court at a later date, the court should consider whether it can make directions relating to the VPS at the first hearing or whether it is more appropriate for the decision to be made by the trial or sentencing bench.
- 5.2 In cases that are adjourned for trial or sentencing, the CPS will submit a written special measures application, where required, at the earliest opportunity in accordance with the Criminal Procedure Rules. This does not preclude the court directing the use of special measures without an application.
- 5.3 If a decision is made about whether or not the victim can read out their VPS in the absence of the parties, HMCTS court staff will notify the Witness Care Unit (WCU), CPS and Defence of the outcome within 1 working day.
- 5.4 In cases that are adjourned for trial or sentencing in the Magistrates' Court, HMCTS will notify the WCU of the outcome of the hearing, including whether the court have given permission for the victim to read out their VPS.

² For an explanation of the VPS as an evidential document please see the Part III 28 of the Current Consolidated Criminal Practice Direction [2009] 1 WLR 1396 and Perkins; Bennett; Hall –v- R [2013] EWCA Crim 323.

- 5.5 The WCU will notify the victim of the court's decision and will confirm with the victim that they wish to attend the hearing to read their statement.
- 5.6 The CPS will notify the Witness Service of the victim's planned attendance via the LWAC process. In areas where, by local agreement, the WCU are responsible for sending the LWAC to the Witness Service then the WCU will be responsible for this notification. The Witness Service should where possible contact the victim prior to the hearing.

6. SECTION 6 – CROWN COURT CASES

- 6.1 When a case is sent to the Crown Court, the CPS will advise the WCU of the likelihood that the defendant will be sentenced at their first hearing in the Crown Court. This information should be provided to the WCU as soon as practicable and, in all cases, sufficiently in advance of the hearing to allow the WCU to update the victim and to give the victim reasonable notice to decide whether they wish to attend.
- 6.2 The WCU will pass on this advice to the victim to allow them to make an informed decision about whether they wish to attend the first Crown Court hearing. The forms of words set out at paragraph 13 would also be applicable for this update.
- 6.3 The Magistrates' Court will notify the Crown Court of the victim's preference regarding reading their VPS, as advised at the first hearing, and whether special measures will be required, if on notice of this.
- 6.4 Where applicable, the CPS will submit a written special measures application at the earliest opportunity in accordance with the Criminal Procedure Rules. This does not preclude the court directing the use of special measures without an application.
- 6.5 If not already determined, the Crown Court should consider whether it can make directions relating to the VPS prior to the first hearing. HMCTS court staff will provide the VPS application to the trial or nominated judge for consideration.
- 6.6 If a decision is made in the absence of the parties, HMCTS court staff will notify WCU, CPS and defence of the outcome by e-mail within 1 working day.
- 6.7 The WCU will notify the victim of the court's decision and will confirm with the victim that they wish to attend the hearing to read their statement. The CPS will notify the Witness Service of the victim's planned attendance via the LWAC process. In areas where, by local agreement, the WCU are responsible for sending the LWAC to the Witness Service then the WCU will be responsible for this notification. The Witness Service should, where possible, contact the victim prior to the hearing.

7. SECTION 7 – APPEALS TO THE CROWN COURT

- 7.1 An appeal to the Crown Court is by way of a re-hearing. Accordingly, if a VPS was made for the purpose of the Magistrates' Court proceedings, this should always form part of the case documentation placed before the Crown Court on Appeal. The Magistrates' Court will notify the Crown Court of the victim's preference regarding reading their VPS, and whether special measures will be required, as in the earlier proceedings. The CPS will submit a fresh application for special measures as required.
- 7.2 Exceptionally, a VPS may be made subsequent to the Magistrates' Court proceedings; for example where there is continuing impact or an additional development relating to the impact of the crime on the victim. Where this is the case, the CPS will provide a copy to the defence and the court, inform the court of the victim's preference regarding reading their statement and, where appropriate, submit a special measures application. This does not preclude the court directing the use of special measures without an application.

- 7.3 The court should make a determination whether the victim may read all or part of their VPS, as per paragraphs 3.3 and 3.4, and the decision should be communicated to the victim, in accordance with paragraph 6.5, 6.6 and 6.7 above.

8. SECTION 8 – APPEALS TO THE COURT OF APPEAL

- 8.1 Preparation of the case documents in an appeal is undertaken by a designated case officer in the Criminal Appeal Office. If a VPS was made for the purpose of the Crown Court proceedings, this should always form part of the case documentation placed before the judges of the Court of Appeal. It would not generally be appropriate for a VPS to be introduced for the purpose of the appeal if it was not before the sentencing judge, save where, for instance this is to capture any continuing impact or additional development relating to the impact of the crime on the victim. Any further VPS should not include any comment on whether the appeal is or is not well founded.
- 8.2 As such cases are likely to relate to a serious crime, the obtaining of an updated VPS, although following the principles detailed above, will tend to be bespoke to each case, potentially involving a family liaison officer or the officer in the case. The VPS should be served on the defence and sent to the Court of Appeal in good time before the hearing. As the appeal hearing involves consideration of the appropriateness of the sentence, taking account of guidelines, and is not a re-hearing of the case, it would be extremely rare for a victim to be allowed to read a statement out in court. However, if the victim expresses such a wish to the police, WCU or CPS, they should communicate this to the relevant case officer in the Criminal Appeal Office as soon as possible and they will inform the court.