AN EVALUATION OF THE PILOT VICTIM STATEMENT SCHEMES IN SCOTLAND

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Scottish Executive Social Research 2007
ACKNOWLEDGEMENTS

Many thanks are due to the following people who helped us in our evaluation:

Mary Munro, who undertook the face-to-face interviews with victims.

Simon Anderson, Christine Sheehy and their team of interviewers at the Scottish Centre for Social Research, who undertook the telephone survey of victims.

Shona Wilson, who was employed as a part-time research assistant for a large part of the project. She provided invaluable assistance with many aspects of the work.

Kevin Brown and Yvonne Melvin, who undertook research for the literature review section and content analysis section respectively.

Julia Murphy, Linda Hutton and Euan Dick, our project managers at the Scottish Executive.

Paul Brownlee, Steve Egan and Sara Evans at Crown Office, who set up and administered the electronic data transfer system.

The staff at the pilot sites, who helped us in numerous ways.

The court staff who assisted us in arranging interviews with sheriffs and High Court judges.

All those who took part in interviews, whether victims or criminal justice professionals.
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EXECUTIVE SUMMARY

This report presents the findings of an evaluation of the pilot victim statement schemes. The research was commissioned by the Scottish Executive and was undertaken by researchers in the University of Aberdeen School of Law. The pilot victim statement scheme commenced on 25 November 2003 and concluded on 24 November 2005. They operated in 3 pilot sites – Ayr, Edinburgh and Kilmarnock – in relation to certain “prescribed offences”.

The pilot schemes provided an opportunity to victims of the prescribed offences (primarily offences against the person, including sexual offences) to make a statement about the effect of the crime on them personally. That right was triggered once a decision to prosecute had been taken. Where a victim statement was made and the accused was convicted, the prosecutor was obliged to present that statement to the sheriff or judge, who was in turn obliged to take it into account in passing sentence.

This summary presents the most significant findings of the research.

Chapters 1 and 2 provide the background to the research and details of the research methods used.

Chapter 3 presents the findings of a review of victim statement schemes in other jurisdictions. It notes that victim statement schemes already exist, in a variety of forms, in most common law jurisdictions. Accurate figures on response rates are not widely available, the main exception being the pilot schemes which operated in England and Wales at an earlier date and were evaluated between 1997 and 1998. These figures are drawn on in evaluating response rates in Scotland (chapter 4).

Chapter 4 examines response rates to the scheme, and considers whether these varied over time and according to factors such as gender, offence category and age. The overall response rate to the Scottish scheme was 14.9%. This is substantially lower than under the pilot schemes in England and Wales (30%), but this can be explained by the fact that the Scottish scheme covered a wider range of offences, including many which would have been insufficiently serious to have fallen within the pilot schemes in England and Wales.

It is clear that the main factor influencing response rates is the seriousness of the offence, with response rates in murder and death by dangerous driving cases being as high as 60%. Response rates did not differ notably over time or with gender. There was some association with age, with older victims being more likely to make a statement than younger ones.

Chapter 5 examines the outcomes of cases in which victim statements were made. In 24% of the cases in which a victim statement was made, it was not put before the court because the accused was not convicted of a relevant offence.

There is some evidence that cases in which victim statements were made were (a) less likely to be deserted by the procurator fiscal and (b) slightly more likely to result in a sentence of imprisonment. In both cases, however, these outcomes may simply be a consequence of the fact that victims are more likely to make statements in serious cases, which are less likely to be deserted and more likely to conclude with a sentence of imprisonment. (In chapter 7, it is explained that interviews with sentencers suggested that, while victim statements may have occasionally influenced the sentencer at least to consider a sentence of a different nature to the
one he or she was initially minded to impose, they are unlikely to have made a significant
difference to sentences in most cases.)

Compensation orders were more likely to be made in a case where there was a victim
statement than they were in a case where there was no victim statement (8% of statement
cases compared to 4% of non-statement cases).

**Chapter 6** reports the findings of a programme of interviews (both by telephone and face-to-
face) with victims of crime. It finds that by far the most common reason for not making a
victim statement was that the impact of the crime was not perceived as serious (53% of non-
statement makers). Fear of reprisals was occasionally cited, but by a much smaller proportion
of non-statement makers (8%).

The majority of statement makers (85% of the 88 respondents), when interviewed after the
case had concluded, felt that their decision to make a victim statement had probably or
definitely been the right one. Only 6% thought that their decision had probably or definitely
not been the right one.

When asked why they had chosen to make a victim statement, the most common reasons were
a desire to express their feelings about the offence (34%), or to influence the outcome of the
case (28%). Only 5% of statement makers made a statement in order to influence sentence.

Sixty-one percent of statement makers reported that making a victim statement had made
them feel better, but 38% reported that it had not. Thirty-nine percent of statement makers
found the process of making a victim statement upsetting. This may not be an entirely
negative finding, as some statement makers indicated that, while the process had been
upsetting, they had found it cathartic. Of the 34 statement makers who found the process of
making a statement upsetting, 20 reported that it had also made them feel better afterwards.

Comprehension of the scheme was mixed, and victims, when interviewed, were frequently
unaware that any statement made would be shown to the offender or that they could be asked
questions about their statement in court. Of those respondents who were aware that their
statement would be shown to the offender, 23% were encouraged by this to make a statement.
A further 21% were discouraged and 57% stated that it made no difference.

When asked for suggestions for improvements to the criminal justice system, victims
generally placed a considerably greater priority on being kept informed about proceedings
than they did on influencing outcomes.

**Chapter 7** reports the findings of a programme of interviews with criminal justice personnel.
The majority of those interviewed were neutral about whether or not the victim statement
scheme should be rolled out across Scotland, with only a minority of respondents expressing
any strong views one way or the other. It was generally thought that the scheme did not
create significant extra work for either the courts or procurators fiscal, given the additional
resources provided during the pilots.

Some sheriffs were concerned that the statements risked prejudicing the accused by including
biased or irrelevant information, but all sheriffs expressed confidence that they could put such
material out of their mind in passing sentence. (The content analysis of victim statements,
reported in chapter 8, indicates that victims generally followed instructions not to include
irrelevant material. There were, however, cases where the offence(s) of which the accused was convicted were not the same as those originally charged.

Some respondents were concerned that the scheme did not represent value for money given the relatively low response rates, or that the scheme might unduly raise the expectations of victims about the influence their statement will have. (However, it is noted in chapter 6 that only a very small proportion of statement makers (5%), when interviewed after the conclusion of the case, felt that their decision to make a statement was the wrong one.)

A number of sheriffs and procurators fiscal commented that the information they were now getting in victim statements was useful and went beyond what would previously have been available.

Respondents were generally opposed to the possibility of the victim statement being read out in court, and all of the sheriffs and procurators fiscal interviewed who expressed a view on the matter were of the opinion that the scheme should not be extended to allow victims to express an opinion about sentence or to have any direct influence over the sentencing process.

Chapter 8 reports the findings of an analysis of the content of 160 victim statements. It finds that victims who made statements wished primarily to comment on the emotional impact of the crime rather than the financial or physical impact, which was not reflected in the design of the victim statement form.

The most commonly reported impacts were all emotional impacts: that the victim was suffering from a general fearfulness or inability to cope; was unable to sleep; was afraid to go out; or was suffering from depression.

The victim statement form instructed victims that they should “not include any views about the accused person or the sentence in your [their] statement”. The clear majority (72%) followed these instructions. Very few victims (3%) expressed an opinion about the sentence the accused should receive if convicted.

Chapter 9 presents an analysis of “lost cases”: that is, cases in which the victim had no opportunity to make a victim statement because the accused pled guilty from custody and was sentenced immediately. It estimates that the number of lost cases ranged from 6 over a 12 month period in one court to 26 in another.

Chapter 10 presents an analysis of the offences which were prescribed for the purposes of the scheme, suggesting that, in order to ensure consistency, some minor clarifications to the list of prescribed offences may be required if the scheme is rolled out across Scotland.

Chapter 11 summarises the findings of the research team.
CHAPTER 1: INTRODUCTION

BACKGROUND TO THE RESEARCH

1.1 The purpose of this report is to present the findings of an evaluation of the pilot victim statement scheme in Scotland. The research was commissioned by the Scottish Executive. The evaluation was undertaken by Mr James Chalmers, Professor Peter Duff and Dr Fiona Leverick of the University of Aberdeen School of Law, with input from Simon Anderson and Christine Sheehy of the Scottish Centre for Social Research; Mary Munro, an independent consultant; and Professor Andrew Sanders of the University of Manchester School of Law. Research assistance was provided at various stages of the project by Kevin Brown, Yvonne Melvin and Shona Wilson.

