

The Parole Board  
for  
England and Wales

Practice Guidance for Members  
Duties towards Victims

April 2017

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## **1. Introduction**

This guidance was revised and updated during 2016/17 to reflect the work and improvements introduced through the Victim Project, which ran from August 2015 – June 2016, and following various updated guidance issued by the National Offender Management Service (NOMS) on victim related issues. As part of the project, during May and June 2016 the Parole Board contributed to developing and delivering national training for Victim Liaison Officers (VLO) to help improve understanding of the process.

There were also a number of reviews published by the Victims' Commissioner, with recommendations and standards, which the Parole Board aspire to comply with. The members of the Victim Focus Group have approved the revisions to this guidance.

### **1.1 Our commitments and the Code of Practice for Victims of Crime**

The Parole Board (the Board) is fully committed to fulfilling its duties towards victims.

These duties encompass legal requirements within the statutory Code of Practice for Victims of Crime (the Code) which in turn observes the wider UK duties contained in Directive 2012/29/EU of the European Parliament and of the Council.

In addition, the Board may from time to time adopt internal policies for what it regards as best practice for dealing with issues that affect victims. Aside from these legal requirements the Board is also committed to treating all victims with sensitivity and respect. The Board undertakes to work in the spirit of the Code in order to give victims every opportunity to participate in parole reviews, while maintaining its common law duty to provide fair hearings.

### **1.2 The Code of Practice for Victims of Crime**

The Code of Practice was revised in both 2013 and 2015 and under the Code the Parole Board<sup>1</sup> must:

- consider all representations that victims have made about licence conditions;
- where a victim has requested a licence condition which has not been included, provide an explanation for the non-inclusion (in the decision letter);
- read a Victim Personal Statement (VPS) if one is submitted;
- consider applications from the victim if they want to attend the oral hearing; and
- consent to a request from the victim to attend in person unless there are good reasons for not doing so.

To read the Code in full follow this link:

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

To read the Directive of the European Parliament in full follow this link:

<http://db.eurocrim.org/db/en/doc/1828.pdf>

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<sup>1</sup> Victims Code of Practice, Chapter 2, Part B, Section 6 (vi), paragraph 6.20

### **1.3 Parole Board publications and victims of crime**

The Board has published:

"Information for Victims", a booklet which sets out for victims how the Board works and answers frequently asked questions victims raise.

<https://www.gov.uk/government/publications/parole-board-information-booklet-for-victims>

A public statement "The Parole Board's Commitment to Victims of Crime" which has been posted on our website.

<https://www.gov.uk/guidance/the-parole-boards-commitment-to-victims-of-crime>

A "Good Practice for Chairs" at oral hearings when victims attend (Annex 1).

### **1.4 The Victims' Commissioner**

The role of the Victims' Commissioner is to promote the interests of victims and witnesses, encourage good practice in their treatment, and regularly review the Code of Practice for Victims which sets out the services victims can expect to receive.

The Commissioner is there to listen to the views of victims and witnesses, understand the criminal justice system from their point of view and try to help improve the services and support available.

More information about the Commissioner's role and work can be found on the website:

<http://victimscommissioner.org.uk/>

### **1.5 Definition of a "victim"**

*Under the Code of Practice, a victim is defined as "a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct" or as a "close relative [This refers to the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provider] of a person whose death was directly caused by criminal conduct."*

The Board, as a service provider, will generally interpret the meaning of "close relatives" on a case by case basis and not usually restrict participation from a guardian or carer of a murder victim, for example.

## **1.6 Victim Personal Statements (VPS)**

Victims are allowed to make a written statement for consideration by the panel, explaining how the crime has affected them, whether it be at a paper review or at an oral hearing. This statement is known as a Victim Personal Statement (VPS).

The VPS may be the same one put forward at trial, or more usually a current statement written specifically for the parole review. Panels must always read any VPS submitted to them, and it will form part of the official dossier submitted by the Secretary of State.

Victims should not feel that they have to seek to attend in person if the case is going to an oral hearing, although there is a growing incidence of victims opting in to this. The VPS will still be read by the panel in any event. The decision whether to seek to attend in person is a personal decision for the victim.

A victim will be supported in preparing and submitting their VPS by a named Victim Liaison Officer (VLO) from within the National Probation Service (NPS).

## **1.7 Purpose and content of the VPS**

Victims often ask what difference does a VPS make and this does require careful explanation to accurately convey the important, but subtle way the VPS is used, and managing expectation and understanding.

The VPS provides the victim with an opportunity to explain in their own words how a crime has affected them. It can provide useful context and information for the panel about the impact of the offence on the victim.

The VPS does not *directly* link to the panel's decision. This is because the panel's focus is on risk assessment, which is not the focus of the VPS. The VPS does allow the panel to direct questions to the prisoner regarding impact of their behaviour, insight into their behaviour, remorse, empathy and assessing licence conditions. It gives the panel insight into the original offence and the impact of those affected.

The Board ultimately makes decisions based on the prisoner's current risk. In most cases, the victim is unlikely to have current information relevant to risk assessment.

