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Victim Impact Statements

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This paper provides information on Victim Impact Statements in Northern Ireland and comparative information on England and Wales, Scotland, Republic of Ireland, Canada, New Zealand, Australia and the United States.

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Key Points

- Some jurisdictions have enshrined victims' rights to make Victim Impact Statements in legislation, however some jurisdictions set out information in relation to Victim Impact Statements in non-legislative sources;
- In Northern Ireland, there is the provision for the use of Victim Impact Statements but not on a statutory basis;
- In some jurisdictions such Victim Impact Statements form one part of a comprehensive Victims' Rights Act.
- Some jurisdictions restrict the types of offences in which victims can make Victim Impact Statements, however there have been developments in England and Wales to widen the range of offences and the range of offences is currently being considered in the Republic of Ireland;
- Some jurisdictions allow victims or a representative of the victim to read their Victim Impact Statements aloud in court, however other jurisdictions only allow victims to make their representations in writing;
- Some jurisdictions allow victims to make Victim Impact Statements in other types of hearings such as bail, plea bargain hearings or early release hearings;
- Canada requires the court to inquire whether a victim has been afforded the opportunity to prepare a Victim Impact Statement, however in England and Wales judges are not required to ask whether a statement has been made;
- Most jurisdictions considered in this paper only allow the victim to comment on the impact of the crime on them and not on the sentence; however in Minnesota victims are allowed to comment on the sentence they feel would be appropriate

Executive Summary

In Northern Ireland there is provision for victims to make Victim Impact Statements to the police, Public Prosecution Service and Victim Support NI, but this is not set out on a statutory basis. The level of victims making Victim Impact Statements in NI is low, since June 2006 there have been 435 cases where Victim Impact Statements have been used in court proceedings. It appears that the use of Victim Impact Statements is in practice restricted to cases involving sexual offences or those of a violent nature. The Department of Justice notes that the use of Victim Impact Statements is ad hoc and it is currently consulting on ways to strengthen current provision.

In England and Wales, the scheme allowing victims to make an impact statement is called a Victim Personal Statement. The scheme is not set out in legislation but is contained in non legislative sources including Crown Prosecution Guidance and judicial practice directions. The scheme allows victims' input not only at the sentencing stage of the process but in decisions at other stages such as bail. Victim Personal Statements may only be made in writing and victims are not allowed to read statements aloud in court. Victims are allowed to describe the impact of the crime on them but not to comment on sentencing. The scheme's application has recently been extended to include other types of offences such as health and safety at work offences.

A scheme was introduced in Scotland in 2009 allowing victims of higher tariff offences to make a written Victim Impact Statement to the court. An evaluation of an earlier pilot scheme found that take up of the scheme was low. However the most notable factor whether a statement was made or not was the seriousness of the offence and in sexual offences victims were particularly likely to make a statement. Certain types of information cannot be included in the statement including a description of what happened or opinion on sentencing.

In the Republic of Ireland, Victim Impact Statements were placed on a statutory footing under the Criminal Justice Act 1993 which was subsequently amended by the Criminal Procedures Act 2010. Victim Impact Statements are restricted to a range of certain types of offences but the Minister for Justice and Equality has indicated that he plans to introduce legislation that will enable courts to have regard to the impact of the crime on the victim in a wider range of offences. Victims or the victim's representative may read out part or all of the statement to the court, however this is optional and voluntary. Victim Impact Reports are also permissible.

In Canada, victims have the right to make a Victim Impact Statement under the Criminal Code of Canada. Courts are required to inquire whether a victim has been advised of the opportunity to prepare a statement and may adjourn proceedings to enable a victim to do so. The Criminal Code provides that the victim may make a request to read aloud their statement which is prepared in accordance with procedures set out in the code.

In New Zealand, victims are entitled to make a Victim Impact Statement under the Victims' Rights Act 2002. The Act requires the prosecutor to make sure that all reasonable information is ascertained from the victim for submission to the judicial officer sentencing on the impact of the crime on them. The Act may also ascertain the views of victims in certain offences about the bail of an accused or an offender.

In the State of Victoria and Western Australia, Victim Impact Statements have been put on a statutory footing. In the State of Victoria, a person who has made an impact statement may request that any part of the statement is read aloud or displayed in the course of the sentencing hearing. In Western Australia, victims may make their statement verbally to the court but this needs to be discussed with the prosecutor who will consult with the judge or magistrate.

In the United States (US) at federal level, the Crime Victims' Rights Act, which was introduced in 2004 gives victims the right to be reasonably heard in any public proceeding in the district court involving release, plea, sentencing, or any parole proceedings. Most states in the US allow victims the right to be heard in sentencing in some form or another. In Minnesota victims have the right to make a Victim Impact Statement in sentencing, plea presentation, pre-sentence and early release proceedings. Victims may also request the sentence they feel would be appropriate.

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1 Introduction

This research paper has been prepared to assist the Justice Committee in its inquiry on victims and witnesses in the criminal justice system. Currently the Department of Justice is consulting on the provision of Victim Impact Statements and Reports in Northern Ireland.

