

## **Victim Personal Statements in England and Wales:**

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In England and Wales, victims provide input at sentencing through the Victim Personal Statement (VPS) scheme, which marked 20 years of operation in 2020.<sup>1</sup> The VPS documents the impact of the crime upon the victim and their family. Police and victim agencies have a duty to inform crime victims of the entitlement to make a VPS. The VPS scheme is universal and encompasses all victims. Yet how many victims are offered a VPS by police (or victims' services personnel), and how many actually submit a statement for the purposes of sentencing? Until now, only partial answers have been available to these questions. Gaps in data are responsible for this lack of knowledge. During the first decade of the VPS regime the principal source of information was the Witnesses and Victims Survey ('WAVES'). Unhelpfully, the government discontinued this survey in 2010. The result is that over the past decade the only data available has come from convenience samples, or surveys in which victims self-select themselves.

### **The VPS Regime in England and Wales**

The VPS is considered at various stages of the criminal process, but has particular relevance at sentencing. Under the definitive sentencing guidelines issued by the Sentencing Council, two dimensions determine the severity of sentence: harm and culpability.<sup>2</sup> In addition to describing the harm they have sustained, victims can express their concerns

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<sup>1</sup> For further information, see: Windsor, E. and Roberts, J.V. (2020) *Victim Personal Statements in England and Wales*. A Review of Law, Policy and Research. London: The Sentencing Academy.

<sup>2</sup> See for example the offence specific sentencing guidelines available at: <https://www.sentencingcouncil.org.uk/> and for discussion Ashworth, A. and Roberts, J.V. (2017) Sentencing. Theory, Policy, and Practice. In: S. Maruna, A. Liebling and L. McAra (eds.) *Oxford Handbook of Criminology*. Sixth Edition. Oxford: Oxford University Press.

regarding bail, and voice any fears arising from racial, cultural or disability issues. The VPS is particularly relevant at sentencing where the impact of the crime plays an important role in determining the seriousness level and hence the sentencing range a court will employ.<sup>3</sup>

### **Previous VPS Trends (2010-2015)**

The WAVES survey was a national, quarterly survey of victims and witnesses which ran from 2004–2005 to 2009–2010. Respondents were victims involved in incidents resulting in a criminal charge and which have been closed through the determination of verdict or discontinued prosecution. The WAVES data provided important insight into VPS usage in this country – subject to several important limitations (see below).

First, the sample was not representative of all crime victims. For example, victims whose case did not result in a charge were excluded, as were victims deemed particularly vulnerable. This latter category includes victims of domestic violence as well as victims in cases involving a fatality. The survey included victims of violence; robbery; burglary, criminal damage and theft and handling stolen goods. Second, the lower age limit of the survey was 18 years – younger victims are therefore excluded. Taken together, these limitations suggest that any estimates of VPS usage from the survey are likely to be biased upwards, suggesting a higher rate participation rate than is in fact the case.

Over the final three-year period covered by the survey (2007–2010), 42% of the victims recalled being offered the opportunity to make a VPS; almost half (45%) explicitly

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<sup>3</sup> I. Edwards. 2013. 'Victims, Sentencing Guidelines and the Sentencing Council. In: A. Ashworth and Roberts, J.V. (Eds.) *Sentencing Guidelines: Exploring the English Model*. Oxford: Oxford University Press.

responded that they had not been given an opportunity to make a VPS while 13% responded ‘don’t know’<sup>4</sup>.

Research by victims' advocacy groups based on nonprobability samples of victims report similar trends. Most recently, the Victims' Commissioner reported that: “39% of victims recalled being offered the chance to make a VPS for use at court or in a Parole hearing”<sup>5</sup>. However, as the report itself notes, its findings are based upon a small, self-selected sample of victims who responded to a call for responses on the Victims' Commissioner website. Victims who chose not to submit a VPS would not have participated in the survey. Accordingly, the responses tell us little about the national participation rate. Both sources of data – the WAVES survey and self-selected victim surveys – are likely to over-estimate, to some unknown degree, levels of participation in the VPS scheme.

The most important source of information about crime victims has yet to be exploited to answer questions about the VPS regime.<sup>6</sup> This article draws upon multiple administrations of one of the largest victimization surveys in the world, the Crime Survey of England and

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<sup>4</sup> Roberts, J.V. and Manikis, M. (2012) Victim Personal Statements: Latest (and last) Trends from the Witnesses and Victims Experience Survey in England and Wales. *Criminology and Criminal Justice*, 13 (3): 245-261.