The VPS should, as far as possible, consist of pure impact. This may be physical, psychological, emotional, financial or any other kind of impact. The VPS should provide the victim's views about:

- the original impact of the offence when it was committed;
- the lasting impact of the offence since it was committed; and
- the impact that the prisoner's release would have, including on them, their family, their community, or those with close ties to them or their family.

In some instances victims will wish to supplement their statement with photos or other documents as evidence of the impact the offence has had on them. There is no hard and fast rule on this but in general photos are not encouraged as the panel are very limited on how they can use such material. However, where a victim feels that this will support their statement and they are determined then members are asked to view this sensitively, and avoid any additional stress to the victim by refusing such material.

The victim should be advised not to include the following:

- views on whether the prisoner should be released or transferred to open conditions, as that will be based on risk and the victim is unlikely to have any up to date information about current risk;
- Threats or critical comments to or about the prisoner or the Parole Board

If victims include an opinion on whether the prisoner should be released, the Board is obliged to disregard it. The VLO must explain this to victims and encourage them not to put such material in their VPS.

Referring to sentencing comments made by the trial judge may provide victims with an alternative means of expressing their concerns in a way that would be acceptable to the panel. However, if the victim insists, the VLO will not remove any material from the VPS.

If a victim wishes to leave such statements in and to attend the oral hearing to read their VPS, the panel Chair may ask them not to read the part which gives a view on release. Panel Chairs are asked to be aware of the effect on the victim of being asked to remove part of the VPS on the day and be sensitive to this issue. As such, it may be more appropriate to let the victim read the statement without drawing too much attention to the contentious parts.

Detailed information regarding the purpose, content and format can be found in the Victim Contact Service Manual.

<https://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-48-2014-victim-contact-service-guidance-manual.doc>

## **1.8 Entitlement to make a VPS**

Under the Code, victims who have a statutory right to the National Probation Victim Contact Service, have the right to make a VPS. Victims have a statutory right if they are the victim of a specified sexual and violent offence, where the offender is sentenced to 12 months or more in prison. A victim is unable to submit a statement unless they are signed up to the Victim Contact Service. This is because the VLO is responsible for informing the victim about the VPS, and helping the victim to submit it and will only be aware if the victim is signed up. The Victim Contact Service entitles victims to be kept updated on the prisoner's sentence and progression, as well as advising them of when the opportunity to submit a VPS arises. VLOs are responsible for informing victims of these details.

There will be victims from crimes committed before the Victim Contact Service was introduced by way of legislation, in 2001. Such victims, who would otherwise have had a statutory right to the service, but for the date of sentence, can join the service retrospectively, and can submit a VPS at a parole review.

Occasionally, the NPS may use discretion to offer the service to victims who do not meet the criteria above. Only exceptionally will it be appropriate for a victim, who has contact on a discretionary basis, to make a VPS to the Board, particularly if they are not the direct victim of the offence.

Probation Instruction 03/2017 "Probation Victim Contact Service – non-statutory cases" was published in April 2017 and aims to ensure consistency of practice when considering discretionary contact for those who fall outside of the statutory definition. The criteria which the NPS use for considering discretionary contact has been revised and narrowed.

Where the offence has resulted in a death, it is often the case that a number of family members, and sometimes even close friends of the bereaved victim, wish to make a VPS. In such cases the Board will aim to be flexible about accepting such statements.

### **1.9 Writing the VPS**

The VPS is usually written by the victim themselves with guidance and support from the VLO. It should be concise and normally not take more than about 10 minutes to read.

Occasionally, it is requested that the VPS is written by another person on behalf of the victim and this is permissible, but ordinarily at the discretion of the Board member assessing the case.

Where possible the Board should accept a VPS as submitted and in most cases the VLO has advised the victim on best practice. However, in some cases it may be necessary to ask the victim to change or alter their VPS, as some of the content may be inappropriate or irrelevant.

Members should bear in mind that such requests can cause anxiety and stress to the victim and so a clear explanation of the reason for the request should be made.

Further details regarding the requirements and responsibilities of the Offender Manager (OM) and Victim Liaison Officer (VLO) under the Victim Contact Service are detailed in Probation Instruction (PI 48/2014). This includes instructions for helping victims complete their statements, how they should be submitted to the Board, how to request to attend an oral hearing or seek to withhold all or part of a statement.

### **1.10 Presenting the VPS**

Under the Code, the victim can choose to have the written statement placed before the panel for the panel members to read for themselves.

Where the case is being heard at an oral hearing, the victim may:

- request to be present and have the VPS read on his or her behalf
- request to be present and read the VPS in person
- request that someone else attends to read the VPS on his or her behalf
- request to read the VPS via Video-link (if available)
- request to pre-record the VPS on audio/video tape or DVD for it to be played to the panel (if facilities are available)

In all of the above, the victim can only request that the prisoner be present or absent during the reading. Where the prisoner's wishes are not in accord with the request, it will be up to the panel Chair to make the final decision. A prisoner cannot be forced to attend.

