



VWAG – Victim Strategy Response

December 2017

Several issues are to be considered in the drafting of a new Victim Strategy. In summary my recommendations are:

1. **Re-draft the VCOP to make it easier to navigate**
2. **Produce a shorter, user-friendly version of the VCOP to be given to all victims**
3. **Make the key elements of the VCOP enforceable, with attendant sanctions (mechanism TBC) – the right to be informed, the right to a positive court experience (with reference particularly to special measures and court facilities) and the right to make one or more VPS at any time before sentencing. The VPS should include, in a part two, the victim’s experience of the criminal justice process and how the impact of the offence has been lifted or worsened by the victims engagement with the criminal justice agencies**
4. **Commence a pilot of all VPSs being collected by courts and passed, on a bi-monthly basis, to LCJBs (for e.g.) – to assist with a fuller understanding of victims experiences, and to act as a mechanism for monitoring, enforcement, and information sharing with the relevant agencies.**
5. **Consider how to monitor and enforce key elements of the VCOP and the new Victim Strategy**
6. **Agencies to be made responsible for referring to VCOP in business plans**
7. **Restorative justice to be offered to all victims throughout the criminal justice process.**
8. **All regions to utilise Victim Advisory Groups, as is the case in Northumbria, to inform continuous improvement.**
9. **Support provision should be clearly signposted and easily accessed for all victims. All provision should be based on a detailed needs assessment, and all victims to be supported by trained staff. There should be no postcode lottery.**
10. **An assessment of court listings needs to be undertaken, with obligations on the Judiciary to consider the impact on victims of any listing/timetable changes.**



11. **Victims should be encouraged to cope and recover, by having therapy if they wish. Prejudice needs to be removed surrounding therapy alongside proceeding through the CJS.**
12. **Criminal injuries compensation needs to be fully reviewed, including the prejudice aimed at victims who have submitted a claim to CICA whilst criminal proceedings are ongoing.**

These recommendations are set out more fully under the following headings:

1. **Victims Code of Practice**
 - a. **The right to be informed**
 - b. **Victim Personal Statements**
 - c. **Enforcement**
2. **Complainants' Advocates (CAs)**
 - a. **A positive court experience**
3. **Further issues to be considered**
 - a. **Victim entitlements**
 - b. **Support provision**
 - c. **Court experience**
 - d. **Information provision**

1. Victims Code of Practice (VCOP)

- The VCOP, in its current format, is lengthy and not user-friendly. There is a case for simplifying the VCOP, to make it easier to identify which agencies have which responsibilities, and what the key victim entitlements are.
- I would also propose making a shorter version for victims, which highlights their entitlements.
 - In the past the MoJ created a booklet for victims which did just this (<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>) – can we re-launch this nationally, or leave it to local areas to create their own, to give to victims? Perhaps by the police at the first point of contact, and via voluntary organisations, similar to Victims First Northumbria?



- At present, the VCOP is no more than a guide, which does not have to be followed by all agencies, and seemingly is not.
- There is a case for pulling the most important elements from the VCOP, and making these enforceable.
- We believe the most important elements for victims are:
 1. The right to be kept informed
 2. A positive court experience
 3. The right to make and have presented a Victim Personal Statement (VPS)

1[A]. The right to be informed

The VCOP sets out the several entitlements for victims, with reference to being kept informed. In summary, victims are entitled to:

- *Be informed about the police investigation*
- *Be informed if a suspect is to be prosecuted or not or given an out of court disposal*
- *Be informed of the time, date, location and outcome of any court hearings*
- *Be informed if you need to give evidence in court, what to expect and discuss what help and support you might need with the Witness Care Unit*
- *Be informed of any appeal against the offender's conviction or sentence*

Though there is evidence that victims are being better-informed by police and other agencies, with the assistance of ISVAs, when available and key workers in organisations such as Victims First Northumbria, there are still many cases where victims are not passed the information they are entitled to. The new Victim Strategy should aim to enforce and monitor these entitlements, as part of putting the victim at the heart of the system, and giving them some power over their situation. Being kept informed of what is happening in relation to a crime perpetrated against an individual, is the least that one should be able to expect.

Being informed of the progress of proceedings is particularly important for victims of serious crimes, such as sexual violence. These crimes often have a traumatic impact on victims, as can the journey through the CJS. The presence of ISVAs and in other kinds of case, IDVAs and similar Domestic Abuse Workers, can assist in performing an inquiry and advocacy role for the victim with the CJS agencies with these obligations but the responsibility is theirs and ISVAs are not recognised uniformly by the CJS and are only available on a postcode lottery



basis. The Home Office document on ISVAs should be followed in particular by the courts and built upon by to ensure sexual offence victims have the support they need wherever they are in the country.