BACKGROUND TO THE PILOT VICTIM STATEMENT SCHEMES

1.2 Victim statements were introduced into the Scottish criminal justice system by section 14 of the Criminal Justice (Scotland) Act 2003, building on the Scottish Executive’s previously stated aim of encouraging greater participation by victims in the criminal justice system (Scottish Executive, 2001, paras 3.3 et seq). The Executive made a commitment that victim statements would be piloted before a decision was taken on whether to roll them out across Scotland (Justice 2 Committee, 2003, col 1352; Justice 1 Committee, 2003, col 66). Accordingly, an order was made in November 2003, under which the statutory right to make a victim statement was to take effect from 25 November 2003, but only for the sheriff courts of Ayr, Edinburgh and Kilmarnock, and the High Court of Justiciary sitting at Edinburgh and Kilmarnock.1 The pilots ran for a 2 year period before being brought to an end as planned.2

1.3 The right to make a victim statement attached after a procurator fiscal determined that proceedings were to be taken in respect of a prescribed offence in one of the prescribed courts.3 The relevant offences were prescribed by statutory instrument. In practice, a “statement pack”, which included a covering letter,4 a leaflet explaining the victim statement scheme (Scottish Executive, 2003b), and a victim statement form,5 was sent to relevant victims after a decision to prosecute was taken. A separate guidance leaflet was prepared for practitioners (Scottish Executive, 2003a). The literature was in English, accompanied by a multilingual (30 languages) “translation request form” which victims could tick and return to the procurator fiscal’s office for a translation of the documents. In Edinburgh, victim statement packs in solemn cases (High Court or sheriff and jury prosecutions) were not sent out until the stage at which the indictment was served on the accused, which might have been some months after the decision to prosecute, depending on whether the accused was in custody pending trial.

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3 Criminal Justice (Scotland) Act 2003, s14(2)(a). Under s14(2)(b), a procurator fiscal has a discretion to permit a victim to make a victim statement at an earlier stage.
4 See Annexes 1 and 2.
5 See Annex 3.
1.4 Where a victim statement was returned, it was placed in the relevant file and presented to the court at the relevant time, where appropriate.  

1.5 The format and content of the pack varied slightly between the pilot sites – in Edinburgh, the pack was sent by Victim Information and Advice, while in Ayr and Kilmarnock, it was sent by the procurator fiscal directly.  

1.6 Victim statements were intended as statements of impact, and not of opinion (for an explanation of the distinction, see Sanders et al, 2001). A victim was to be afforded an opportunity to make a statement “as to the way in which, and degree to which, that offence (or apparent offence) has affected and as the case may be continues to affect, that person”, and not a statement as to their opinions on (for example) the appropriate sentence to be passed were the offender to be convicted. From the evidence given by the Minister for Justice and Executive officials to the Justice 1 Committee, it appears that victim statements were envisaged as having two principal purposes: first, providing information to be taken into account by a sheriff or judge when sentencing, and secondly what might be termed the “therapeutic” objective of improving victims’ satisfaction with the criminal justice system (Chalmers, 2003).

RESEARCH AIMS

1.7 The main aim of the evaluation, as set out in the Invitation to Tender, was to establish the extent to which the pilot schemes were working effectively and to inform the decision on whether victim statement schemes should be rolled out across Scotland.

1.8 The specific objectives of the evaluation, as set out in the Invitation to Tender, were as follows:

1. To establish and evaluate how the schemes worked in each pilot area

This included analysis of: the service provided by the pilot in the area with a VIA service (Edinburgh) compared to the service in the area without (Kilmarnock/Ayr); the additional costs incurred by the victim statement scheme; and the experience of victim support organisations.

2. To evaluate the impact of the victim statement scheme on court processes

This included establishing: the impact, if any, of the victim statement scheme on court processes; how often victims were cross-examined about statements; the views of relevant professionals about the victim statement scheme; and an estimate of the number of cases lost

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6 See s14(5) of the Criminal Justice (Scotland) Act 2003: “A prosecutor must (a) in solemn proceedings, when moving for sentence as respects an offence; and (b) in summary proceedings, when a plea of guilty is tendered in respect of, or the accused is convicted of, an offence, lay before the court any victim statement which relates (whether in whole or in part) to the offence in question”.

7 Although the pilot schemes were managed by VIA in Edinburgh and by the procurator fiscal in Ayr and Kilmarnock, this was a reflection of existing arrangements (VIA not having been rolled out across Scotland at the time) and was not intended to provide two different ways of administering the pilot schemes for the purposes of the evaluation (see Justice 1 Committee, 2003, col 68).

8 Criminal Justice (Scotland) Act 2003, s14(2).
to the victim statement scheme due to the offender pleading guilty from custody at the first opportunity and being sentenced immediately (so called ‘lost cases’).

3. To investigate the characteristics of victims and their statements

This included establishing: the number of statements made; whether particular categories of individual (in terms of age, sex or offence type) were more or less likely to make a statement; victim perceptions and feelings about making a statement; the reasons why eligible victims did not make a statement; the views of victims on the statement scheme literature; and the views of victims on the level of support offered and its usefulness.

A NOTE ON TERMINOLOGY

1.9 Under the pilot scheme, a victim statement was (at least where procedures operated as planned) made before court proceedings resulted in the case coming to a conclusion: in other words, before any determination had been made of the accused’s guilt or innocence. Although it might, strictly, be appropriate to refer to “alleged victims” and “alleged offenders”, the researchers did not feel that this would be helpful. Accordingly, throughout this report, the term “victim”, and sometimes also the term “offender”, is used for the purpose of readability. Such terminology is not, however, intended to imply any conclusion about the particular cases under discussion.

1.10 The abbreviations COPFS (Crown Office and Procurator Fiscal Service), VIA (Victim Information and Advice) and VSS (Victim Support Scotland) are also used to refer to relevant agencies where appropriate.
CHAPTER 2: RESEARCH METHODS

2.1 This chapter describes the research methods used in the evaluation. The evaluation comprised the following main components: (1) the collection and analysis of data on individuals offered the opportunity to make a victim statement in order to determine whether particular categories of individual (in terms of age, sex or offence type) were more or less likely to do so; (2) interviews with statement makers (in order to obtain their views about the experience of doing so) and non-statement makers (in order to establish why they had chosen not to make statements); and (3) interviews with criminal justice practitioners and related personnel in order to obtain their views on the impact of victim statements and the operation of the scheme.

2.2 In addition to these main components, the research also comprised: (4) a literature review to obtain information on the operation of victim statement schemes in other jurisdictions; (5) an analysis of the content of completed victim statements in order to identify the type of issues raised; (6) an analysis of case outcomes in order to assess the impact of victim statements on sentencing and to estimate the number of cases in which a victim statement was not submitted to the court because the accused was not convicted; (7) an analysis of the offences ‘prescribed’ for the purposes of the scheme; and (8) an estimate of the number of cases lost to the victim statement scheme due to the offender pleading guilty from custody at the first opportunity and being sentenced immediately (so called ‘lost cases’).

2.3 The main components of the research are described in more detail below.

COLLECTION AND ANALYSIS OF STATISTICAL DATA

2.4 Data transfer arrangements were agreed with each pilot site to ensure that the researchers received details of all statement packs sent out and those cases in which a statement was submitted. Data from Ayr and Kilmarnock was transferred electronically. Data from Edinburgh was transferred using paper records. The data from both sources was input into a database and was analysed using the SPSS data analysis package.

2.5 Both the electronic and manual data transfer systems provided information on the date on which a statement pack was sent out and whether or not a statement was returned. In addition, information was provided on the nature of the (alleged) offence, age and gender of victims. For the Edinburgh sample, offence information was provided only in terms of the general class of offence. The codes used were those used by VIA generally to categorise offences, rather than the specific charge against the accused. For the Ayr/Kilmarnock sample, information on the precise nature of the charges against the accused was provided.