## **2. Member Case Assessment**

### **2.1 Inclusion in the dossier**

The VPS should form part of the dossier, but is not a mandatory document. As the Board has powers to issue directions concerning any evidence put before it, MCA members can make such Directions as required for or about the VPS. However, the Board cannot Direct that a VPS be submitted. Directions relating to the VPS (and/or victim) can be issued at the MCA stage or in preparation for the oral hearing, if one is taking place, via MCA Duty Member Directions or Panel Chair Directions (PCD).

Key points to consider at MCA stage:

- Is the victim planning to submit a VPS?
- Is the victim or (unusually) another person writing it on their behalf?
- Is the VPS included in the dossier yet?
- Are multiple victims planning to submit a VPS?
- Is the content appropriate?
- Does the VPS contain any new information?
- Is non-disclosure requested?
- Is a Gist suitable?
- Is the victim requesting permission to attend?
- Who will read the VPS out, if presented at the oral hearing?
- How will the statement be delivered e.g. in person, Video-link, pre-recorded?
- Are there any dates to avoid?
- Has the victim requested am or pm hearing?
- What is the best timetable
- What licence conditions are required
- Are there reasons for exclusion zones and detailed map?
- Is the prisoner unrepresented?

All these matters should, where applicable be dealt with at the MCA stage and, if directions are necessary, both parties should be provided with sufficient time (7 days) to challenge those issued regarding the VPS.

## 2.2 Is the victim planning to submit a VPS?

This information should be contained in the Probation PAROM1 form for review cases and on Parts A, B and C for recall cases. If the VPS is available at the time of dossier compilation, it will be added and form part of the full dossier disclosure (subject to any non-disclosure applications). However, in practice the VPS is often added at a later stage.

Therefore, it is important to check these forms as this will indicate if there are victim issues and if a VPS has been provided, or is expected. Both review and recall forms include the following questions:

1. As part of designing the Risk Management Plan you must contact the VLO. On what date did you do this?
2. Have you informed the VLO of the hearing date? On what date did you do this?
3. Are the victims engaged in the victim contact service?
4. Do victims wish to submit a Victim Personal Statement? Where possible the VPS should be submitted no later than 4 weeks before the oral hearing.

*Question 2 will almost certainly not be completed as the date of the MCA paper review or oral hearing in most cases will not be known at the time the report is completed.*

## 2.3 Is the victim or (unusually) another person writing it on their behalf?

Members may be asked to confirm that they are content for the VPS to be written by another person on behalf of the victim. This is appropriate where writing the statement will cause the victim overwhelming stress or anxiety and it is preferable for someone else to write it. Whilst unusual, there are no procedural issues with this and in most cases it can be agreed.

## 2.4 Is the VPS included in the dossier?

If, when the MCA member receives the dossier a VPS is indicated but not present, it should be flagged in their directions. A member cannot direct that a VPS should be provided and therefore they can only enquire and/or remind the Probation Service.

The VPS should be received at the same time as the dossier is served on the Board and the prisoner i.e. 8 weeks following the referral from the Secretary of State (18 weeks prior to the target conclusion date of the review). This is set out in the Generic Parole Process timetable (GPP).

However, it is recognised that it is not always possible for the paper VPS and any digital recording thereof to be ready at this point. Therefore the Board has advised HMPPS that statements must be served on the Board by week 12 of the review timetable, providing an additional 28 days for the VPS to be submitted. (NB – this is the same timeframe that the prisoner is given to provide written representations following the disclosure of the dossier.)

Where the relevant agency is unable to comply with this 28 day deadline, the Board will do all it can to allow the statement to be submitted, as long as it does not unduly delay the review. Holding up the MCA assessment longer than 28 days could lead to a claim of unlawful delay by the prisoner.

If a VPS is not received by the time of the MCA assessment then the case may be concluded without sight of the VPS. We have made HMPPS aware of this and we are all working to improve this process to ensure victims are not disappointed to learn that their VPS was not considered. This is particularly relevant for IPP cases, where a release can now be directed on the papers alone (as well as those cases where a recommendation for a transfer to open is being made on the papers).

Where a case is directed to an oral hearing and a VPS is expected but not yet received we have informed HMPPS that it must be submitted 28 days ahead of the oral hearing date. We do recognise that this timeframe can sometimes be challenging and so if a VPS is received outside of this time the Board will do everything it can to accept it, bearing in mind any processing of non-disclosure (and potential appeal) that may be submitted. Please see 2.8 below and refer to the guidance on non-disclosure in the handbook for more detail on this.

The above timeframe does not apply to recall prisoners as they do not follow the GPP review timetable.

Recall cases present particular challenges in terms of provision of a VPS for paper reviews as the timeframe provides only a small window for the VLO to work with the victim to deliver a statement.

## **2.5 Are multiple victims planning to submit a VPS?**

The Board does have the power to limit the number of victim statements but will only use this on rare occasions. Where a number of members of a murder victim's family, for example, wish to put forward separate personal statements, it may be appropriate to direct that one or two representative views are submitted. The Board will always aim to be sensitive to the needs and wishes of the victims in these cases.