The value of Victim Impact Statements has been highlighted in academic literature as they promote justice without interfering with the legitimate interests of defendants.¹ However research has indicated that the introduction of a Victim Impact Scheme will not result in the widespread use of statements and that only a minority of victims appear to want to submit a statement at sentencing.² This does not suggest that Victim Impact Statements are less important as a source of information for sentencers but for a number of reasons victims are content in remaining out of the sentencing process.³ However research shows that most victims, who submitted a Victim Impact Statement, reported being satisfied with sentencing.⁴

This paper gives some background information on Victim Impact Statements and the current position on Victim Impact Statements in Northern Ireland. The paper also provides comparative information on schemes available in England and Wales, Scotland, the Republic of Ireland, Canada, New Zealand, Australia and the United States. The paper shows that the jurisdictions examined make some form of provision for victims and witnesses to inform the court of the impact of the crime on them. However the schemes differ from jurisdiction to jurisdiction. For example some jurisdictions establish the right of victims to make such statements on a statutory basis, while in others it is a non-statutory scheme. Provisions in some jurisdictions allow victims to read aloud their statements in court. Some jurisdictions also limit the possibility to make statements to victims of certain types of offences.

2 Victim Impact Statements and Reports in Northern Ireland

2.1 What are Victim Impact Statements?

A Victim Impact Statement (VIS) is a personal statement prepared by the victim or by another person on their behalf or bereaved relatives of a deceased victim. The VIS gives the victim the opportunity to inform the judge of the impact that a crime has had

¹ PG Cassell "In Defense of Victim Impact Statements" in *Ohio State Journal of Criminal Law* [2009] Vol 6:611

² JV Roberts "Victim Impact Statements: Lessons Learned and Future Priorities" in *Victims of Crime Research Digest* 2008, Issue No 1, 3.

³ *Ibid*

⁴ *Ibid* at, 4

on them. According to the Department of Justice (DoJ) the functions of the VIS include:⁵

- To provide information to a sentencing judge about the impact of the crime which will assist the court on reaching a decision about the penalty;
- To provide a therapeutic aspect, helping victims recover from the harm caused by crimes committed against them;
- To educate the defendant about the full consequences of the crime, leading to greater understanding of the harm caused and acceptance of responsibility;
- To contribute to fairness in sentencing by ensuring that all relevant parties are heard.

A VIS should not include comments about the offender or what sentence the victim thinks the offender should receive. A VIS is optional and is prepared with the consent of the victim before their case is heard in court. However the statement is taken into consideration by the sentencing judge alongside other information including the legislative authority or sentencing guidelines, the maximum sentence which can be given, whether the defendant pleaded guilty or not, the level of sentences in similar cases in the part and the powers of the court.⁶

2.2 What are Victim Impact Reports?

Victim Impact Reports differ from VIS as they are prepared following a request by the court for a professional assessment and they are obtained by the Public Prosecution Service.⁷ The reports are prepared by professionals such as a psychologist or psychiatrist providing specialist opinion on the traumatic impact of the crime on the victim. Similar to VIS, the reports do not include comment about the offender or what a sentence should be. The victim does not provide direct comment for inclusion in a victim impact report.⁸ Similar to VIS, Victim Impact Reports are used to assist the court in reaching a decision as to sentence and are not used until after a conviction has taken place.⁹ If a court requests a Victim Impact Report, it will be lodged after conviction but in advance of sentencing.¹⁰ The Victim Impact Report is available to the defence lawyer but the information contained in the report is not normally shared with

⁵ Department of Justice "Consultation on Provision of Victim Impact Statements and Victim Impact Reports", December 2011

⁶ Ibid, 5

⁷ Ibid, 6

⁸ Ibid, 6

⁹ Criminal Justice Inspection Northern Ireland "The Care and Treatment of Victims and Witnesses in the Criminal Justice System" December 2011, 53

¹⁰ Information obtained from the Department of Justice with thanks via email on 23/01/12

support agencies that may be able to provide assistance to the victim to meet the needs identified by professionals in the report.¹¹

2.3 The current position on Victim Impact Statements and Reports in Northern Ireland

In Northern Ireland, there is no legislative entitlement for the victim to make a Victim Impact Statement.¹² However there is provision to enable victims to make a VIS to the police, Public Prosecution Service or Victim Support Northern Ireland.¹³ The PSNI policy on Dealing with Victims and Witnesses limits the use of VIS in indictable cases, in particular those cases involving sexual and serious physical assault stating that the “IO (investigating officer) should consider the need to record data concerning the effect of the crime on the victim”.¹⁴ The Code of practice for Victims of Crime published by the Department of Justice provides that if a victim has prepared a Victim Impact Statement the Public Prosecution Service will make sure it is provided to the Court.¹⁵

The completion of a VIS is optional and when completed it is forwarded to the Public Prosecution Service to include in the prosecutorial papers as an evidence statement. It is presented to the court after a finding of guilt and before a sentence is given.¹⁶ The Department of Justice highlighted that the police, courts and Public Prosecution Service reported that the level of uptake by victims to make a Victim Impact Statement is low.¹⁷ Statistics obtained from the Department of Justice show that since June 2006, there have been 435 cases where Victim Impact Statements have been used in court proceedings.¹⁸ A breakdown on the use of Victim Impact Statements in Northern Ireland from 2006-2012 can be found in **Annex A** of this paper.