2.6 The information was provided subject to one limitation. From the outset of the pilot scheme, those receiving a statement pack were informed about the evaluation and were offered the opportunity to opt-out of the research by returning a reply slip. The wording of the original reply slip meant that no data on age, gender or offence category could be supplied about those individuals who opted out of the research. The letter sent to victims was

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9 From March 2004 onwards. Prior to this a system of paper data transfer was in place.
10 1 = non sexual offence of violence; 2 = sexual offence; 3 = theft by housebreaking; 4 = racially motivated offence; 5 = death by dangerous driving; 6 = fireraising.
subsequently re-drafted and a revised version came into operation on 6 July 2004.\textsuperscript{11} As part of the re-draft, the wording of the opt-out clause was changed to permit the researchers to receive personal information about individuals who had opted out (but not to read any victim statement submitted or to contact the individual for the purposes of an interview). From this point onwards, where they were known,\textsuperscript{12} details of gender, age and offence were made available to the researchers for all victims.

2.7 One of the aims of the evaluation was to assess the impact of victim statements on sentencing. To this end, the researchers attempted to secure details of case outcomes for cases in which a statement pack was sent out. This exercise was subject to a number of limitations. First, not all cases had concluded by the time that the final batch of data was transferred, in December 2005. Second, it only proved possible to secure electronic data about case disposals in the broadest of terms – whether the disposal was imprisonment/detention, a fine, a compensation order and so on – rather than the exact length of any period of imprisonment or amount of any fine. This was because the source of the electronic data was the COPFS information system and this does not hold detailed information on disposals. Third, for the Edinburgh sample, case outcome information was provided only for a sample of cases, rather than for every case in which a statement pack was sent out. This was because staff at the pilot sites had to extract the case outcome manually and the work involved in doing this for every single case would have been excessive. All of these factors mean that the analysis of case outcomes in chapter 5 is necessarily limited, although given the multitude of factors that affect sentencing decisions, even if precise data had been supplied, this exercise would have been of limited value.\textsuperscript{13}

2.8 Finally, for each case that was transferred electronically, the researchers received details of all the charges against the accused. Where this was the case, the only charge entered onto the SPSS database was the most serious.\textsuperscript{14} Multiple charges were not entered onto the database as this would run the risk of over-representing the number of victim statements made, if statements were made in cases involving multiple charges. This explains, for example, the relatively small number of cases involving an offence under s41 of the Police (Scotland) Act 1967 (assault on a police officer).\textsuperscript{15} This is because these cases often involved an additional charge of common law assault and, where this was the case, it was the charge of assault that was recorded.

**INTERVIEWS WITH STATEMENT MAKERS AND NON-STATEMENT MAKERS**

2.9 This component of the research involved 2 sub-components: telephone interviews and in-depth face-to-face interviews.

\textsuperscript{11} See Annex 1 (pre July 2004 letter) and Annex 2 (post July 2004 letter).
\textsuperscript{12} This was not always the case.
\textsuperscript{13} These limitations are discussed at para 5.4 below.
\textsuperscript{14} In the data supplied by the Edinburgh pilot site this was not an issue, as the staff at the pilot sites provided details of the most serious charge against the accused only. The information provided was mostly in terms of the broad category of the offence rather than the specific offence. See para 2.5 above.
\textsuperscript{15} See Table 4.6 below.
Telephone interviews

2.10 This aspect of the research was undertaken by the Scottish Centre for Social Research, with input from the University of Aberdeen researchers. Three separate batches of telephone interviews were undertaken with victims who had been offered the chance to make a statement. The first was a pilot survey, which took place in July 2004. The telephone interviews were undertaken using a structured questionnaire. The pilot survey was intended to test this questionnaire, and involved non-statement makers only.16

2.11 In the event, only very minor changes were made to the questionnaire following the pilot and essentially the same questionnaire was used in 2 further telephone surveys, which took place in December 2004 and September 2005. Both of these surveys involved statement makers and non-statement makers. A copy of the questionnaire used for the telephone interviews is contained in Annex 4.

2.12 Over the course of the 3 surveys, attempts were made to contact and interview 404 victims. Interviews took place with 182, an overall response rate of 45%.17

2.13 Eighty eight of those interviewed had made victim statements, while 94 had not. Statement makers therefore comprised 48.4% of the sample, which is significantly higher than the overall response rate for the pilot schemes (14.9%).18 Details of the sample in terms of age, gender, nature of the offence, employment status and educational background are provided in Annex 5. The results of the telephone survey are presented in chapter 6.

Face-to-face interviews

2.14 In addition to the structured telephone interviews, follow-up in-depth face-to-face interviews were undertaken with 20 victims drawn from the telephone questionnaire sample.19 This aspect of the research was carried out by Mary Munro, an independent consultant with extensive experience of this type of work. The interviews took place in the homes of the respondents. The intention of the face-to-face interviews was to explore in more depth some of the issues that could only be touched upon in the structured telephone survey. The interviews were tape recorded and transcribed and were analysed by the researchers.

2.15 The sample of interviewees was selected in order to try and include a range of ages, offence categories and an approximately equal number of men and women and statement makers and non-statement makers. This was successful up to a point. Some of the interviewees selected proved impossible to contact or, having initially stated in their telephone interview that they were prepared to take part in a face-to-face interview, changed

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16 At this stage it was not possible to interview statement makers as the Invitation to Tender had specified that no interviews with statement makers should take place until their case had concluded, and it was not until some way into the evaluation that there existed a sufficient number of concluded cases involving statement makers to make a sample of statement makers cost effective.
17 The remainder of the sample either declined to be interviewed or proved to be unobtainable using the contact details provided.
18 See below, Table 4.1. This is deliberate, as the intention was to sample an approximately equal number of statement makers and non-statement makers.
19 All those who took part in the telephone questionnaire survey were asked if they would be prepared to take part in a longer face-to-face interview at a later date.
their mind when contacted. The sample details of the 20 respondents are provided in Annex 8.

2.16 The face-to-face interviews were guided by a discussion guide. A separate discussion guide was used for statement makers and non-statement makers. Copies of the discussion guides used are contained in Annex 6 (non-statement makers) and Annex 7 (statement makers).

2.17 It cannot be claimed in any way that this is a representative sample of the population of victims offered the opportunity to make a statement. These respondents have in common the fact that they were (a) contactable at the details provided to the researchers; (b) willing to take part in a telephone interview; and (c) willing to take part in a longer face-to-face interview in their home. The purpose of these face-to-face interviews was simply to illuminate some of the issues covered by the telephone questionnaire, rather than to make any broader claims. As such, the findings are reported alongside the findings from the telephone questionnaire, in chapter 6.

INTERVIEWS WITH CRIMINAL JUSTICE PERSONNEL

2.18 Interviews with criminal justice personnel took place over the course of the project in order to gather their views on the pilot schemes. In total, interviews took place with: 2 High Court judges; 11 sheriffs; 5 procurators fiscal; 3 representatives of VIA;20 4 defence agents; and 4 representatives of VSS.21 Many of these participants were interviewed more than once.

2.19 The interviews were usually undertaken by 2 members of the research team together. They were guided by a discussion guide, a sample copy of which is contained in Annex 9. The discussion guides used varied slightly according to the role of the interviewee. The interviews were relatively informal in nature and the participants were not restricted to the topics listed on the discussion guide, being encouraged to give their views on all aspects of the victim statement scheme.

2.20 In addition to these formal interviews, the research has been informed by several informal discussions with those parties involved in the pilot schemes, such as the office staff administering the schemes and the Director of VIA.

2.21 The results of the interviews of criminal justice practitioners are reported primarily in chapter 7. Information gathered during the interviews also serves to supplement other chapters of the report.

20 The Victim Information and Advice branch of the procurator fiscal service. VIA were responsible for administering the pilot victim statement scheme in Edinburgh (see para 1.5 above).
21 Informal discussions also took place with representatives of Rape Crisis Scotland and the Women’s Support Project in order to establish the extent (if any) of their involvement with the pilot victim statement scheme. The discussions indicated that these organisations had only had very limited – if any – contact with the scheme and therefore formal interviews were not carried out.
CHAPTER 3: VICTIM STATEMENT SCHEMES IN OTHER JURISDICTIONS

3.1 This chapter reports the results of the literature review undertaken in order to obtain information on the operation of victim statement schemes in other jurisdictions.