If multiple statements are submitted from victims that are unrelated or unknown to each other, then each VPS should be accepted.

## **2.6 Is the content appropriate?**

As set out in 1.7 above, the VLO will advise the victim of content which is not appropriate to be included in the VPS. This can include:

*Threats to the prisoner and others* - HMPPS has made it clear that it will remove from a VPS any material that contains threats either to the prisoner or a third party, or language that is offensive or inappropriate. If such material does appear, a direction can be issued requesting that it be removed.

It may not always be appropriate for the panel to simply disregard such information. This may be, for example, that it is indicative of intent to harm the prisoner or disrupt proceedings, and so may need to be factored into planning for oral hearings.

There may also be health and safety issues, if the prisoner's family is also in attendance as observers, and again could increase the risk of an untoward incident at the hearing.

*Victim opinions* - the Board recognises that the Secretary of State has stated in PI 48/2014 that "If victims include an opinion on whether the prisoner should be released, the Parole Board is obliged to disregard it<sup>2</sup>.

Where possible, these situations should be dealt with at MCA stage, via a direction to have the reference removed from the statement, taking into account the sensitivities set out in 1.9 above.

## **2.7 Does the VPS contain any new information?**

Anything relating to risk should not appear in the VPS. If it appears that the statement contains new information potentially relevant to the prisoner's risk, the member may:

- Refer the matter to a Secretary of State Representative to consider and take up with the victim or relevant agency. This may result in the statement being redacted.
- In exceptional circumstances the MCA member may direct that the victim attends the panel hearing as a witness in order to give evidence (and potentially to be cross-examined) in relation to the information. This is to be avoided wherever possible.

Consideration will need to be made by the authorities as to how that information may be submitted without the need to directly involve the victim. Avoiding re-victimisation (for example through questioning and cross-examination) is critical and it is therefore preferable that any such information is removed from the VPS and provided to the relevant agency.

In such cases the information will usually be provided to the Offender Manager to consider including in their report, or perhaps by a Victim Contact Report from the VLO.

Either party (i.e. the Secretary of State for Justice or the prisoner) may make written representations to the Board in relation to the statement or to any of his/her directions.

## **2.8 Is non-disclosure requested?**

It should be clearly understood by victims that normally the statement and any recording thereof will be disclosed to the prisoner and their legal representative in its final form. The default position is to assume full disclosure will occur.

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<sup>2</sup> PI 48/2014 Part VI, section 25.3.3 <https://www.justice.gov.uk/offenders/probation-instructions>

However, there will be instances where victims misunderstand the process or believe that they can withhold the information from the prisoner, and can become distressed when informed otherwise.

If the victim wishes to object to such disclosure they will need to provide written notification to this effect (giving reasons) to the Secretary of State for Justice when the statement is sent and the PPCS may make the appropriate non-disclosure application to the Board (and thus to the MCA member or panel Chair).

The application will be decided in advance in accordance with Rule 8 of the Parole Board Rules 2016 and MCA Guidance Annex 4.

It should be noted that it is only in rare circumstances that the Board will lawfully be able to direct that a VPS is withheld from a prisoner. The criteria for withholding information (Rule 8) includes where disclosure would adversely affect national security, prevention of disorder or crime, or health and welfare of the prisoner or any other person.

If a VPS is withheld from the prisoner, it will usually still be presented to the legal representative, if there is one. The legal representative makes an undertaking not to share it with the prisoner and can be liable for severe sanctions, should they do so. This is set out in Rule 8 (7).

Where the non-disclosure request has been refused the Secretary of State for Justice is informed and the victim then has the option to withdraw the VPS. In these circumstances panel members who have seen the VPS will ordinarily recuse themselves and new members appointed.

Detailed guidance for HMPPS staff on handling sensitive information provided by victims is set out in PSI 15/2016 PI 14/2016 – Handling of sensitive information, including information provided by victims, for the purpose of Parole Board reviews (published autumn 2016).

## **2.9 Directing Gists**

PSI 15/2016 PI 14/2016 – “Handling of sensitive information, including information provided by victims, for the purpose of Parole Board reviews”, instructs that any VPS submitted with an application for non-disclosure will also have a gist submitted alongside it. However, if a gist is not provided, one can be directed. The Secretary of State’s Representative or relevant PPCS Case Manager will undertake writing these and guidance has been issued on preparing a good gist.

Making use of a gist ensures that the victim can be assured that their original statement has been seen by the panel, and that fairness to the prisoner has been maintained. A gist can also avoid the complete withdrawal of the VPS.

Gists can be particularly helpful if the prisoner is unrepresented as it provides a summary of the content without disclosing the full details; and overcomes the problem of there not being a legal representative to provide assurances to the prisoner.

However, please note a gist will not be submitted without the consent of the victim.

Where a member has made a ruling on disclosure, either party can appeal against this. In such cases, the matter is referred to the Chairman or Vice-Chairman of the Board. This decision will be final.