CJINI reported in its inspection on victims and witnesses in December 2011 that a member of the judiciary informed them, that whilst the use of VIS was not excluded in other cases, the practice was for their use in cases of a sexual or violent nature.¹⁹ CJINI inspectors found that the use of the Victim Impact Statement was not well understood in Northern Ireland and that the absence of guidance meant that various professionals and the public took differing views as to how and when they could be used.²⁰ Inspectors also reported that a Judicial Review was being taken by an individual as a result of being told that a Victim Impact Statement would not be taken in

¹¹ Department of Justice “Consultation on Provision of Victim Impact Statements and Victim Impact Reports”, December 2011, 7

¹² Ibid

¹³ Ibid at, 6

¹⁴ PSNI Policy Directive “Dealing with Victims and Witnesses” PD 05/06, 17

¹⁵ Department of Justice “Code of Practice for Victims of Crime” 2010, 28-29

¹⁶ Department of Justice “Consultation on Provision of Victim Impact Statements and Victim Impact Reports”, December 2011, 7

¹⁷ Ibid

¹⁸ Information obtained from the Department of Justice with thanks via email on 23/01/12

¹⁹ Criminal Justice Inspection Northern Ireland “The Care and Treatment of Victims and Witnesses in the Criminal Justice System” December 2011, 53

²⁰ Criminal Justice Inspection Northern Ireland “Treatment and Care of Victims and Witnesses in the Criminal Justice System in Northern Ireland” December 2011, 53

that case. Despite the limitations and issues surrounding the use of Victim Impact Statements, CJINI indicated that a codified, regularised and well understood scheme in Northern Ireland could be beneficial in giving victims a voice and enhancing their role in the criminal justice process.²¹ CJINI recommended that the Criminal Justice Board should introduce guidance on a Victim Impact Scheme in Northern Ireland, considering lessons learned from the implementation of the Victim Personal Statement in England and Wales.²²

The Department of Justice published a consultation document on Victim Impact Statements and Reports in December 2011. The document explains that the system for the completion of a Victim Impact Statement in NI is ad hoc and that there is no operational guidance in place or explanation of the purpose of a statement to explain to victims why they are completing a statement.²³ The document states that the department sees the consultation “as an opportunity to strengthen current provision and build on local experience whilst taking account of experiences elsewhere.”²⁴ The consultation questions can be found in **Annex B** of this paper.

3 England and Wales

A Victim Impact Statement in England and Wales is called the Victim Personal Statement. The Victim Personal Statement (VPS) first emerged in England and Wales under the Victims’ Charter introduced by the Home Office in 1996 and the scheme was rolled out nationwide in 2001.²⁵ The VPS does not have a legislative basis but the aims and uses of the VPS are found in non- legislative sources including judicial directives, Crown Prosecution Service and Home Office guidance.²⁶

The aim of the VPS is to provide an account of the impact of the offence from the person most affected by the crime.²⁷ The purpose of a VPS is to:²⁸

- give victims the opportunity to state how the crime has affected them - physically, emotionally, psychologically, financially or in any other way;

²¹ Ibid, 53

²² Ibid, 54

²³ Department of Justice “Consultation on Provision of Victim Impact Statements and Victim Impact Reports”, December 2011, 14

²⁴ Ibid 14

²⁵ JV Roberts and M Manikis “Victim Personal Statements: A Review of Empirical Research” Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 8

²⁶ Ibid at 10. Some of the sources include the Crown Prosecution Service Guidance on Victim Personal Statements http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/index.html: Amendment no 22 to the Consolidated Criminal Practice Direction (Criminal Proceedings: Victim Personal Statement; Pleas of Guilty in the Crown Court; Forms) III.28.2a,c [2009] All ER (D) 136 (May)

²⁷ JV Roberts and M Manikis “Victim Personal Statements: A Review of Empirical Research” Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 8

²⁸ http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/index.html

- allow victims to express their concerns in relation to bail or the fear of intimidation by or on behalf of the defendant;
- provide victims with a means by which they can state whether they require information about, for example, the progress of the case;
- provide victims with the opportunity of stating whether or not they wish to claim compensation or request assistance from Victim Support or any other help agency;
- provide the criminal justice agencies with a ready source of information on how the particular crime has affected the victim involved.

As well as informing sentencing decisions, such statements can be considered at other stages such as the grant of bail.²⁹ Under the VPS scheme, the statements are not completed by the victim but are taken by the police. The officer who initially interviews the victim will ask them if they wish to make a VPS, therefore the process is entirely optional. There is guidance for police officers which gives advice on what the victim should include in their statement such as concerns about feeling vulnerable or intimidated, however the officer should also explain to the victim the limitations of the scheme, for example the victims opinion on sentencing.³⁰ If the victim decides to make a statement it is transcribed at the end of a form (an MG11 witness statement) and it is added to the public file and is made available at all stages of the process.³¹

All victims are provided with a leaflet stating that they are entitled to make a statement at any point of the process prior to the disposal of a case. According to the legal guidance provided by the Crown Prosecution Service, the scheme envisages two stages in the process: Stage 1 where a victim from whom a witness statement is taken is given the opportunity to make a VPS when the statement is taken: and Stage 2 where the victim can provide a separate statement at any time to describe the longer term effects of the crime.³² Once a VPS is made, it cannot be withdrawn or changed.³³

Statements in England and Wales are in writing only, unlike other jurisdictions which permit victims to read their statements aloud in court.³⁴ All victims of crime in England and Wales can make a statement including victims of health and safety at work offences and of some road traffic offences.³⁵