3.2 Victim statement schemes exist in various forms in most common law jurisdictions. As such, one of the aims of the evaluation was to obtain information on the manner in which such schemes operate. The most relevant scheme for purposes of comparison with the Scottish pilot scheme is probably that operating in England and Wales (see Hoyle et al, 1998; Morgan and Sanders 1999; Graham et al, 2004), but victim statement schemes also operate in the Republic of Ireland, almost all US states (for accounts of schemes in New York and Ohio states respectively, see Henley et al, 1994; Erez and Tontodonato, 1990), Canada (see Meredith and Paquette, 2001), Australia (see Sumner, 1994; Erez et al, 1994) and New Zealand (see Morris et al, 1993). It is more difficult to obtain information in English on continental European legal systems, but a recently published article describes a victim statement scheme operating in the Netherlands (Kool and Meorings, 2004).

3.3 The following short section summarises, as far as possible, some of the key features of victim statement schemes in other jurisdictions. It is far from a complete account, given that published information on the various schemes is very limited, the only comprehensive evaluation available being that of the pilot victim statement scheme in England and Wales.

THE ADMINISTRATION OF VICTIM STATEMENT SCHEMES

3.4 The way in which victim statement schemes are administered in different jurisdictions varies according to a number of factors such as the point in the criminal justice process at which the statement is taken, whether the statement is in written or oral form and, for written statements, whether they are completed by the victim themselves or by a criminal justice professional on the victim’s behalf.

3.5 In the pilot victim statement schemes in England and Wales, 3 different methods of obtaining a victim statement were evaluated between 1997 and 1998. In all of them, the process commenced with the police sending a letter to the victim inviting them to take part in the statement scheme at the same time as they sent the letter informing the victim that the defendant would be prosecuted. Method 1 involved sending a victim statement form along with this letter and inviting the victim to return it. Method 2 involved sending a statement form only to those victims that opted into the scheme, by sending back a reply slip attached to the original letter. Method 3 involved a police officer visiting the home of victims who opted into the scheme and completing a form on their behalf.

3.6 When the victim statement scheme was rolled out across the whole of England and Wales, however, none of these methods was the one eventually utilised. Under the victim statement scheme that presently operates in England and Wales (called the Victim Personal Statement scheme), the police officer who initially interviews the victim will ask them if they

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22 Criminal Justice Act 1993, s5.
23 A difference that is immediately apparent between this and the Scottish pilot scheme is that in the latter the letter inviting the victim to submit a victim statement was sent separately to any other communication from the procurator fiscal.
want to make a personal statement, after they have finished making their witness or evidential statement.\(^{24}\) If they wish to do so, the personal statement, although intended to be in the victim’s own words, is actually written by the police officer. The main reason for the change in procedure compared to the pilot schemes was that it was decided that the victim personal statement should be available at the point at which the decision on whether or not to prosecute is taken. Whether or not a victim makes a statement at the point of the initial police interview, they are given a leaflet stating that they are entitled to make a personal statement at a later date (whether for the first time, or to update any statement that they have already made). If the victim does decide to make a statement at a later date, they do so by contacting the police, who then arrange to take the statement at the victim’s home, at the police station or at some other mutually convenient place. Thus the statement, even at this stage, is completed by the police officer, and not by the victim themselves (Home Office, 2003).

3.7 The English personal statement scheme is not the only scheme in which statements are not self-completed. Statements are also written on behalf of victims by criminal justice professionals in the Netherlands, parts of the US, in some Australian states and in some parts of New Zealand. In both the evaluation of the English pilots (Hoyle et al, 1998) and in a survey undertaken in New Zealand (Victims Task Force, 1993), it was found that levels of satisfaction with the victim statement scheme did not differ significantly according to whether the statement was self-completed or was completed by a police officer/other criminal justice professional.

3.8 Another way in which statement schemes might differ is according to whether the statement is made in writing, as in Scotland, England and Wales and the Netherlands, for example, or whether the victim has an opportunity to make a verbal statement in open court, as in some US states.\(^{25}\)

3.9 The Canadian victim statement scheme permits both written and oral presentation, as does the South Australian scheme, that in Victoria, Australia and the schemes operating in some US states. In these hybrid written/verbal arrangements, victims are offered the opportunity both to make a written statement and, if they wish to do so, to read out their written statement in court. In New Zealand, a further variation in practice exists, in that a statement may be recorded on audio or videotape and played to the sentencing judge.

3.10 Focus groups undertaken with Canadian victims who had made victim statements indicated widespread support for the opportunity to read out their statement, the victims perceiving (whether accurately or not) that the sentencing judge would be more likely to pay attention to it than if it was merely in writing (Meredith and Paquette, 2001). By contrast, an evaluation of the victim statement scheme in the Netherlands concluded that there was little or no desire among victims to be able to make an oral statement to the court (Kool and Meorings, 2004).\(^{26}\)

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\(^{24}\) Separate arrangements are made for those completing a personal statement as the next of kin, where they are not asked to make a witness statement. In these cases, the statement is still taken by the police, rather than completed by the next of kin themselves.

\(^{25}\) For recent English proposals in this regard, see below, para 3.13.

\(^{26}\) This may reflect the fact that continental legal systems traditionally place less weight on oral testimony (and more on written evidence) than is the case in common-law jurisdictions, which may affect the perceptions of victims as to the relative merits of oral and written statements.
3.11 Statement schemes also differ according to the procedures used to collect statements from children. The majority of jurisdictions in which statements are self-completed do not permit children below a certain age to complete a statement themselves, requiring instead that a parent or carer does this. In the statement scheme operating in South Australia, however, special provision is made for young children, giving them the option of writing the statement in their own words or drawing a picture that sums up their feelings about the alleged offence. This is passed to the sentencing judge in the same way as a victim statement completed by an adult.

3.12 Statement schemes differ according to whether they allow for victim impact statements or victim opinion statements, the former permitting the victim only to provide a factual account of the impact of the offence, with the latter permitting the victim to express his or her view on the appropriate sentence (Sanders et al, 2001). The Scottish pilot scheme was clearly a victim impact statement scheme, as is that of England and Wales, the Republic of Ireland and Canada, for example. Victim opinion statements are permissible in a number of US states and in parts of Australia.

3.13 In September 2005, the Department for Constitutional Affairs published a consultation paper, *Hearing the Relatives of Murder and Manslaughter Victims*, seeking views on proposals to enable “bereaved relative[s in murder and manslaughter cases], if they wish, to make a personal statement in court before sentence on how the death has affected them, either directly themselves, or through a lawyer or suitable representative” in England and Wales (Department for Constitutional Affairs, 2005, para 45). At the time of writing, no further steps had been taken in respect of these proposals.

**RESPONSE RATES**

3.14 Up to date, reliable information on response rates to victim statement schemes in other jurisdictions is difficult to obtain. The most detailed information available is that in relation to the English pilot victim statement schemes. As described above, 27 different methods of implementation were evaluated in 5 different pilot areas. Methods 1 and 2 involved the victim completing a victim statement form and returning it by post, whereas method 3 involved the statement being taken by a police officer in the victim’s own home. The response rates for each pilot area are shown in Table 3.1.

3.15 As Table 3.1 shows, the overall response rate was 30%, but this varied considerably between the different pilot areas. The highest response rate was found in Merseyside (44%), where victims were simply offered the opportunity to make a statement in a letter from the police and returned the statement form by post. The 2 pilot areas in which police officers visited the home of victims to take their statements in person both had response rates of 19%. The lowest response rate was in the MPD, where victims had to return a reply slip indicating that they wished to make a statement before they were even sent a statement form.