Further guidance for members regarding requests for non-disclosure of the VPS to the prisoner is contained in the [video/DVD entitled "Non-disclosure tutorial for the Parole Board"](#) delivered by Sir David Calvert Smith (former Parole Board Chair 2012-16) and MCA Guidance Annex 4.

### **2.10 Is the victim requesting permission to attend?**

A request to attend in person can be granted at MCA stage although the final decision rests with the panel Chair. If a victim requests to attend and the case is not progressing to oral hearing, then a short note should be sent to the case manager asking them to provide the VLO with an explanation that no oral hearing will be taking place.

In practice requests will quite often come in after the MCA stage and so will be presented to the panel Chair for a decision.

**MCA members and panel Chairs are asked to consider these requests speedily as the anxiety and stress that victims can experience whilst waiting to hear if their request has been approved can be significantly exacerbated by delay.**

### **2.11 How will the statement be delivered e.g. in person, Video-link, pre-recorded?**

If the statement is to be read aloud at an oral hearing then it is helpful to ensure all logistics are agreed in advance and all parties know what will happen.

Where a case is being directed to oral hearing, the victim can request to deliver the VPS via a live Video-link or by a pre-recorded statement. Careful consideration should be given to the suitability of the VPS to be given in these ways and the MCA member should be satisfied that this will not present any issues on the day.

Supporting or empathising with a victim over a Video-link can be difficult and result in awkward or upsetting situations. MCA members should also check if someone will be on hand for equipment set up and technical support and that all parties are aware of the arrangements. Technical problems, delays, or undue fuss can exacerbate the anxiety and stress of the victim.

The Ministry of Justice is responsible for providing facilities for the playing of audio/video/DVD recordings and for the provision of Video-link. Any audio/video tape or DVD must be limited to a reading by the victim of the written statement. The written statement must accompany the audio/video tape or DVD.

It should be noted that facilities and equipment to undertake and playback pre-recordings are limited and so these arrangements may need to be thoroughly checked ahead of any hearing.

### **2.12 Who will read the VPS out, if presented at the oral hearing?**

Arrangements about who will read out the VPS (if it is not the victim directly) can be decided post MCA. See sections Reading the VPS on the victims' behalf and Victims under 18 years old for more guidance.

### **2.13 Are there any dates to avoid?**

Where possible, and if known, dates of reviews or oral hearings should avoid coinciding with key dates related to the index offence. For example if a review falls on or around the anniversary of the offence, or of a funeral for example it can make the Board look insensitive. If such dates are known, these can be highlighted in listing notes and they will be taken into consideration when scheduling hearings. It is the VLO's responsibility to ask victims about dates to avoid and pass those to the PPCS to forward to the Board.

### **2.14 Has the victim requested am or pm hearing?**

If the victim has to travel a considerable distance on the day of an oral hearing, or have to make childcare or other arrangements, they may have requested a preference for the case to be heard in either the morning or afternoon. Where practicable, the Listings Team will aim to accommodate such requests, if they are highlighted ahead of scheduling. Panel Chairs may wish to consider such arrangements when planning the day.

### **2.15 The timetable**

The Parole Board Case Managers have been advised to remove specific details of the victim from the timetable, and so this may only state "victim" or "victim party" rather than state the relationship to the victim or deceased.

### **2.16 Licence Conditions**

Any licence conditions put forward by the victim should be included in the PAROM1 or Part B/Part C for recall cases. The VLO may also include them in their Victim Contact Report with their views on any requested licence conditions.

Victims who qualify for the statutory Victim Contact Service have the right to make representations about licence conditions that relate to them and must be informed about relevant conditions which are included in the prisoner's licence under the statute of 35 of the Domestic Violence, Crime and Victims Act 2004.

In cases where the victim does not qualify for statutory contact, but where the NPS has used discretion to provide them with the service, the victim receives the same level of service as those with a statutory entitlement, and will be able to make representations about licence conditions.

Licence conditions should be necessary and proportionate and should take into account the likely risk to a victim, which could be actual or perceived/psychological. It does not necessarily have to be limited to actual/physical risk.

Victims will be supported to request licence conditions that will make them feel safer and if this includes the real possibility of coming face to face with an offender, with psychological impact then they may be included. VLOs will advise victims that exclusion zones and non-contact must a) present as proportionate b) not infringe the free movement of the offender unnecessarily and c) be enforceable by the NPS.

Where the victim has made representations, they are made aware that the Board will not always decide to make the precise conditions requested. The Board has a duty to balance the rights of the victim and family against the rights of the prisoner and family. All licence conditions must be necessary, proportionate and manageable in order to be lawful.

### **2.17 Naming victims on the licence**

Licence conditions requiring a prisoner not to contact the victim or members of the victim's family should ordinarily include the names of the individuals to whom the 'no contact' condition applies. However, there may be circumstances particular to a case where the naming of an individual is not appropriate where placing a victim and/or family member's name on the licence could cause additional emotional distress. It is possible therefore to name some victims/family members and not others.