²⁹ JV Roberts and M Manikis "Victim Personal Statements: A Review of Empirical Research" Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 10

³⁰ http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/index.html

³¹ JV Roberts and M Manikis "Victim Personal Statements: A Review of Empirical Research" Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 11

³² http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/index.html

³³ JV Roberts and M Manikis "Victim Personal Statements: A Review of Empirical Research" Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 43

³⁴ Ibid, 11

³⁵ JV Roberts and M Manikis "Victim Personal Statements: A Review of Empirical Research" Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 12

In England and Wales there is no statutory basis for the VPS, therefore courts are not statutorily obliged to consider a VPS and are not required to make an inquiry about a statement or whether a victim has been given the opportunity to submit a statement.³⁶

Research in England and Wales indicates that there is considerable variability in the proportion of victims who recalled being offered the opportunity to make a VPS across the different Local Criminal Justice Board area: from 29% in London to 63% in Northumbria, a difference of 34%.³⁷ The percentage of victims who actually recalled making a VPS also varied, from 41% in Cumbria to 71% in Cambridgeshire.³⁸ A number of possible factors were cited regarding the low response rate including:³⁹

- the system could do a better job of informing victims about the scheme;
- victims may wish to minimise their engagement with the system; the victim may believe that the seriousness of the crime did not warrant this level of engagement with the system;
- participation rates are also likely to be affected by the attitudes of criminal justice professionals to victim input schemes; there is no statutory duty on police, prosecutors or any other professionals to inform victims of the VPS.

4 Scotland

The Victim Statement Scheme was introduced in Scotland in 2009.⁴⁰ The scheme allows victims of serious crime to make a written statement to the court on how a crime has affected them emotionally, physically or financially.⁴¹ The statement will be given to the court if the accused pleads guilty or is found guilty after a trial but before a sentence is passed. A copy of the statement is also given to the defence. The judge must consider all the circumstances of the case and the statement and decide what weight must be given to it. Certain types of information should not be included in the statement such as a description of what happened, how the crime affected others or what sentence the victim thinks the accused should receive.

The Procurator Fiscal (Prosecutor) keeps the statement with the file and arranges for copies to be given to the judge and the defence team; however the defence will not usually be given the statement until after the defendant has pled guilty or has been found guilty. Once a statement has been made it cannot be withdrawn. However if something has changed, the victim can submit another to update information provided in the first statement. If a victim of crime is under the age of 14 they cannot complete a

³⁶ Ibid at, 13

³⁷ Ibid, 20

³⁸ Ibid, 21

³⁹ Ibid, 23

⁴⁰ The scheme was established after a pilot scheme was piloted in a number of Sherriff Courts in Ayr, Edinburgh and Kilmarnock and in the High Court of Justiciary in Edinburgh and Kilmarnock. The pilots ran for a two year period and an evaluation of the scheme was published in 2007. See F Leverick and P Duff (2007) "An Evaluation of the Pilot Statement Schemes in Scotland", 8.

⁴¹ <http://www.victimsofcrimeinscotland.org.uk/the-justice-process/court-process/victim-statement-scheme/>

statement themselves. A parent or carer can complete a statement on their behalf. If a victim has died, up to four near relatives can make a victim statement.⁴²

An evaluation of the initial pilot statement scheme introduced in 2003, found that the overall participation rate for the scheme was 14.9%, lower than that for the pilot scheme in England and Wales at 30%. The explanation given was that the Scottish pilot scheme covered a wider range of offences.⁴³ The evaluation found that the most common reason for not making a statement was that the impact of the crime was not perceived as serious (53%).⁴⁴ The evaluation found that the most notable factor for whether or not a statement was made was the seriousness of the offence in question and that victims of sexual offences were particularly likely to make a statement.⁴⁵ Subsequently the Scottish Government in 2009 made a national scheme available for higher tariff crimes in cases heard in a High Court or in cases where a Sheriff sits with a jury (courts of solemn jurisdiction).⁴⁶

5 Republic of Ireland

Victim Impact Statements which were previously used on an ad hoc basis in the Criminal Justice System in the Republic of Ireland have been placed on a statutory footing under Section 5 of the Criminal Justice Act 1993.⁴⁷ This provision requires the court when determining a sentence to be imposed on a person, to take into account and receive any evidence or submissions concerning the effect of the offence on the person on whom the offence was committed.⁴⁸ This provision was amended by Section 4 of the Criminal Procedures Act 2010 which expanded the range of offences in which the court was required to consider the impact of the crime on the victim to include:⁴⁹

- sexual offences;
- violence or threats or violence;
- offences under the Non -Fatal Offences Against the Person Act 1997 which include assault causing harm, harassment and false imprisonment;⁵⁰
- attempts to commit or conspire to commit, aid, abet, procure or incite commission of the above offences.

⁴² <http://www.scotland.gov.uk/Resource/Doc/256204/0076050.pdf>

⁴³ F Leverick and P Duff (2007) "An Evaluation of the Pilot Statement Schemes in Scotland", 26.

⁴⁴ Ibid", 6.