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27 See para 3.5.
28 This was not automatic. A police officer visited only if the victim opted into the scheme by returning a reply slip expressing a desire to make a statement.
Table 3.1: Response rates to the English pilot statement scheme

<table>
<thead>
<tr>
<th></th>
<th>Number eligible</th>
<th>Number making victim statement</th>
<th>% making victim statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merseyside (method 1)</td>
<td>516</td>
<td>229</td>
<td>44</td>
</tr>
<tr>
<td>MPD&lt;sup&gt;29&lt;/sup&gt; (method 2)</td>
<td>327</td>
<td>29</td>
<td>9</td>
</tr>
<tr>
<td>Sussex (method 2)</td>
<td>250</td>
<td>85</td>
<td>34</td>
</tr>
<tr>
<td>Hampshire (method 3)</td>
<td>120</td>
<td>23</td>
<td>19</td>
</tr>
<tr>
<td>Lancashire (method 3)</td>
<td>79</td>
<td>15</td>
<td>19</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,292</strong></td>
<td><strong>381</strong></td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>


3.16 It is worth noting at this point that the scope of the offences covered by the English pilot scheme was narrower than that covered by the Scottish scheme and thus the response rates are not directly comparable. Of particular note is the fact that the Scottish scheme included all assaults, whereas the English scheme included only assault occasioning grievous bodily harm and domestic violence cases.<sup>30</sup> This should be borne in mind in the context of chapter 4, where it is reported that the overall response rate to the Scottish pilot scheme is 14.9%,<sup>31</sup> considerably lower than the rate found in the English pilot scheme. The published research on the English pilot schemes does not break down response rates by offence category, but it seems likely that the higher response rate is partly a result of the greater seriousness of the offences involved.<sup>32</sup>

3.17 Aside from the English evaluation, information on response rates is rather patchy, although it is clear that the main conclusion to be drawn is that they vary enormously. US studies have found response rates of 60% (in sexual assault cases) (Walsh, 1986); 55% (in felony cases, that is, relatively serious offences) (Erez and Tontodonato, 1990) and, in studies that examined participation in relation to all levels of offence, 27% and 15% (Tobolowsky, 1999). In a New Zealand study, victim statements were submitted in 6% of District Court cases and 49% of High Court cases (Victims Task Force, 1993).

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<sup>29</sup> Metropolitan Police District.

<sup>30</sup> Offences included in the schemes were “domestic burglary, domestic violence, assault occasioning grievous bodily harm (Offences Against the Person Act 1861, sections 18 and 20), sexual assault, robbery, criminal damage over £5,000, racially motivated offence, and attempting or conspiring to commit any of these offences” (Sanders et al, 2001, p450 n1).

<sup>31</sup> See Table 4.1 below.

<sup>32</sup> In the Scottish pilot scheme response rates were clearly related to offence seriousness: see para 4.20 below.
CHAPTER FOUR: RESPONSE RATES

4.1 One of the aims of the evaluation was to collect and analyse data on response rates to the victim statement scheme among those offered the opportunity to make a statement. This chapter of the report examines overall response rates, compares response rates over time and addresses the issue of whether or not response rates varied according to factors such as gender, offence category or age.

4.2 This analysis is based on all statement packs sent out from the commencement of the pilot victim statement scheme on 25 November 2003 until the end of October 2005. The victim statement scheme actually concluded on 24 November 2005, but these last 3 weeks have been left out of the analysis. The reason for this is that the last batch of electronic data was transferred to the researchers in the first week of December 2005 and is unlikely to include all the statements submitted by victims who received their statement packs in November 2005. Including these last 3 weeks of the scheme could have distorted the analysis.

RESPONSE RATES SINCE THE COMMENCEMENT OF THE PILOTS

4.3 Table 4.1 below shows the response rates to the pilot victim statement schemes since the commencement of the pilots on 25 November 2003 to the end of October 2005. As Table 4.1 shows, during this period 4993 statement packs were sent out and the response rate across the 3 courts was 14.9%. There was very little variation in response rates between courts. The response rate for Ayr was 15%; for Kilmarnock was 14.1% and for Edinburgh was 15.5%.

<table>
<thead>
<tr>
<th>Court</th>
<th>Victim statement packs sent</th>
<th>Statements received (number)</th>
<th>Statements received (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ayr</td>
<td>758</td>
<td>114</td>
<td>15.0</td>
</tr>
<tr>
<td>Kilmarnock</td>
<td>1900</td>
<td>268</td>
<td>14.1</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>2335</td>
<td>361</td>
<td>15.5</td>
</tr>
<tr>
<td>All courts</td>
<td>4993</td>
<td>743</td>
<td>14.9</td>
</tr>
</tbody>
</table>

4.4 While the overall response rate of 14.9% is lower than the response rate to the equivalent scheme in England and Wales, which was 30%, the figures are not directly comparable. The range of offences included within the English scheme was more serious, and the higher response rate is likely to be due predominantly to this, rather than to any differences in the way in which the schemes were administered.

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33 Analysis of the data does indicate a very low response rate for statement packs sent out in November 2005 – this is almost certainly because some victims who did eventually return statements had yet to return statements by the time the final batch of electronic data was transferred.
34 See the discussion of the English pilot scheme in para 3.16 above.
35 As this chapter will shortly demonstrate, response rates in the Scottish pilot scheme increased the more serious was the offence (see para 4.20 below).
RESPONSE RATES OVER TIME

4.5 Table 4.2 examines response rates to the victim statement scheme over time. In order to enable comparisons to be drawn, the 2 year period of the operation of the pilots is divided into 8 approximately equal sub-periods.

<table>
<thead>
<tr>
<th>Table 4.2: Response rates over time (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Period 1:</strong> 25 Nov 2003 – 31 Jan 2004</td>
</tr>
<tr>
<td>----------------------------------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Period 2:</strong> 1 Feb – 30 Apr 2004</td>
</tr>
<tr>
<td><strong>Period 3:</strong> 1 May – 31 July 2004</td>
</tr>
<tr>
<td><strong>Period 4:</strong> 1 Aug – 31 Oct 2004</td>
</tr>
<tr>
<td><strong>Period 5:</strong> 1 Nov 2004 – 31 Jan 2005</td>
</tr>
<tr>
<td><strong>Period 6:</strong> 1 Feb – 30 Apr 2005</td>
</tr>
<tr>
<td><strong>Period 7:</strong> 1 May – 31 July 2005</td>
</tr>
<tr>
<td><strong>Period 8:</strong> 1 Aug – 31 Oct 2005</td>
</tr>
</tbody>
</table>

4.6 There is no real pattern to the figures displayed in Table 4.2. Although response rates varied between time periods, there was neither an upward nor a downward trend in response rates over the 2 years of the operation of the pilots.36

4.7 As Table 4.2 also shows, there was considerable variation in response rates between courts within the same time period. This is almost certainly due simply to the profile of offences in each court during the period in question and, in particular, the prominence of relatively serious offences, as it was apparent from an early stage of the pilot schemes that the primary factor affecting response rates was offence seriousness.37

4.8 This is demonstrated by a closer examination of the figures in Table 4.2 itself. For example, in period 2, the response rate in Kilmarnock (at 19%) was considerably higher than that of the other courts (11% in Ayr and 15% in Edinburgh). This is almost certainly entirely due to the profile of offences in Kilmarnock during that period. Using the Edinburgh charge codes, 75% of cases in which statement packs were sent out in Kilmarnock were cases involving violence; 5.3% were sexual offence cases; and only 15% were cases of theft by housebreaking. The comparable figures for Ayr during this period were 70% (violence); 2.7% (sexual offences); and 23% (theft by housebreaking). There were also 2 murder cases

36 The initially low response rate for period 1 can be explained in part by the fact that, in Edinburgh, very few statement packs in solemn cases were sent out during this period (see para 1.3 above where this difference in the procedure adopted in Edinburgh is noted). As response rates appear to be related to offence seriousness (see para 4.20 below), the low response rate in Edinburgh during this period is to be expected.

37 See para 4.20.
and 2 cases of abduction in Kilmarnock during this period (there were none in Ayr), with statements being made in all 4 of these.

4.9 Likewise, during period 3, the response rate in Ayr (24.7%) was abnormally high compared to the other 2 courts. Once again, however, this is almost certainly because relatively serious offences were over-represented in Ayr during this period. Using the Edinburgh charge codes, 95% of cases in which a statement pack was sent out in Ayr in period 3 were offences involving violence, whereas the comparable figures for Kilmarnock and Edinburgh were 84% and 85% respectively. Using the more detailed charge codes supplied with the electronic data, 49% of cases in which a statement pack was sent out in Ayr were aggravated assaults, compared to only 25% in Kilmarnock. In a small court such as Ayr, where only 81 statement packs were sent out during period 3, the effect of even a small number of relatively serious offences in the offence profile is likely disproportionately to affect response rates in this way.

4.10 As a final example, in period 6 the response rate in Ayr was 22.6%, compared to 10.8% in Kilmarnock and 14.7% in Edinburgh. Based on the Edinburgh charge codes, 95% of cases in which a statement pack was sent out in Ayr during this period were offences involving violence. This compares to 84% in Kilmarnock and 81% in Edinburgh. Again, using the more detailed charge codes supplied with the electronic data, 37% of cases in which a statement pack was sent out in Ayr were aggravated assaults, compared to 30% in Kilmarnock; 52% were non-aggravated assaults in Ayr compared to 42% in Kilmarnock; and 4% were theft by housebreaking in Ayr compared to 15% in Kilmarnock.