In addition to being well-informed of the court process, victims are also entitled to have a positive court experience in other areas. Key entitlements are:

- Court facilities - To enter the court building through a separate entrance to suspect(s) and their family and friends; a separate court waiting area from the suspect(s) and their family and friends

The VCOP states that victims only have a right to '*ask the court staff*' if they can enter through a separate entrance (section 3.1, p25) and the court will ensure that separate waiting areas are provided '*wherever possible*' (section 3.1, p26).

HMCTS conducted a review of the court facilities for victims and witnesses in the six Magistrates Courts in Northumbria in 2017 (attached). The review revealed that though there is potential for facilities to be victim/witness focussed, often this is not the case. Most courts had a shared entrance for witnesses and suspects, unless prior arrangement had been made for witnesses to access a separate entrance. However, in these circumstances, there were often communication issues with security which did not make this as seamless as it should be. For lunch/cigarette breaks, most courts had a separate back entrance, but witnesses had to re-enter the court building through the main, shared entrance, and/or be accompanied at all times by security/witness services staff. Witness service areas often were not very private and/or were close to main waiting areas for suspects etc. Toilet facilities were usually shared with all other court users (therefore including the suspect and family/friends). Courtrooms were usually only accessible through the main waiting area, even if witness waiting areas were separated.

Though there are issues with buildings being old, victims are entitled to basic court facilities which ensure their safety from suspects and their confidence whilst attending court. Being accompanied outside for breaks restricts freedom and shared facilities could result in fear or unwanted incidents with suspects/families/friends. I would propose a full review of courts nationwide, with recommendations and obligations to improve facilities for victims and



witnesses so that there is nowhere where they cannot come safely and securely to court and be accommodated as long as necessary with the same safeguards. There will have to be alternative solutions where facility upgrade is not possible. The MoJ and HMCTS announced in August that £80,000 has been invested in improving victim and witness waiting rooms in five courts across the country, with more money being invested to modernise and digitise all courts. The entitlements under the VCOP with regard to facilities for victims should be central to this modernisation, and reflected in the new Victim Strategy.

In Northumbria we have just completed an observation of the Special Domestic Violence Courts and the results are in process of analysis. On many occasions observers attended at courts where there were not only no separate facilities for victims and defendants but often no presence of the court based witness service to offer assistance. This means that victims in contested domestic abuse cases were likely to have to wait unchaperoned in the group waiting area outside the courtrooms, a situation which in itself is likely to impact on the quality of justice attainable and probably plays a role in the failure to appear of a large tranche of domestic abuse victims who have said that they would do so. It is important that there is adequate victim and witness support attached to every functioning court for all cases and especially for serious ones. It should not be overlooked that victims and witnesses are performing a service to justice and hence to the public and not merely serving their own interests when attending court. Indeed many victims would suggest that they are acting in the public interest in conflict with their own interests and putting themselves at risk.

- The use of special measures to assist in giving best evidence (screens/curtains in the courtroom; a live video link; giving evidence in private by clearing the public gallery; removal of wigs and gowns; video-recorded statements)

Many of the issues in the paragraph above can be resolved by optimising the availability of remote live links, so that the victims and witnesses never have to approach the court building with all the risks and hazards which are currently present, especially in old facilities and without adequate staffing. The availability of special measures is enshrined in law, subject to judicial discretion about specific provision, however evidence suggests that police and prosecutors will sometimes dissuade victims from utilising special measures, through an unproven view of how a jury's opinion might be affected. Some victims are also not informed



of all of their options for special measures. The Victim Strategy should emphasise that special measures should be freely available to all victims, in the statutory categories, who require them to give their best evidence. There should be a positive obligation on police and CPS to ensure that this is fully understood and what the range of measures is.

1[B]. Victim Personal Statement (VPS)

The purpose of a VPS is outlined in the VCOP on p21, section 1.12:

“A Victim Personal Statement (VPS) gives you an opportunity to explain in your own words how a crime has affected you, whether physically, emotionally, financially or in any other way. This is different from a witness statement about what happened at the time, such as what you saw or heard. The VPS gives you a voice in the criminal justice process. However you may not express your opinion on the sentence or punishment the suspect should receive as this is for the court to decide”.