⁴⁵ Ibid", 26

⁴⁶ The Scottish Government "Victims voices to be heard" 01/04/09

<http://www.scotland.gov.uk/news/releases/2009/03/31105605>

⁴⁷ Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" March 2011, funded by the Commission for the Support of Victims of Crime

⁴⁸ Criminal Justice Act 1993, section 5, <http://www.irishstatutebook.ie/1993/en/act/pub/0006/sec0005.html#sec5>

⁴⁹ <http://www.irishstatutebook.ie/2010/en/act/pub/0027/sec0004.html#sec4>

⁵⁰ <http://www.irishstatutebook.ie/1997/en/act/pub/0026/index.html>

The Justice Minister Alan Shatter has indicated that he will introduce legislation that will enable the courts to have regard to the impact on victims and their families in a wider range of offences, including burglary, theft, road traffic offences that cause serious injury and offences resulting from anti-social behaviour.⁵¹

A Victim Impact Statement is to be given to the court subsequent to conviction and prior to sentencing.⁵² The statement should contain an account of the effect of the offence on the victim's physical, emotional, psychological and financial well-being along with any other effect on the victim.⁵³ Victims can voluntarily make a statement; they are not mandatory.⁵⁴

The victim of the offence can make a victim impact statement or a family member may make the statement.⁵⁵ Family member means:⁵⁶

- A spouse or partner of the person;
- A child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew, or niece of the person;
- A person who is acting in loco parentis to the person;
- A dependant of the person; or
- Any other person whom the court considers to have had a close connection with the person.

There is a range of circumstances in which a family member may make a statement including where the victim of the offence:

- is a child under 14, the child or his or her parent or guardian may give evidence as to the effect of the offence concerned on the child; or
- is a person with a mental disorder (not resulting from the offence concerned) the person or family member may give evidence as to the effect of the offence concerned on that person; or
- is a person with a mental disorder (not resulting from the offence concerned, who is also a child, the person or his or her parent or guardian may give evidence as to the effect of the offence concerned on the child; or

⁵¹ Speech by Mr Alan Shatter T. D. Minister for Justice and Equality, at the fifth meeting of the Victims of Crime Consultative Forum Ashling Hotel, Parkgate Street Dublin 1 April, 2011

<http://www.justice.ie/en/JELR/Pages/SP11000031>

⁵² Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" Match 2011, funded by the Commission for the Support of Victims of Crime,2

⁵³ Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" Match 2011, funded by the Commission for the Support of Victims of Crime,2

⁵⁴ Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" Match 2011, funded by the Commission for the Support of Victims of Crime, 2.

⁵⁵ Section 5 (2) (b) of the Criminal Justice Act 1993, as amended by section 4 of the Criminal Procedure Act 2010.

⁵⁶ Section 5 (6) (a)-(e) of the Criminal Justice Act 1993

- is a person who is ill or incapacitated as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his/her family members;
- has died as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on the person between the commission of the offence and his or her death (where relevant), and on the family members of the person who has died.⁵⁷

The main focus of the Victim Impact Statement is on the impact of the offence for which a sentence is being imposed and not on any other offence which the offender may have been originally charged or tried.⁵⁸ There are no official guidelines as to the structure and content of a Victim Impact statement.⁵⁹ However Rape Crisis Network Ireland has published a guide which contains information on what should be included in a statement and what should not be included. The statement should identify the victim, contain an acknowledgement that the victim does not object to the statement being given to court and include the full name of the person who wrote the statement and be signed and dated by the victim. The statement should not include the opinion of the victim as to the sentence to be imposed.⁶⁰

The Prosecution is responsible for presenting the Victim Impact Statement to the court and has a responsibility to ensure that the statement confines itself to the impact of the offence on the victim. The defence are also given a copy of the statement in advance to allow objections to be raised regarding its contents.⁶¹ Victims or the victim's representative may read out part or all of the statement to the court; however this is optional and voluntary.⁶²

Victim Impact Reports are also permissible under section 5 of the 1993 Act as amended. A Victim Impact Report is written by another person assessing the effects of the crime on the victim. The report should be attached to the Victim Impact Statement and presented to the court as an appendix to the statement unless a judge orders otherwise.⁶³

6 Canada

Victims have a right to complete a Victim Impact Statement under section 722 of the *Criminal Code of Canada (the Code)*. Section 722 (1) provides:

⁵⁷ Section 5(3)(b) of the Criminal Justice Act 1993, as amended by the 2010 Act.

⁵⁸ Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" March 2011, funded by the Commission for the Support of Victims of Crime, 5.

⁵⁹ Ibid, 5.

⁶⁰ Ibid, 5.

⁶¹ Ibid, 6.

⁶² Rape Crisis Network Ireland "Victim Impact Statements/ Report: A guide for Victim Supporters from Rape Crisis Network Ireland" March 2011, funded by the Commission for the Support of Victims of Crime, 6.

⁶³ Ibid, 3.

“For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.”