RESPONSE RATES BY DRAFT OF LETTER

4.11 On 6 July 2004, a revised letter to eligible individuals came into operation in all of the pilot sites. The revisions were intended to simplify and improve the user-friendliness of the letter. Table 4.3 displays response rates before and after the revised letter came into operation.

| Draft 1 (pre-6 July 2004) | 1453 | 219 | 15.1 |
| Draft 2 (6 July 2004 onwards) | 3540 | 524 | 14.8 |
| Total | 4993 | 743 | 14.9 |

4.12 As Table 4.3 shows, across the 3 courts, the revised letter had very little impact on response rates, with there being a very slight decrease (from 15.1% to 14.8%) since the new letter came into operation.

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38 Figures are not available for Edinburgh as charges were not broken down in this level of detail in the paper data transfer system.
39 Cases of theft by housebreaking have a particularly low response rate: see Table 4.6 below.
41 The figure of 14.8% may be a slight under-estimate of the true response rate. The final batch of electronic data was transferred to the researchers in the first week of December 2005. There may be a few victims who
4.13 Table 4.3 does mask some differences between courts. As Table 4.4 below shows, in Ayr and Edinburgh, response rates actually increased very slightly after the new letter came into operation, whereas in Kilmarnock they fell by just over 3 percentage points. This suggests that the changes in response rates are unlikely to be due to the letter itself and are far more likely to be due to factors such as the profile of offences at each pilot site during the 2 periods in question. For example, the low response rate figure for draft 1 of the letter in Edinburgh is likely to be due in part to the fact that, in the early stages of the pilot scheme in Edinburgh, very few statement packs were sent out in solemn cases.42 As response rates are related to offence seriousness,43 a lower response rate during this period was only to be expected.

Table 4.4: Response rates by draft of letter and court

<table>
<thead>
<tr>
<th>Court</th>
<th>Response rate to draft 1 (%)</th>
<th>Response rate to draft 2 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ayr</td>
<td>13.9</td>
<td>15.6</td>
</tr>
<tr>
<td>Kilmarnock</td>
<td>16.5</td>
<td>13.2</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>14.1</td>
<td>15.9</td>
</tr>
</tbody>
</table>

RESPONSE RATES BY OFFENCE CATEGORY, GENDER AND AGE

4.14 As well as reporting on response rates to the pilot scheme as a whole, a further aim of the evaluation was to determine whether particular categories of individuals in terms of age, sex or offence type were more or less likely to submit a victim statement. The following tables address this aim.

4.15 Before examining the results, it is necessary to note that the analysis that follows is an imperfect one, as the researchers do not hold complete information on all individuals who were offered the opportunity to make a victim statement. First, no data on age, gender or offence category is available for those individuals who opted out of the research by returning the reply slip before the revised letter came into operation on 6 July 2004.44 Second, no detailed information on the nature of the (alleged) offence is available for the majority of the Edinburgh sample.45 Third, the number of cases in which information is available on the age of the eligible individual (especially in the Edinburgh sample and in the pre-electronic data transfer Ayr and Kilmarnock samples) is restricted mainly to those individuals who returned reply slips. While noting these limitations, the researchers believe that the findings presented here remain valid.

4.16 The tables that follow, then, have been drawn up on the basis of the sample of individuals on whom the researchers hold the relevant information and should be read with

were sent statement packs towards the end of October 2005 who returned statements too late to be included. If this is the case, the tiny difference between response rates to draft 1 and draft 2 of the letter may be even smaller.42 Because of the different procedure adopted in Edinburgh in respect of solemn cases: see para 1.3 above.43 See para 4.20 below.44 Once the revised letter came into operation, this was no longer a problem, as the wording of the opt-out clause was changed to permit the researchers to receive personal information about individuals who have opted out (see para 2.6 below).45 For the Edinburgh sample, information is available in terms of the general class of offence and this is reported in Table 4.6. The paper data transfer system established with Edinburgh did not, however, provide the researchers with detailed information on the nature of the offence.
this caveat in mind. Nonetheless, they do provide at least an indication of general trends and patterns in terms of the types of individuals who were more or less likely to make a statement.

4.17 Table 4.5 breaks down response rates by offence category. The offence categories are those used by VIA in Edinburgh (the data from Ayr and Kilmarnock has been re-classified to fit into the Edinburgh categories for the purposes of this analysis).

<table>
<thead>
<tr>
<th>Table 4.5: Response rates by offence category (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of eligible individuals</td>
</tr>
<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td>Sexual offence</td>
</tr>
<tr>
<td>Non-sexual offence of violence</td>
</tr>
<tr>
<td>Theft by housebreaking</td>
</tr>
<tr>
<td>Racially aggravated offence</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

4.18 As Table 4.5 shows, response rates were highest among those individuals who had been victims of sexual offences, with 38% of this category of individuals choosing to make a victim statement. Among victims of non-sexual offences of violence, the response rate was 15% and among victims of theft by housebreaking, it was slightly lower at 14%. The lowest response rate was among those who had been victims of racially aggravated offences, with only 12% choosing to make a victim statement.50

4.19 Table 4.6 also examines response rates according to the nature of the offence, but it is based on the 2832 individuals on whom the researchers hold more detailed offence information.

4.20 Essentially what is clear from Table 4.6 is that response rates varied according to offence seriousness. The more serious the offence, the more likely an eligible individual was to make a victim statement. The highest response rates were found in relation to death by dangerous driving (60%); murder (also 60%); sexual offences (46% for rape and 51% for other sexual offences); abduction (50%); and attempted murder (40%). Response rates were higher for aggravated assault (21%) than for assault without any aggravating factor (17%). Response rates were also higher for robbery (24%) than for theft by housebreaking (14%). It is only possible to identify general trends here: the seriousness of an offence as perceived by a victim will be crucial and this may vary from case to case in a way that is not possible to identify from this data.

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46 Includes rape, indecent assault, lewd and libidinous behaviour or practices and sexual offences under the Criminal Law (Consolidation) (Scotland) Act 1995.
47 Includes murder, culpable homicide, abduction, aggravated assault, assault (including assault on a police officer under s41 of the Police (Scotland) Act 1967), and robbery.
48 Includes racially aggravated harassment under s50A of the Criminal Law (Consolidation) (Scotland) Act 1995 and (where this information is available) racially aggravated offences under s96 of the Crime and Disorder Act 1998.
49 Includes death by dangerous driving and fireraising.
50 This finding is commented upon in more detail in paras 4.22 to 4.23 below.
Table 4.6: Response rates by offence category (2)

<table>
<thead>
<tr>
<th>Offence category</th>
<th>Number of eligible individuals</th>
<th>Number who made statement</th>
<th>% who made statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence under s1 RTA (death by dangerous driving)</td>
<td>5</td>
<td>3</td>
<td>60</td>
</tr>
<tr>
<td>Murder</td>
<td>10</td>
<td>6</td>
<td>60</td>
</tr>
<tr>
<td>Sexual offence (excluding rape)</td>
<td>41</td>
<td>21</td>
<td>51</td>
</tr>
<tr>
<td>Abduction</td>
<td>6</td>
<td>3</td>
<td>50</td>
</tr>
<tr>
<td>Rape</td>
<td>13</td>
<td>6</td>
<td>46</td>
</tr>
<tr>
<td>Attempted murder</td>
<td>5</td>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>Robbery</td>
<td>101</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>860</td>
<td>179</td>
<td>21</td>
</tr>
<tr>
<td>Assault</td>
<td>1290</td>
<td>217</td>
<td>17</td>
</tr>
<tr>
<td>Theft by housebreaking</td>
<td>379</td>
<td>54</td>
<td>14</td>
</tr>
<tr>
<td>Offence under s50A CLCSA (racially aggravated harassment)</td>
<td>36</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Offence under s41 PSA (assault on a police officer)</td>
<td>73</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fireraising</td>
<td>8</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2832</td>
<td>520</td>
<td>18</td>
</tr>
</tbody>
</table>


4.21 The lowest response rates (4%) were found among victims of offences under s41 of the Police (Scotland) Act 1967, essentially assault on a police officer. This might be thought to indicate that police officers are less likely than civilians to make a victim statement. It is more likely, however, to reflect the fact that when an assault on a police officer is particularly serious, and especially where it involves physical violence, this is more likely to be prosecuted as assault (or aggravated assault) under the common law. Thus this finding is likely simply to reflect the general trend that response rates increase with offence seriousness, rather than indicating that police officers are less likely to make victim statements.