<sup>5</sup> Victims Commissioner (2015) ‘The Silenced Victim: A Review of the Victim Personal Statement’ (Accessed 23<sup>rd</sup> April 2020) < <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/02/VC-Silenced-Victim-Personal-Statement-Review-2015.pdf> > p. 15.

<sup>6</sup> One article reports data from the 2006-2007 administration of the British Crime Survey, but did not report the overall recall of offer rates. Mastrocinque, J. (2014) ‘Victim Personal Statements: An analysis of notification and utilization’ *Criminology & Criminal Justice*, 14 (2): 216-234.

Wales (CSEW). We report trends from recent administrations of the CSEW<sup>7</sup> (2013-14 to 2018-2019).<sup>8</sup> This article addresses the following questions:

1. What percentage of crime victims recall being offered a VPS?
2. What proportion of crime victims report that they submitted a VPS?
3. To what degree do victims believe that their statement was 'taken into account' by the criminal justice system?

The first two questions are straightforward, the third is more ambiguous. After all, how would a victim know whether his or her VPS was taken into account? And if a victim believed that the VPS had not been taken into account, can we assume this is true, and that the statement was ignored or insufficiently considered? Finally, binary questions such as whether the victim submitted a VPS are clear, the question of whether it was considered is far more subjective, and the responses accordingly harder to interpret.

## **1. Recall of Offer**

Table 1 summarises trends in the percentage of respondents across England and Wales recalling having received a VPS offer. In the most recent year for which data are available (2018-19) 12.5% of respondents recalled a VPS offer. The percentage has changed little over the six administrations of the survey, never exceeding 14% or falling below 12% (Table 1).

Aggregating across all six administrations of the survey yields a total recall of offer rate of 13%. As we might have anticipated, the CSEW found consistently lower recall of

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<sup>7</sup> The survey was formerly known as the British Crime Survey (BCS).

<sup>8</sup> Two additional questions relating to oral delivery are not discussed in this article.

offer rates than those emerging from the WAVES research: the three-year average (2016-2019) was 13% compared to 39% in the first three sweeps of the WAVES survey. These 'recall of offer' rates are also significantly lower than those found in the small-scale research reported by the Victims' Commissioner. The percentage of victims recalling an offer varied little across regions: The lowest recall rate was recorded in Yorkshire and Humberside (11%) and the highest rate was found in the south West (17%).

## **2. Percentage of Victims Submitting a VPS**

Turning to the other two questions (relating to participation and perceptions regarding whether the VPS was taken into account), a pattern of stability emerges. Over time, and across the two surveys, participation rates and perceptions of whether the statement was considered remained practically unchanged (Table 1). In the most recent year (2018-2019), 54% of victims responded that they had provided a VPS. Aggregating across all six administrations 53% recalled providing the statement. There was more variation in this rate across the country: from 47% in the North East to 62% in the West Midlands.

## **3. Perceptions regarding the use of the VPS**

Finally, in response to the question of whether their VPS had been taken into account, in the most recent year 36% of victims responded 'yes, fully'; 30% 'yes to some extent'; 16% 'No, not really' and 17% 'no, not at all'. The pattern across all administrations was little different (Table 1). The greatest degree of regional variation emerged in responses to this question. Only one quarter of victims in London, but 58% in the North East held the view that their VPS had been fully considered.

These trends reveal that the greatest regional variation emerges with respect to victim perceptions of whether their VPS was fully considered. The recall of offer rates varied only very modestly across regions, falling between 11% and 19%. The proportion of victims

making a VPS was also relatively consistent across regions in 2018-2019, fluctuating between 47% and 62%. Greater variation emerged from responses to the third question on perceptions of the CJS response: one quarter of respondents in London but almost six in ten in the North East held the view that their VPS had been fully taken into account.

#### Are victims reliable in their recall?

The low recall of offer statistics are troubling. They are more unequivocal than the participation rates. It may be argued that only a minority of crime victims want to submit a VPS. A 50% participation rate may simply reflect the reasons noted earlier for declining participation. Yet if only approximately one victim in 10 recalls having been made aware of an offer, the VPS regime can hardly claim to be universal in scope. We cannot exclude the possibility that some victims were offered a VPS, but simply failed to recall the offer. It seems unlikely that many victims would fall into this category. Even if they had done so, it suggests that the police failed to bring the statement to their attention in a meaningful way; it may have been seen as just another official form to complete.