The Code sets out the procedure for the Victim Impact Statement which must be prepared in writing in accordance with procedures established by a designated programme and filed with the court.⁶⁴ The administration of Victim Impact Statements falls under the jurisdiction of the provinces and each province has a different scheme with specific guidelines and forms.⁶⁵

Courts are required to inquire of the prosecutor whether the victim has been advised of the opportunity to prepare a statement and may adjourn proceedings to permit the victim to prepare a statement.⁶⁶

The legislation provides that a victim may make a request to the court to read aloud their statement prepared in accordance with the procedure set out in the Code.⁶⁷ Research has indicated that only a small minority of victims avail themselves of the opportunity to deliver their Victim Impact Statement orally to the court; however those individuals who do so benefit greatly from the experience.⁶⁸

The preparation of a Victim Impact Statement is voluntary, no victim is required to make a victim impact statement. However where a statement has been prepared, consideration of the statement by a sentencing judge is mandatory.⁶⁹ An impact statement is not used unless or until a defendant is convicted. The statement can also be used in the case of a plea bargain. The Victim Impact Statement will be shared with the defence and when the statement has been entered into court it becomes a matter of public record.⁷⁰

According to academic literature rates of statement submission or participation in Canada are 23%.⁷¹

7 New Zealand

Victims have a statutory entitlement to submit a Victim Impact Statements under the Victims' Rights Act 2002.⁷² Section 17 of the 2002 Act requires the prosecutor to make

⁶⁴ Criminal Code of Canada, <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-393.html>

⁶⁵ JV Roberts and M Manikis “Victim Personal Statements: A Review of Empirical Research” Report for the Commissioner for Victims and Witnesses in England and Wales, October 2011, 45

⁶⁶ Section 722.2 of The Criminal Code of Canada

⁶⁷ Section 722 (2.1) of the Criminal Code of Canada

⁶⁸ Victims of Crime Research Digest 2008, Issue No 1, p 4. Available at www.canada.justice.gc.ca/eng/pi/rs

⁶⁹ Victim Impact Statements prepared by the Canadian Resource Centre for Victims of Crime <http://www.crcvc.ca/docs/VictimImpactStatements.pdf>

⁷⁰ Victim Impact Statements prepared by the Canadian Resource Centre for Victims of Crime

⁷¹ JV Roberts “Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole”, in Crime and Justice Vol 38 No 1 (2009) p 362.

sure that all reasonable information is ascertained from the victim for submission to the judicial officer sentencing the offender on the following matters:⁷³

- any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and
- any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and
- any other effects of the offence on the victim.

The information must be put into writing or recorded in another way such as audio or videotape and submitted to the judicial officer sentencing the defendant.⁷⁴ The information must be submitted by the prosecutor in the form in which it was recorded, but requests can be made by the prosecutor, the victim or a person named by the victim to read all or part of the statement.⁷⁵ The legislation provides that the Victim Impact Statement can take a number of forms including any recording, summary, transcript, or other copy of information of that kind.⁷⁶ The offender may not be given a copy of the Victim Impact Statement to keep unless the victim consents to this.⁷⁷ Furthermore, every person who receives or makes a copy or copies of a victim impact statement during proceedings must return the copy or copies to a member of court staff as soon as practicable after the end of the proceedings.⁷⁸

Section 30 of the 2002 Act requires the court in certain types of offences including sexual offences, or one that resulted in the serious injury or death of a person to ascertain the views of a victim about the release on bail of an accused or an offender.

Academic literature suggests that participation rates in New Zealand are 14%⁷⁹

8 Australia

This section focuses on two Australian states: the State of Victoria and Western Australia which both make statutory provision for Victim Impact Statements.

⁷² Victim Impact Statements were initially introduced in legislation under the Victims of Offences Act 1987, however this legislation was replaced by The Victims' Rights Act 2002, for further information see the following links: <http://www.justice.govt.nz/publications/global-publications/s/sentencing-policy-and-guidance-a-discussion-paper/9.-the-role-of-victims-in-sentencing> and <http://www.justice.govt.nz/publications/publications-archived/2002/victims-rights-act-2002-a-guide-for-agencies-dealing-with-victims-of-offences/introduction>

⁷³ <http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM157874.html>

⁷⁴ S 19 of the Victims' Rights Act 2002

⁷⁵ S 21 of the Victims' Rights Act 2002

⁷⁶ S 22 of the Victims' Rights Act 2002

⁷⁷ S 23 of the Victims' Rights Act 2002, <http://www.justice.govt.nz/publications/publications-archived/2002/victims-rights-act-2002-a-guide-for-agencies-dealing-with-victims-of-offences/victim-impact-statements>

⁷⁸ S 24 of the Victims Rights Act 2002

⁷⁹ JV Roberts "Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole", in Crime and Justice Vol 38 No 1 (2009) p 362

8.1 State of Victoria

In Victoria, victims have a statutory right to make a Victim Impact Statement under Part 6, Division 1A of the Sentencing Act 1991 to assist the court in determining the sentence.⁸⁰ A Victim Impact Statement can be made in writing by statutory declaration or in writing by statutory declaration and orally by sworn evidence.⁸¹ The Victim Impact Statement must contain information on the impact of the offence on the victim and of any injury, loss or damage suffered by the victim. The Statement may also take the form of photographs, drawings or poems and other material that relates to the impact of the offence on the victim.⁸² The legislation also allows medical reports to be attached to the Victim Impact Statement on medical matters concerning the victim.⁸³ If a victim is to provide a Victim Impact Statement, the victim must within a reasonable time before the sentencing takes place: file a copy with the court and provide a copy to the offender or the legal practitioner representing the offender and the prosecutor.⁸⁴ Victims may also be examined and cross examined on their Victim Impact Statement.⁸⁵ The legislative provisions enable the reading aloud of a Victim Impact Statement in Court. A person who has made an impact statement may request that any part of the statement is read aloud or displayed in the course of the sentencing hearing. The statement can be read by the person making the request or a person chosen by the person making the request or by the prosecutor.⁸⁶ The court may also rule as inadmissible the whole or any part of the Statement, including the whole or any part of the medical report. Academic literature indicates that participation rates in Victoria are 16%.⁸⁷