Though a victim may not give any opinion on sentence through their VPS, section 1.22 of the VCOP on p22 states that:

“The court will pass what it judges to be the appropriate sentence, having regard to all the circumstances of the offence and of the offender. This will include taking into account, so far as the court considers it appropriate, the impact of the offence on you as set out in your VPS. Your VPS will be considered in exactly the same way whether or not it is read or played in court”.

In addition, sections 5.6-7 at p28 of the VCOP state that if the offender appeals their sentence, the Court of Appeal “*will always taking into account any VPS that is presented to it, which was provided to the sentencing court*”. A further VPS may also be provided at appeal, to detail the continuing impact of a crime.

Furthermore, victims can make a VPS to be considered by The Parole Board, specifying the impact of the offence on them at the time and afterwards, and the possible impact that the offender’s release will have on them (section 6.27, p33).



Therefore, the opportunity for a victim to set out clearly the impact that a crime has had on them, is extremely important, as it *may* affect sentencing and parole. However its primary/additional importance is surely one of offering procedural justice to a victim. This is through the opportunity to have the state, in the form of the courts, acknowledge the impact of the indignity, lack of respect, abuse or injury caused by a crime committed by a citizen for which it bears responsibility so that the victim can be satisfied (and the public can similarly be satisfied) that the state intends to right the wrong caused and restore the victim to a position of respect and self-respect.

Victims have an entitlement to be “*offered the opportunity to make a VPS at the same time as giving a witness statement about what happened to the police about a crime*”. When making a VPS, a victim is entitled to say whether they would like their VPS read aloud (by the victim themselves or somebody else, such as a family member or CPS advocate), played (if recorded, or simply considered as part of the evidence (p21, 1.13). The decision as to whether the whole or part of the VPS is read out/played and who reads out the VPS is ultimately for the Court (p21, 1.13 and p22 1.21).

However, in practice it would seem that the opportunity to make a VPS is not routinely offered to victims, nor are VPSs routinely considered by the Court. As rehearsed above making a VPS can be extremely important for a victim; giving them a voice in a criminal justice system which presently does not have much victim-involvement. It should become a standard, never failing practice that a VPS is formally and publicly acknowledged in court proceedings and read out/used in the manner wished by a victim of any crime which may have had the kinds of any impact set out above.

The point(s) at which a VPS is made should also be changed and enhanced. In Northumbria, approximately 92% of VPSs that are made, are done at the police reporting stage. Though section 1.13 (p21) of the VCOP sets out an entitlement for a VPS to made at this stage (alongside a witness statement). This is the best time, and should not be the only time, at which a VPS may be created. Section 1.16 of the VCOP at p21 states:

“if you are a victim of the most serious crime (including bereaved close relatives), persistently targeted, or vulnerable or intimidated, you are entitled to make a VPS to



the police at any time prior to sentence whether or not you make an witness statement about what happened”.

In addition, section 1.18 on the same page states that:

“Once the statement is completed and signed, a VPS (like any other formal statement) cannot be changed or withdrawn if you have second thoughts about what you have said. However, you may submit a further VPS to the police to add to or clarify your original VPS”.

I would suggest that due to the sometimes lengthy period of time that can elapse between the reporting of a crime and the case proceeding to trial (particularly for serious offences such as sexual offences), the entitlements under section 1.18 should be enforced, in that a victims should be informed that they can make/add to a VPS at any point before sentencing. How a victim feels about an offence perpetrated against them may change hugely between reporting and trial. It is not unusual for this time period to be up to 2 years for sexual offences. The impact on a victim’s life will develop in this time: feelings will likely change, medical conditions may develop, or a financial situation may worsen. Putting the victim truly at the heart of the criminal justice system means acknowledging lived experience. Giving victims the opportunity to add to their VPS further down the line, or make one at a later stage for the first time, is one way we can ensure victims’ lived experience is recognised and their voice included in the criminal process. A VPS will then reflect the true impact on a victim. Section 5.7 of the VCOP (referenced above) acknowledges that the impact of a crime will develop and continue (in entitling victims to give a fresh VPS to a Court of Appeal), so there is already basis for these suggestions within the Code as it stands.

The VCOP refers to the police as the agency which will assist a victim to make a VPS (or a Victim Liaison Officer if a VPS is for The Parole Board). However, it should not have to be the police who take this role, albeit the responsibility for ensuring that it is done may perhaps conveniently remain with them. Organisations giving support to victims, through the CJS, such as Victims First Northumbria (VFN) are better placed, to do this, particularly if that victim, as is the gold standard, has their own caseworker within the organisation. Such a statement does not require the skills of a police officer and may be improved by the empathy of the victim’s supporter.