4.22 Relatively low response rates (6%) were also found in relation to racially aggravated harassment offences under s50A of the Criminal Law (Consolidation) (Scotland) Act 1995. Once again, the most likely reason for this is that incidents charged as racially aggravated harassment are less serious than the others which are within the scope of the victim statement scheme, as almost all of the other offences necessarily involve physical attacks or/and property loss/damage.

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51 Includes indecent assault; lewd, indecent or libidinous behaviour; offences under Part I of the Criminal Law (Consolidation) (Scotland) Act 1995; and offences under the Mental Health (Scotland) Act 1984.
52 Includes assault with intent to rob.
53 Includes assault to injury, severe injury, impairment, disfigurement and/or danger to life. It includes domestic assault, but not assault with intent to rob (which has been included in the category of robbery).
54 Includes housebreaking with intent to steal.
55 Other than in relation to fireraising where there were very small numbers involved (only 8 statement packs sent out).
56 The maximum penalty under s41 is 3 months imprisonment (or 9 months if the offender has been convicted of a similar offence within the previous 2 years). There is no maximum penalty for common law assault and the potential sentence is limited only by the powers of the court in which it is prosecuted.
4.23 Support for this conclusion is provided by Scottish Executive funded research undertaken into racially aggravated offences (Clark and Moody, 2002). In the study, only 3% of cases prosecuted as racially aggravated harassment under s50A of the Criminal Law (Consolidation) (Scotland) Act 1995 were on indictment rather than summary complaint (and all were sheriff & jury; there were none in the High Court) (Clark and Moody, 2002, Table 1). By contrast, the Ayr/Kilmarnock data before electronic data transfer started\(^{57}\) suggests that 18% of victim statement cases were prosecutions on indictment.\(^{58}\) That seems a fairly clear indication that the ‘average’ s50A case is much less serious than the ‘average’ victim statement case overall, and so a (significantly) lower response rate is only to be expected given that uptake increases with offence seriousness. Further support for this conclusion was gained from discussions with procurators fiscal at the pilot sites, which also suggested that almost all s50A cases are prosecuted under summary procedure.

4.24 Table 4.7 examines response rates according to whether the eligible individual was male or female (for the 2702 individuals for whom this information is available). As Table 4.7 shows, the gender of an individual did not appear to have any substantial impact on their likelihood of submitting a victim statement, with response rates among male and female victims being 23% and 21% respectively. It should be noted that the relatively high overall response rate in Table 4.7 (22%) reflects the fact that statement makers were over-represented in this sample, because the researchers were more likely to hold details of the gender of individuals who made a statement than those who did not (because in the Edinburgh sample and the pre-electronic data transfer Ayr and Kilmarnock samples most information on gender came from victims who returned one or both of a victim statement or reply slip). This does not in any way affect the validity of the findings in terms of the general patterns displayed in the table. The same point can be made in relation to Table 4.8, but here too the general patterns displayed are still valid.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Number of eligible individuals</th>
<th>Number who made statement</th>
<th>% who made statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>1276</td>
<td>270</td>
<td>21</td>
</tr>
<tr>
<td>Male</td>
<td>1426</td>
<td>323</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td>2702</td>
<td>593</td>
<td>22</td>
</tr>
</tbody>
</table>

4.25 Table 4.8 examines the issue of whether or not response rates differed according to the age of the eligible individual (for the 2731 individuals for whom this information is available).

4.26 It is difficult to discern any clear pattern in Table 4.8. Victims aged under 21 were, by some way, the least likely to make a statement, with only 18% of those aged under 18\(^{59}\) and only 17% of those aged between 18-21 submitting a statement. Response rates were higher

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\(^{57}\) After electronic data transfer came into operation on 22 March 2004, the researchers no longer received information on whether the case was solemn or summary.

\(^{58}\) Data to this effect was submitted to the Scottish Executive as part of an quarterly report at an earlier stage of the project. See Table 1 of the second quarterly report submitted for this project on 27 May 2004.

\(^{59}\) Where the victim was aged under 14, the statement was made by their parent, guardian or other carer on their behalf.
among individuals aged 22-49, but were highest in the 50-59 age category and second highest in the “60 plus” category, so there does appear to be something of a trend for response rates to increase with age.

Table 4.8: Response rates by age

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Number of eligible individuals</th>
<th>Number who made statement</th>
<th>% who made statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 18</td>
<td>554</td>
<td>101</td>
<td>18</td>
</tr>
<tr>
<td>18-21</td>
<td>334</td>
<td>55</td>
<td>17</td>
</tr>
<tr>
<td>22-29</td>
<td>515</td>
<td>115</td>
<td>22</td>
</tr>
<tr>
<td>30-39</td>
<td>584</td>
<td>146</td>
<td>25</td>
</tr>
<tr>
<td>40-49</td>
<td>433</td>
<td>114</td>
<td>26</td>
</tr>
<tr>
<td>50-59</td>
<td>185</td>
<td>71</td>
<td>38</td>
</tr>
<tr>
<td>60 or over</td>
<td>126</td>
<td>35</td>
<td>28</td>
</tr>
<tr>
<td>Total</td>
<td>2731</td>
<td>637</td>
<td>23%</td>
</tr>
</tbody>
</table>

SUMMARY OF ANALYSIS OF RESPONSE RATES

4.27 In summary, over the 2 year period in which the pilot victim statement scheme operated, 14.9% of eligible individuals took the opportunity to make a victim statement. This is lower than the response rate to the equivalent scheme in England and Wales, which was 30%, but the figures are not directly comparable. The range of offences included within the English scheme is more serious, and the higher response rate is likely to be due primarily to this.

4.28 The most notable factor affecting whether or not a victim statement was made was the seriousness of the offence in question. Victims of sexual offences were also particularly likely to make a victim statement. Response rates did not differ between male and female victims, but there was a trend (of sorts) for response rates to increase with age.

4.29 Over the course of the 2 years in which the pilot victim statement scheme operated, there was little difference in response rates between the pilot sites (15% in Ayr; 14.1% in Kilmarnock; and 15.5% in Edinburgh). There was some variation in response rates between the sites when the figures were broken down into quarterly time periods, but this can be explained by the offence profile in the court and time period in question, rather than by any difference in the administration of the scheme between the pilot sites.

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60 Where a child was under 14, the statement was made by their parent, guardian or other carer.
61 Once again, the relatively high overall response rate figure reflects the fact that statement makers were over-represented in this sample, for the same reasons as outlined in relation to Table 4.7.
62 See para 3.16 above.
CHAPTER FIVE: CASE OUTCOME ANALYSIS

5.1 This chapter presents the findings of the case outcome analysis. The purpose of this analysis was two-fold. First, one of the aims of the evaluation was to assess the impact of victim statements on sentencing. One way in which this aim was addressed was by examining case disposals in victim statement cases and comparing them to case disposals in non-victim statement cases. At the outset, it must be said that this exercise is subject to some major limitations. Two of these are practical in nature:

5.2 First, it was not possible to obtain information on the disposal of all cases, either because the case had not concluded by the end of the evaluation or because it would have involved an excessive amount of time for the pilot sites to supply case conclusion details for every single concluded case. This in itself is not thought to have affected the validity of the analysis. There is no reason to think that the pattern of case outcomes would have been any different in those cases for which outcome information was not available.

5.3 Second, information on disposals was only provided in terms of the nature of the sentence (imprisonment, community service, fine etc.) and not the length of any imprisonment period or the amount of any fine. Thus comparisons can only be made in terms of the nature of the sentence and not its precise length. Information was provided on compensation orders, however, so it was at least possible to assess whether or not compensation orders were more likely to be made in victim statement cases than non-victim statement cases.

5.4 The exercise is also limited for a more principled reason. The existence of a victim statement is only one of a multitude of factors that influence sentencers in their sentencing decisions and it is difficult if not impossible to isolate the effect on sentencing of the statement alone. This is not helped by the fact that the more serious the offence the more likely it was that a statement was made\(^{63}\) and therefore sentences are likely to have been heavier in cases where there was a statement for this reason alone. What will almost certainly be of more value in assessing the impact of victim statements on sentencing is the information derived from the interviews undertaken with sheriffs and High Court judges, who were asked about the extent to which the existence of a victim statement affected their sentencing decisions.\(^{64}\)

5.5 The second purpose of the case outcome analysis was to estimate the number of relevant cases in which a victim statement was made but was not put before the court because the accused was not convicted.\(^{65}\) This could have been because the case ended with a not guilty or a not proven verdict; because the case was deserted; or because the accused eventually pled guilty to a reduced charge that did not fall under the auspices of the victim statement scheme.\(^{66}\) The outcome analysis will allow us to estimate the number of cases in which this occurred. While the outcome analysis is subject to some of the same limitations as

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\(^{63}\) See para 4.20 above.