8.2 Western Australia

Victims have a right to make a Victim Impact Statement in Western Australia under the Sentencing Act 1995, Part 4 Division 4.⁸⁸ The aim of the Victim Impact Statement is to assist the court in determining the proper sentence for the offender.⁸⁹ The legislation also makes provision covering who may give a statement and these persons include the victim of the offence or in the case of age disability or incapacity; another person may give it on the victims' behalf if the court is satisfied it is appropriate to do so.⁹⁰ The Victim Impact Statement is a written or oral statement which must.⁹¹

⁸⁰ Section 95A of the Sentencing Act 1991

⁸¹ Section 95A (2) of the Sentencing Act 1991

⁸² Section 95 (1) and (1a) of the Sentencing Act 1991

⁸³ Section 95BA of the Sentencing Act 1991

⁸⁴ Section 95C of the Sentencing Act 1991

⁸⁵ Section 95D of the Sentencing Act 1991.

⁸⁶ Section 95F of the Sentencing Act 1991

⁸⁷ JV Roberts "Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole", in Crime and Justice Vol 38 No 1 (2009) p 362

⁸⁸ http://www.austlii.edu.au/au/legis/wa/consol_act/sa1995121/

⁸⁹ Section 24, Part 4 Division 4 of the Sentencing Act 1995

⁹⁰ Section 24 (2) of the Sentencing Act 1995

⁹¹ Section 25 (1) (a)-(b) of the Sentencing Act 1995

- give particulars of any injury, loss, or damage suffered by the victim as a direct result of the offence; and
- describe the effects on the victim of the commission of the offence.

The legislation also makes it clear that a victim impact statement is not to address the way in which or the extent to which the offender ought to be sentenced.⁹² The court has the powers to make the Victim Impact Statement available to the prosecutor and the offender on such conditions as it thinks fit.⁹³ The court also may rule inadmissible the whole or any part of the Victim Impact Statement.⁹⁴ Victims may make their statement verbally to the court but this needs to be discussed with the prosecutor who will consult with the judge or magistrate. The judge or magistrate will make a formal decision.⁹⁵

9 The United States

Victim Impact Statements are written and oral statement concerning the impact of the crime on the victim and are commonly used in sentencing.⁹⁶ The crime victim's right to deliver a victim impact statement at sentencing is enshrined in the United State's criminal justice system and victims have this right in all federal sentencing decisions and in almost all state ones.⁹⁷ At federal level the Crime Victims' Rights Act which was enacted in 2004, gives the victim the right to be reasonably heard in any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.⁹⁸ Forty eight states in the US guarantee victims the right to be heard, in some form or another at sentencing; in the remaining two the matter is left to the judge's discretion.⁹⁹ State and federal statutes tend to vary in relation to Victim Impact Statements.¹⁰⁰ However it may be useful to look at one State, Minnesota, which provides victims with the right to give a Victim Impact Statement.

⁹² Section 25 (2) of the Sentencing Act 1995

⁹³ Section 26 (1) of the Sentencing Act 1995

⁹⁴ Section 26 (2) of the Sentencing Act 1995

⁹⁵ http://www.courts.dotaq.wa.gov.au/v/victim_impact_statement_print.aspx

⁹⁶ National Center for Victims of Crime

<http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32515>

⁹⁷ P G Cassell "In defense of Victim Impact Statements" Ohio State Journal of Criminal Law [2009] Vol 6:611

⁹⁸ <http://www.ojp.usdoj.gov/ovc/rights/legislation.html>

⁹⁹ P G Cassell "In defense of Victim Impact Statements" Ohio State Journal of Criminal Law [2009] Vol 6:615

¹⁰⁰ Robert Johnson Anoka County Attorney, Minnesota on "The Use of Victim Impact Statements at Sentencing Hearings in the United States" at the International Association of Prosecutors, Copenhagen, Denmark 2005, http://www.iapcopenhagen.org/Files/Filer/Papers/Johnson_IAPVictimImpactStmts0905.pdf

9.1 Minnesota¹⁰¹

In Minnesota, victims were given rights to make Victim Impact Statements at sentencing hearings in 1988. Victims also have a right to submit impact statements at plea presentation hearings. Victims may also provide an impact statement as part of the pre-sentence investigation and in early release proceedings.

Corrections personnel are required to notify victims when sentencing is due to take place and to inform them of their right to be present and make a Victim Impact Statement. If a victim chooses to participate in a sentencing hearing, they may present the statement to the court or request that the prosecuting attorney or victim advocate present the statement. In the statement, victims can write or speak to the court about their physical or emotional injuries they have suffered, financial losses incurred, the impact of the crime on their family, their feelings about the offender and the overall impact of the crime. Unlike other jurisdictions, crime victims may also request the sentence they feel would be appropriate and to explain the reasons behind their request.