In some cases the victim specifically requests that their name not appear on the licence. In addition, if victims are not named specifically the licence can require the prisoner not to contact any person whom they know to be a victim of the crime.

### **2.18 Reasons for exclusion zones and detailed map**

The following section includes extracts from the Members' Handbook:

*The purpose of an exclusion zone condition must be clear and necessary, and the size of the exclusion zone reasonable and proportionate. Furthermore there may be occasions when it is necessary to balance the views of the victim with the need to support an offender's effective resettlement. For example, in some cases the offender, with prior approval from the supervising officer, may need to cross an exclusion zone by a prescribed route to get to work, or to enter the zone in order to seek medical care. However, it should be presumed that the access is only granted where there are no other alternatives – the offender's convenience is not a reason for modifying an exclusion zone.<sup>3</sup>*

*The exclusion area must be defined precisely and therefore requesting a map and the reasons for the exclusion zone should be directed at MCA. A blanket ban on entering a large town, for example, will not always be acceptable unless the reasons for placing the zone can be supported by sufficient evidence. The zone should be no bigger than is*

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<sup>3</sup> Members' Handbook Section B Casework and Policy Guidance Chapter 6 Sections 2.23-2.29

*reasonably necessary to achieve the objective sought. In order to define the exclusion area as clearly and precisely as possible, it is necessary to draw the boundaries on a map or diagram. The offender must be in no doubt where the exclusion zone begins and ends.*<sup>4</sup>

The main difficulty that can sometimes arise is where a requested exclusion zone is disproportionate, and this becomes an issue at an oral hearing (that can result in an adjournment). It is therefore important to consider any exclusion zones, ideally with a clearly detailed map, and to ensure that the reasons for the exclusion are fully provided. If a member comes across a potentially inappropriate request then it can help if this is checked as early as possible. Asking the prisoner or the legal representative if there is likely to be any challenge can give an indication if further information is needed before proceeding.

### **2.19 Is the prisoner unrepresented?**

If a prisoner is not represented, consideration should be given to suggesting that the prisoner be advised and supported to secure representation, prior to the hearing. However bear in mind that some prisoners are not eligible for legal aid.

Care should be taken to ensure that fairness is maintained when victims are engaged in the process for reviews of unrepresented prisoners. Explaining the process, particularly if the victim is attending the oral hearing, is important to avoid any complications on the day.

Non-disclosure presents particular difficulties where the prisoner is unrepresented. If the VPS is submitted with an application for non-disclosure then the unrepresented prisoner is deemed to have automatically appealed against the application (set out in section 3.26 of PSI 15/2016 Handling of Sensitive Information). In such cases, the PPCS will be given 7 days in which to provide any further information, after which the matter will be put before the Parole Board Chairman, in the same way as any other non-disclosure appeal.

Where non-disclosure is upheld, a feasible solution is to ask arrangements for someone else, who is neutral, to sit in when the VPS is being read out. They can then assure the prisoner that all was in order. This could be a member of the OMU at the prison, or a key worker, or member of the Chaplaincy for example.

Where possible, try to avoid either the Offender Manager or the Offender Supervisor undertaking this duty, as it may be inappropriate, for example there could be a conflict of interest issue. However, if this is the only solution available then it is advisable to seek the agreement of the parties in advance.

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<sup>4</sup> Additional Licence Condition Criteria and Table .Suggested wording from PSI 18/2014. See Chapter 6 of the Members' Handbook for further guidance

Where the VPS is extremely complex or a critical aspect of the review it is possible for a Special Advocate to be instructed to represent the prisoner. Circumstances where a Special Advocate is needed are very rare and this should only be considered where all else has failed, and it is considered absolutely necessary. Advice from the Legal Adviser or Practice Adviser should be sought where you consider a Special Advocate may be required.

### **3. Pre Hearing Stage – preparing for the oral hearing**

Panel Chairs are asked to read the MCA section in this document as several points may also be relevant at the pre-hearing stage.

The most important thing is to cross-check that a VPS has been received where the dossier indicates one is to be provided. If it appears to be missing, then panel Chairs can make enquiries about this, either informally with the case manager or via a direction. One enquiry is considered sufficient (but remember a VPS cannot be directed). Where the VPS was not submitted at the MCA stage panel Chairs are likely to be involved in handling issues resulting from a delayed or late submission of a VPS.

Matters that may need consideration include all those that arise at the MCA stage, but crucially:

- Requests to attend the hearing
- Confirming who will read the VPS
- If anyone under 18 is involved
- Is the content appropriate?
- Non-disclosure requests
- Unrepresented prisoner issues
- Reasons for exclusion zone and map

### **4. The Oral Hearing**

Attending a prison or using the Video-link can be a daunting prospect for a victim and the possibility of facing the prisoner can be very stressful. Victims' groups advise that the experience can trigger memories and responses associated with crime as though it had just happened. Dealing with victims in a sensitive and understanding way can alleviate some of these anxieties.

Panel Chairs are asked to read the checklist for chairs at oral hearings (when victims attend) as this sets out good practice and helpful tips. See Annex 1.