The enforcement of the duty to offer a victim the opportunity to make a VPS (at any time before sentencing, including adding to it) will provide a supply of information on victim experiences offering a rich picture of the impact of crimes. There should be a Part Two to every VPS which sets out the way in which the CJS agencies have dealt with the victim, from report to court. This will give a similarly rich picture of how those agencies are fulfilling their obligations to serve the local public. These statements, in particular the new part two, should not merely be used in court and left on file but collated and forwarded on a regular basis to the Local Criminal Justice Board (LCJB). Performance can be evaluated and lessons can then be learned from these documents, feeding back into agencies to improve victim experience. The obligation to do so could be put on all agencies led by the LCJB.

1[C]. Enforcement

- As aforementioned, LCJBs could be given responsibility in relation to VPSs – monitoring of collection and feedback/actions.
- There is also a case for enforcing the key parts of the VCOP, which would need to be discussed further, however some brief suggestions are detailed here.
- The creation of some key performance indicators could be attached to the most important elements of the VCOP, where organisations have a specific requirement to report at a national and local level.
- A person or body to have a statutory obligation for victims' services and compliance with the VCOP in each local area. This to be subject to inspection and review and be enforceable.
- The need for criminal justice services to explain their part under a formal review system in causing negative impact to a victim due to inadequacies within their service. Could this be similar to Domestic Homicide Reviews? The purpose of DHRs are to:
 - *Establish what lessons are to be learned from the domestic homicide regarding the way in which local professionals and organisations work individually and together to safeguard victims;*
 - *Identify clearly what those lessons are both within and between agencies, how and within what timescales they will be acted on, and what is expected to change as a result;*



- *Apply these lessons to service responses including changes to policies and procedures as appropriate; and*
- *Prevent domestic violence homicide and improve service responses for all domestic violence victims and their children through improved intra and inter-agency working.*

(Home Office, 2013)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97881/DHR-guidance.pdf

2. Complainants' Advocates (CAs)

The introduction of ISVAs has helped to alleviate some of the concerns for victims of one kind of serious crime. There remains the question of how far and in what kinds of cases individual representation for victims, going beyond the services of a generic victims' hub, should be assured.

2[A]. Positive court experience

The Northumbria OPCC has been awarded funding from the VAWG Transformation Fund for four strands of work. One of these is the development of Complainants' Advocates in VAWG cases by addressing a need for court-related support and 'assertive advocacy', as advocated by the Victims Commissioner. CAs are likely to have a dual role of further ensuring victims have all the information they need, whilst demanding that the CJS understands, consults on and accommodates victims' requirements. They are not ISVAs and not super ISVAs, there will often be a case when a complainant has both an ISVA for general support and a CA.

CAs will take on an assertive advocacy role, following their availability in other adversarial legal systems similar to our own. Research is ongoing into the possibilities and scope of this role, however it is intended that CAs will be able to represent victims' interests at key stages of the CJS, where currently victims' voices and needs are not heard. They are likely to be legally trained and may be required to have rights of audience. These key stages are:



1. Involvement in ABE interviews, to ensure they are conducted properly, in accordance with s28 and incorporating compliance with the full effect of S28 when it is brought into force in the north east and victims' needs are met.
2. Involvement in disclosure – representing victims in writing and/or oral hearings, ensuring that any applications for prosecutorial or third party disclosure are properly contested, should a victim want this, and taking into account their Article 8 rights.
3. Act as an advocate for a victim at s41 hearings – acting as a link between the victim and the CPS, to rebut the Defendant's evidence/assertions where appropriate.
4. At trial, sitting in to ensure that the Counsel on both sides conduct themselves as they should, with regard to victims. For example, ensuring the Defence do not introduce any sexual history evidence, having not previously applied for it to be admitted, and pressing Counsel for the Crown to challenge this. At present, it is evidenced that sexual history evidence is introduced by the Defence without following the proper application procedure, and often neither the prosecution nor the judiciary are challenging this. CAs will be trained to identify when this is happening, with prior knowledge of whether any s41 applications have been made/granted.