10 Conclusion

This paper has reviewed mechanisms by which the effect of crimes on victims can be considered in the criminal justice process. Common law jurisdictions have provided for mechanisms known as Victim Impact Statements and in some countries Victim Impact Reports. A Victim Impact Statement allows a victim to make known the effects of the crime on them; a Victim Impact Report is prepared by professionals describing the effects of the crime on the victim.

In many common law countries, there is a statutory basis for Victim Impact Statements (e.g Republic of Ireland, Canada, New Zealand, Australia and the United States). In England and Wales, Scotland and Northern Ireland, there is no legislative basis for Victim Impact Statements. In some other common law countries, the provision for Victim Impact Statements is part of a more comprehensive victims' rights Charter or Act such as New Zealand which has the Victims Rights Act 2002 and in the United States, the Crime Victims' Rights Act enacted in 2004.

Usually victims are not allowed to comment on their views on sentencing. However in Minnesota victims are allowed to request a sentence. In some jurisdictions, statements are provided in written form only, while in others victims are allowed to read their statements aloud in court proceedings.

¹⁰¹ The following information is obtained from a paper given by Robert Johnson Anoka County Attorney, Minnesota on " The Use of Victim Impact Statements at Sentencing Hearings in the United States" at the International Conference

Annex A- Breakdown on the use of Victim Impact Statements in Northern Ireland 2006-2012¹⁰²

Year	Business Area	Document Code	Document Name	Number
2006	CRC	VIREP	Victim Impact Statements / Report(s)	13
	MCP	VIREP	Victim Impact Statements / Report(s)	0
				13
2007	CRC	VIREP	Victim Impact Statements / Report(s)	41
	MCP	VIREP	Victim Impact Statements / Report(s)	2
				43
2008	CRC	VIREP	Victim Impact Statements / Report(s)	69
	MCP	VIREP	Victim Impact Statements / Report(s)	2
				71
2009	CRC	VIREP	Victim Impact Statements / Report(s)	87
	MCP	VIREP	Victim Impact Statements / Report(s)	2
				89
2010	CRC	VIREP	Victim Impact Statements / Report(s)	83
	MCP	VIREP	Victim Impact Statements / Report(s)	0
				83
2011	CRC	VIREP	Victim Impact Statements / Report(s)	125
	MCP	VIREP	Victim Impact Statements / Report(s)	2
				127
2012	CRC	VIREP	Victim Impact Statements / Report(s)	9
	MCP	VIREP	Victim Impact Statements / Report(s)	0
				9
Total (June 2006 - 10 Jan 2012):				435

¹⁰² With thanks from the Department of Justice, information received via email 23/01/12. The Department of Justice explains it is not possible to differentiate between Reports and Statement as they are both recorded under a single Ancillary Document Code (VIREP) that CRC denotes Crown Court and MCP denotes Magistrates Court Police, the vast majority are used in Crown Court Cases.

Annex B-Department of Justice Consultation questions on the Provision of Victim Impact Statements and Victim Impact Reports

1. Are the functions of a Victim Impact Statement appropriate? Are there any gaps?
2. How can we ensure that victims understand what the purpose of a Victim Impact Statement is and how might they be used? Would the development of new guidance be helpful and what should this contain? What other measures would assist their understanding?
3. Would placing the entitlement to make an impact statement in legislation make a victim more likely to take up this opportunity? Alternatively, would other enabling measures (such as practice directives and guidelines) be more effective?
4. Should measures be in place, with consent of the victim, to enable disclosure of information in the Victim Impact Statement with other justice organisations with the aim of meeting the victim concerns.?
5. Should we allow for restrictions to be placed on how the Statement is used?
6. In which circumstances would you consider it appropriate for a victim to submit an impact statement? Do you see any practical difficulties with extending the use of such statements in this way?
7. Should others be permitted to read the impact statement in open court with the consent of the victim?
8. Should a victim be given the choice to personally read aloud their written statement in court if they wish to do so, do you consider victims have a desire for such a measure?
9. What would you consider as the appropriate name for an impact statement? Should we opt for a 'Victim Personal Statement' as in England and Wales or should we opt for a 'Victim Impact Statement' as it is called elsewhere. What is your preference?
10. Which organisation should contact a victim with the offer to make an impact statement?

11. Who should complete the Victim Impact Statement? Should this be the victim themselves or should someone else do this on their behalf, using their words?
12. Experience in other jurisdictions indicates victims are more inclined to submit an impact statement for serious offences. Do you think that Victim Impact Statements should only be used for specific offences? If so, what should these be?
14. Would it be appropriate to stipulate in guidance the number of persons who may write a Victim Impact Statement in the case of a deceased or incapacitated victim and to specify their relationship to the victim?
15. Would the arrangements identified above assist children to contribute to a Victim Impact Statement? Are there other measures which could be included?
16. What measures would support vulnerable adult victims to make a Victim Impact Statement? Would specifying the appropriate persons who may be nominated to make a statement be a supportive measure?
17. Do Victim Impact Reports serve a useful purpose and is it worthwhile for them to continue? If so should arrangements be considered to enable a range of organisations to provide a Victim Impact Report?
18. Is there sufficient awareness and understanding of the purpose of a Victim Impact Report? If not, how might we address this?
19. Should protocols and guidance be considered for a Victim Impact Report to be shared with organisations which can offer support to the victim or who have responsibilities for working with the offender? Could they be used to help the justice agencies “signpost” victims to services they may need outside the justice sector?