#### **4.1 Reading the VPS at the start of the hearing**

The normal practice should be for the victim, if attending in person, to read their statement to the panel at the start of the hearing. Normally the prisoner will not be present but the legal representative will be, if there is one. However, this can vary, as sometimes the prisoner asks to attend, and sometimes the victim asks the prisoner to be present.

The victim must stick to reading only the submitted content of the VPS and will not be allowed to add anything beyond the written statement. Where a Direction has been made to remove wording from a statement, the victim attending must only read out the redacted version of the statement. In most cases the VLO will have advised the victim of the process. The Board recognises that victim participation in this way can be a difficult and emotionally distressing experience and panels will try not to interrupt victims while delivering their statements.

However, if the victim does add content to the statement which is offensive, potentially inflammatory or prejudicial, the Panel Chair can intervene and ask the victim to return to their pre-prepared statement. The victim should not be questioned about the statement.

Once the victim has read the statement, the victim and their supporter will be asked to leave.

The panel will then commence with the hearing.

#### **4.2 Reading the VPS on the victim's behalf**

In some cases someone else will read out the VPS on behalf of the victim even when they are attending. This should always be arranged in advance. It will usually be the Secretary of State Representative, a victim supporter or very rarely the VLO.

There are occasions when none of these options are available, and someone else needs to be assigned to read it out. This can be complicated, as there can sometimes be a conflict of interest and care should be taken if this happens. Suitable individuals such as a Chaplain, an IMB representative, a member of the Offender Management Unit team or the Offender Supervisor may be suggested. However, if the Offender Supervisor, or someone else closely linked with the prisoner's supervision is selected, then all parties must be advised and confirm that they are content with the arrangement.

#### **4.3 Support for the victim on the day**

If the victim is attending the hearing in person they may apply to be accompanied by a supporter. This would normally be a family member or friend and so the request will often come with at least two people's names.

There will always be a Secretary of State Representative present at these oral hearings who will act as a support to the victim.

Members should note that the VLO no longer attends prison establishments to support the victim on the day of the hearing and it will usually be the first time that the victim will have met the Secretary of State Representative. As such, they will be supported by someone new to them which may be disconcerting for some.

Arrangements to ensure that the victim is met, escorted, and kept apart from the prisoner whilst attending the prison establishment are the responsibility of the Secretary of State Representative.

However, it may be prudent to enquire as to the arrangements on the day to ensure due consideration has been given to avoid any issue arising. For example checking that there are enough rooms available to avoid prisoner/victim contact. Also, it can help to stagger the arrival times at the gate to avoid any other unforeseen contact with either party.

#### **4.4 Video-link/Pre recordings**

Where the victim is presenting their statement via video-link the VLO will usually be in attendance to support them. In these instances the Secretary of State Representative will not be involved.

Suitability for Video-link should already have been considered and advance notification to all parties of the arrangements should have taken place ahead of the day. However, it may be useful to review this in case any circumstances have changed, which could make handling on the day difficult or inappropriate in some way.

Whilst not their responsibility, it is suggested panel Chairs check on arrival at the hearing that both the victim and panel can be seen and heard on the Video-link before it goes live. This may involve prison staff in the hearing room and the VLO or another staff member in the remote Video-link room having a "run through" before the victim arrives in the Video-link room.

It is advisable for Chairs to initiate these checks and not assume that they have been made already.

#### **4.5 Attendance of the represented prisoner**

The attendance of the prisoner during the presentation of the VPS is a matter for the panel Chair to decide. The panel Chair will take account of the wishes of both the victim and the prisoner, if a view has been put forward, before reaching a decision.

Where a prisoner indicates that they do not want to be present, the Parole Board will not force them to attend. Whilst it is recognised that some victims want the prisoner to be present while they read their statement, forcing the attendance of the prisoner could be detrimental to the Parole Board's ability to make a full assessment of risk. For example, a prisoner who does not want to attend but feels forced into attendance may not then be open to providing honest answers to the panel's question about their attitude to the index offence or victim empathy. In these circumstances the legal representative will remain.

Where the victim does not want the prisoner to be present, but the prisoner does want to be present, panel Chairs will normally seek to agree that the prisoner should be excluded from that part of the hearing where that is possible. The prisoner has a right under the Parole Board Rules to be present throughout the entire hearing, but panel Chairs will ensure that victims' wishes are made known to the prisoner and where possible reach an agreement that the prisoner does not attend to hear the presentation of the VPS. Where the prisoner is legally represented, however, their legal representative will usually be present.

In situations where there has been a successful application to withhold the VPS from the prisoner, and the victim is attending to deliver their VPS in person, the prisoner will not be present. Generally, the prisoner's legal representative will be present (and have seen the VPS).

#### **4.6 Attendance of the unrepresented prisoner**

Where the prisoner is unrepresented and does not want to attend whilst the VPS is read out it is possible for a member of the prison staff to sit in to ensure fairness. Ultimately, it will be for the panel Chair to be satisfied that the hearing is fair.