There is a precedent for independent legal representation of this nature in several other adversarial legal systems, which the pilot seeks to utilise and build upon. For example, in the Republic of Ireland, complainants of sexual offences have been entitled to a limited form of legal representation since 2001, to oppose any applications for the introduction of sexual history evidence at trial. Canada allows for complainants of sexual offences to participate themselves, or be represented to participate in the opposing of applications for the recovery of personal records. There is also existing support for the above actions in our country. Most notably in *R (on the application of B) v Stafford Combined Court [2007] 1 All ER*, where it was held that a complainant has a right to be given notice of any applications for the disclosure of her personal records, and that she has to be given an opportunity to make representations, including oral representations at any hearings. Although this does not appear to be happening in practice.

Thus, while research is still ongoing, the establishment of CAs within courts are likely to be a source of significant support to victims particularly of the most serious crimes, with a role ranging from advising to actively seeking to redress the underpowered position of the



vulnerable victim in the hands of state institutions whose purposes and function do not always accord with theirs

Therefore ultimately the Victim Strategy should seek to outline the entitlements of victims, with regard to their rights to oppose disclosure and s41 applications as these are given reality by the advent of CAs and other Home Office funded Advocacy pilots in other PCC areas with which we are working closely.

3. Further issues to be considered

The VWAG outlined further issues for victims under four headings. Below are suggestions to these issues (aside from those mentioned above), drawing from good practice in Northumbria:

3[A] Victim entitlements

- VCOP to be simplified and key elements enforced, as set out above.
- Responsibilities for agencies under the VCOP should be referred to in business and action plans and monitored for improvements needed.
- A requirement for restorative justice to be offered at several points in the CJS – this could potentially be done alongside the offering of a VPS/amended VPS, by agencies such as Victims First Northumbria (VFN), as proposed above.
- VFN has lead for restorative justice and a specific plan to increase take up
- Northumbria has a Victim Advisory Group which is used to inform continuous improvement – this should be national practice.

3[B] Support provision

- Clear pathways should exist to other support services, as is the case in Northumbria.
- High demand with increased resource to manage this. This will be particularly relevant if a dedicated service is required for all victims of crime whatever their need.
- VFN have a plan in place to target hard to reach communities and those who do not report a crime – this should be the norm for key support services.



- Needs assessments are crucial. To be completed when a victim has first contact with a support organisation, and to be reassessed continuously. VFN does this extremely well, and from this assessment decides whether a victim needs enhanced support.
- VFN staff have training to deal with the most complex cases – this should be the case for all support services.
- Some areas have visited Northumbria to obtain and share best practice.
- A number of VFN staff have accredited training and plans in place to extend this across the team.

3[C] Court experience

- VFN have ISVA provision with qualifications attached and plans to increase this. This also includes CHISVA qualifications and a formal qualification relating to stalking and harassment
- Victim Advisory Groups are used to ensure the victims voice is heard in Northumbria, by having direct access to the OPCC
- There needs to be an improvement in Court listing - perhaps a new obligation on the Judiciary to formally discuss the impact of changes in listing and the timetable of a case in in court on victims and witnesses. At present, victims are called to Court unnecessarily and timetables are frequently disrupted. All of this impacts on a victim waiting for a trial to proceed, which is already a difficult experience.
- Courts could liaise directly with victims' support workers? E.G. VFN. If preferable for a victim.
- Victims should be free and encourage to have therapy to be able to cope and recover. The CJS is misguided in thinking that this will harm evidence. The Victim Strategy should clarify this, to ensure that victims are at the heart of the CJS.
- In the same vein, if a victim makes a claim for criminal injuries, via CICA, this should have no bearing on the criminal case. At present, any claim to CICA before the conclusion of criminal proceedings is used to hold a victim in a negative light. This is absurd, and also makes no logical sense as CICA have a time bar of 2 years for claims. Some offences take 2 years+ to get to Court. This area needs to be looked at urgently.



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3[D] Information provision

- VFN has a website with multiple options to refer to the service.
- Automatic referrals occur through Northumbria Police where consent has been obtained. This makes the process much easier and more accessible for victims, without the need for them to self-refer, which can be emotionally difficult.
- Information from VFN can be provided in different languages, braille and minicom.
- VFN staff participate in secondments with CRC to enhance information sharing relating to restorative justice.
- VFN has a specialist Children and Young People worker with outreach and schools and community venues, including GP surgeries, Accident and Emergency and hospitals.

Underlying all of these proposals, there needs to be a mechanism for monitoring and enforcement. Otherwise, there will be no teeth to the new Victim Strategy, which will then be freely ignored by some, as is the VCOP.