Although participant rates are typically described as 'low', it is unclear what an acceptable participant rate would be. Caution must be exercised in interpreting participation statistics. A low rate of submission need not mean that a system intended to be universal in application, has failed. A potentially large proportion of crime victims will see no need to submit a VPS. The crime may be relatively minor and/ or the loss sustained may have been compensated. Some victims may simply prefer to remain outside the criminal justice system or may have privacy-related reasons for declining the offer of a statement. The critical statistics would appear to be the percentage of victims who were offered a statement, and the percentage of victims who declined to participate for reasons relating to the CJS.

Without adequate context, participation rates constitute an ambiguous indicator of the health of a VPS regime. What is needed is a targeted study focusing on victims of mid to high seriousness crimes. If such a category of victims is identified, a cohort study could track the percentage of victims who recalled being offered a VPS, the proportion deciding to submit a statement, and the reasons why some victims decline to participate. No such research has been undertaken to date in England and Wales. Moreover, foreign research across a range of schemes demonstrates that victim impact statements are only infrequently submitted at sentencing, apart from the most serious crimes of violence and sexual aggression.<sup>9</sup> This is particularly true in the lower tier of trial courts, where less serious crimes are sentenced.

The key question for the CJS is whether elements of the criminal process, or problems in the administration of the VPS scheme, are responsible for constraining participation rates. Police officers are the key criminal justice professionals with respect to alerting victims to the scheme and collecting the statement.

## **Conclusion**

The role of victim impact statements at sentencing remains ambiguous and contested. Yet if the VPS scheme is intended to be universal, the trends reported here suggest much work needs to be done to achieve this goal. A significant number of victims are likely to decline the offer to participate for a variety of personal reasons; it would be unrealistic to expect all victims to participate. Nevertheless, if only approximately one victim in ten recalls receiving the offer, the administration of the scheme needs reviewing.

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<sup>9</sup> Roberts, J.V. (2012) Crime Victims, Sentencing and Release from Prison. In: K. Reitz and J. Petersilia (eds.) *The Oxford Handbook of Sentencing and Corrections*. New York: Oxford University Press.

Table 1. Victim responses to VPS questions, all crime victims, CSEW, 2013-2018.

	2013/2014		2014/2015		2015/2016		2016/2017		2017/2018		2018/2019		Full sample	
<i>Were you offered a VPS?</i>														
Yes	453	14.3%	363	12.4%	394	13.0%	372	13.3%	381	13.5%	351	12.5%	2,314	13.2%
No	2,721	85.7%	2,573	87.6%	2,629	87.0%	2,416	86.7%	2,444	86.5%	2,459	87.5%	15,242	86.8%
<i>Total</i>	<i>3,174</i>	<i>100%</i>	<i>2,936</i>	<i>100%</i>	<i>3,023</i>	<i>100%</i>	<i>2,788</i>	<i>100%</i>	<i>2,788</i>	<i>100%</i>	<i>2,810</i>	<i>100%</i>	<i>17,556</i>	<i>100%</i>
<i>Did you provide a VPS?</i> <i>(of respondents recalling</i> <i>an offer)</i>														
Yes	228	50.9%	174	50.0%	221	57.6%	194	53.0%	199	53.8%	185	54.4%	1,201	53.2%
No	220	49.1%	174	50.0%	163	42.4%	172	47.0%	171	46.2%	155	45.6%	1,055	46.8%
<i>Total</i>	<i>448</i>	<i>100%</i>	<i>348</i>	<i>100%</i>	<i>384</i>	<i>100%</i>	<i>366</i>	<i>100%</i>	<i>366</i>	<i>100%</i>	<i>340</i>	<i>100%</i>	<i>2,256</i>	<i>100%</i>
<i>Was the VPS taken into</i> <i>account? (of respondents</i> <i>who made a VPS)</i>														
Yes, fully	76	40.6%	46	32.9%	50	30.7%	69	45.7%	51	33.6%	49	35.5%	341	36.6%
Yes, to some extent	61	32.6%	43	30.7%	49	30.1%	36	23.8%	48	31.6%	42	30.4%	279	30.0%
No, not really	34	18.2%	32	22.9%	33	20.2%	12	7.9%	20	13.2%	18	13.0%	149	16.0%
No, not at all	16	8.6%	19	13.6%	31	19.0%	34	2.3%	33	21.7%	29	21.0%	162	17.4%
<i>Total</i>	<i>187</i>	<i>100%</i>	<i>140</i>	<i>100%</i>	<i>163</i>	<i>100%</i>	<i>151</i>	<i>100%</i>	<i>151</i>	<i>100%</i>	<i>138</i>	<i>100%</i>	<i>931</i>	<i>100%</i>