The prisoner will in any case most likely have seen the VPS but it may be worth the Chair checking that the Offender Supervisor has made sure the prisoner has seen and read it.

On occasion there may be a prisoner who wants to attend but the victim does not want them present. This becomes even more complicated if there has been a successful application to withhold the VPS from the prisoner. Where possible, the prisoner should be assured that fairness will be maintained, and as already mentioned seeing if someone neutral can be secured to sit in on the reading of the VPS on behalf of the prisoner.

#### **4.7 Victims under 18 years old**

A victim under 18 years of age will not normally be allowed to attend the hearing in person due to the security restrictions involved in entering a prison. A victim under 18 may choose one of the following:

- have the written statement placed before the panel for the panel members to read for themselves;
- have the statement read on his or her behalf
- request to read the statement via Video-Link or record it on audio/video tape or DVD for it to be played to the panel (if facilities are available).

In accordance with the Code of Practice, the Parole Board will accept a VPS from young victims and from their parents or guardians. Where the victim is under the age of 18 years, their parent or guardian may request to attend the hearing on their behalf in order to read out the statement and any statement of their own.

### **5. The Decision**

#### **5.1 Referencing the victim's involvement**

It is good practice (and a recommendation from the Victims' Commissioner) to reference that a VPS was read by the panel at the start of the decision letter, when setting out the details of the dossier. Additionally, reference should be made where a victim (or their supporters) attended the oral hearing.

This is important to provide assurances to the victim that their statement was indeed read by the panel. This applies at both MCA and oral hearing stages.

## **5.2 Licence Conditions**

Panel Chairs should be mindful of the requests regarding naming victims on licence conditions, and where possible and feasible, agree to such requests.

Where a Parole Board panel has not made the licence conditions requested by a victim, or issued an adapted version, the Panel will explain why it has not done so in its decision. This should include reference to the principles of the request being necessary and proportionate.

This information will be passed on to the victim by their VLO. This is a requirement as set out in the Code of Practice.

## **5.3 Sharing the decision**

Laws on data protection and confidentiality mean that the victim will not be entitled to see the dossier or a copy of the panel's written reasons. HMPPS, via the VLO, will be responsible for informing the victim of the outcome of the Parole Board hearing<sup>5</sup>.

The OM should provide the VLO with a copy of the decision letter so that the victim can be given appropriate information about the decision. However, this practice varies across the regions. The Parole Board position is to support the VLO being provided with the full decision.

## **5.4 Acknowledging and thanking the victim**

In addition to the verbal thanks from the panel Chair on the day, since spring 2016, the Parole Board Chief Executive now writes to the victim thanking them for attending and contributing to the hearing. The notelet is sent to the VLO requesting they pass it to the victim on behalf of the Parole Board.

If anything untoward or of note happens on the day it would be helpful for the Chair to inform the Secretariat (relevant Case Manager or Stakeholder and Communications Officer) so that the letter can be appropriately worded.

## **5.5 Deferral or Adjournment**

If the case is deferred or adjourned on the day then consideration on whether the victim needs to re-attend should be given. Where possible, the victim should be asked for their preference, and this agreed to. However, the final decision will rest with the Chair.

There should not be a need to issue a new VPS in these instances.

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<sup>5</sup> PI 48/2014 Part VI, section 24.7.5 <https://www.justice.gov.uk/offenders/probation-instructions>

Where a deferral or adjournment is required please do bear in mind the additional anxiety this may cause the victim and therefore dealing with them speedily will be appreciated.

It should be noted that if the victim wishes to attend the reconvened hearing the final decision will rest with the Chair. Attending more than once does add a financial burden for the victim and so this should be taken into consideration when rearranging the hearing – perhaps the victim could read it out by videolink the second time, for example.

## **6. Complaints**

Risk assessing the prisoner is at the centre of what the Board does and ensuring a fair and timely parole review takes place is paramount. However, where victims are engaged in a parole review the Board will do everything possible to ensure they are treated with sensitivity and compassion. Sometimes this can involve a situation to which the resolution can appear to be unfair to the victim. The panel Chair will aim to accommodate all parties but must always consider that proceedings will provide a fair and timely hearing for the prisoner.

If a victim believes that the Board has breached any of its duties under the Code of Practice for Victims<sup>6</sup>; or has a grievance about any other issue involving their treatment by the Board, that person may make a formal complaint. The Complaints Policy is available on the GOV.uk website.

The Board's complaints handling processes have been informed by the Victims' Commissioner's review of victim complaints and in line with good practice as set out by the Parliamentary and Health Service Ombudsman.

## **7. Further help and guidance**

If further guidance is needed members are encouraged to contact one of the following:

- the MCA Duty Member
- Sophie Klinger, Practice Adviser (0203 334 5329)
- Balbir Matharu, Legal Advisor (0203 334 4755)
- Glenn Gathercole, Head of Business Development (0203 334 4392)

## **Annexes**

Annex 1 - Good Practice for Chairs at Oral Hearings where victims are attending

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<sup>6</sup> Victims' Code of Practice, Chapter 2, Part B, Section 9