\(^{64}\) On this, see chapter 7 below. This information is, of course, subject to the usual limitations of self-reporting: even where responses are entirely honest, people do not always do what they say they will do.

\(^{65}\) The situation could also arise whereby a victim never got the chance to make a victim statement, despite the offender being convicted. This would have happened in a so-called “lost case” where the offender pled guilty from custody at the first opportunity and was sentenced immediately (see chapter 9).

\(^{66}\) Most commonly this occurred where the original charge was one of assault, but a plea of guilty to breach of the peace was accepted.
the sentencing analysis, primarily the fact that outcome information was not available for all cases, the general patterns it displays are still valid.

ANALYSIS OF OUTCOMES

5.6 Bearing these limitations in mind, Table 5.1 provides details of case outcomes for cases where a statement was submitted compared to cases where a statement was not submitted, in the 2262 cases for which this information was available. Two issues emerge from the table.

5.7 First, Table 5.1 indicates that cases were less likely to be deserted (or it was less likely for a not guilty plea to be accepted) where a victim statement was made. Only 15% of statement maker cases were deserted compared to 23% of non-statement maker cases. This may indicate that procurators fiscal were more reluctant to desert a case when they knew that there was a victim statement. Indeed, the interviews undertaken with procurators fiscal did indicate that the existence of a victim statement was one factor that they took into account in deciding whether or not to desert a case or to accept a plea of not guilty in relation to a particular charge.\(^\text{67}\)

<table>
<thead>
<tr>
<th>Case Outcome</th>
<th>% of Statement Makers (n=412)</th>
<th>% of Non-Statement Makers (n=1850)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deserted/not guilty plea accepted</td>
<td>15</td>
<td>23</td>
</tr>
<tr>
<td>Found guilty</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Found guilty under deletion</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Found not guilty/not proven</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>Pled guilty</td>
<td>61</td>
<td>59</td>
</tr>
<tr>
<td>Pled guilty under deletion/to amended charge</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Pled guilty to reduced (non-VS) charge</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

5.8 One should, however, be careful not to read too much into this finding. It may simply be a result of the relationship between the existence of a victim statement and the seriousness of the offence.\(^\text{68}\) Equally, it may be that procurators fiscal were simply more reluctant to desert relatively serious cases than they were minor ones, rather than the existence of the victim statement itself being the influential factor. An alternative explanation is that one type of case that tends to get deserted is that where victims are reluctant to give evidence and it may be that reluctant or uncooperative victims were unlikely to make victim statements.

5.9 Table 5.2 attempts to isolate the impact of the victim statement (or at least to reduce the influence of the seriousness of the offence) by calculating the proportion of victim statement and non-victim statement cases that were deserted for the specific offence categories of assault, aggravated assault, robbery and theft by housebreaking.\(^\text{69}\)

\(^{67}\) See para 7.29 below.

\(^{68}\) The more serious the offence, the more likely it was that a victim statement was made: see para 4.20 above.

\(^{69}\) Other offences (such as rape and murder) were left out of this analysis because the small number of cases involved did not make the exercise worthwhile.
5.10 As Table 5.2 shows, even within each category of offence, cases in which there was a victim statement were less likely to be deserted. The exception to this was robbery, where statement cases were actually slightly more likely to be deserted than non-statement cases (10% of statement cases compared to 7% of non-statement cases), although in view of the relatively small numbers involved this finding is not particularly reliable. Even in relation to the offence categories where the relationship does hold, it should be noted that this is a very crude exercise, as even within the generic category of ‘assault’ the conduct concerned can vary in seriousness quite considerably, and it may still be that offence seriousness is the main influencing factor and not the existence of the victim statement.

Table 5.2: Likelihood of desertion by offence (statement makers vs non-statement makers)

<table>
<thead>
<tr>
<th>Offence</th>
<th>% of statement maker cases that were deserted</th>
<th>% of non-statement maker cases that were deserted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault (n=946)</td>
<td>19</td>
<td>23</td>
</tr>
<tr>
<td>Aggravated assault (n=662)</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Robbery (n=79)</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Theft by housebreaking (n=217)</td>
<td>9</td>
<td>21</td>
</tr>
</tbody>
</table>

5.11 Second, Table 5.1 allows us to make an estimate of the number of cases in which a victim statement was made but was not submitted to the court. This would occur whenever the case resulted in a not guilty or not proven verdict; where the case was deserted; or where the accused pled guilty to a reduced charge that did not fall under the auspices of the victim statement scheme. As Table 5.1 indicates, 24% of cases in which a victim statement was made resulted in one of these outcomes. This equates to a total of 99 actual cases in which a statement was made but was not put before the court. It should also be noted that this is an under-estimate of the number of cases involved because case outcome data was only available for 412 of the cases in which a statement was made – just over half of the total. There were an additional 331 cases in which a statement was made and for which the eventual case outcome is not known. Assuming that the pattern of case outcomes in Table 5.1 is replicated in these 331 cases, this would result in an additional 79 cases in which a statement was made but not put before the court, and an estimated total of 178 (from a total of 743 statements) across the 2 year pilot period.

ANALYSIS OF DISPOSALS

5.12 Table 5.3 focuses only on those cases in which there was a conviction (either because the accused was found guilty or pled guilty). It shows the proportion of cases in which a particular disposal was made for both statement maker cases and non-statement maker cases (in the 1501 cases for which this information was available). Where multiple disposals were

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70 There is no obvious reason why the pattern of case outcomes would not be replicated in this way, and, while noting this limitation to the data, the researchers do not believe that the validity of the research findings is affected.

71 This will still be a slight under-estimate as a cut-off date of statement packs sent out by the end of October 2005 was chosen for the purposes of the analysis and thus some cases in which a statement pack was sent out were not included in the analysis at all: see para 4.2 above.
made (for example, a fine and community service), only the most serious was recorded (in this example, that would be the fine).

5.13 Table 5.3 shows that cases in which there was a victim statement were slightly more likely than cases in which there was no victim statement to result in a sentence of imprisonment. Conversely, they were slightly less likely to result in a fine or a probation order. This finding on its own is of negligible value, however, given that victim statements were more likely to be made the more serious the offence and relatively serious offences are themselves more likely to result in a disposal of imprisonment.

<table>
<thead>
<tr>
<th></th>
<th>% of statement makers (n=303)</th>
<th>% of non-statement makers (n=1198)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imprisonment/detention</td>
<td>36</td>
<td>31</td>
</tr>
<tr>
<td>Fine</td>
<td>28</td>
<td>34</td>
</tr>
<tr>
<td>Community service</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Compensation order</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Probation</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Admonished</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Other 72</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

n=1501

5.14 One finding in Table 5.3 that is of some interest is that compensation orders were more likely to be made in cases in which a victim statement was made: 8% of victim statement cases compared to only 4% of non-victim statement cases.

5.15 What is of slightly more value in terms of attempting to assess the impact of victim statements on sentencing is the analysis that is displayed in Table 5.4 below. To try and isolate the impact of the victim statement (or at least to reduce the influence of the seriousness of the offence), the likelihood of a disposal of imprisonment has been calculated for the specific offence categories of assault, aggravated assault, robbery and theft by housebreaking.

<table>
<thead>
<tr>
<th></th>
<th>% of statement maker cases resulting in imprisonment</th>
<th>% of non-statement maker cases resulting in imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault (n=576)</td>
<td>20</td>
<td>15</td>
</tr>
<tr>
<td>Aggravated assault (n=430)</td>
<td>37</td>
<td>35</td>
</tr>
<tr>
<td>Robbery (n=53)</td>
<td>80</td>
<td>74</td>
</tr>
<tr>
<td>Theft by housebreaking (n=161)</td>
<td>61</td>
<td>76</td>
</tr>
</tbody>
</table>

72 This category includes restriction of liberty orders; drug treatment and testing orders; hospital orders; and absolute discharges.
73 Other offences (such as rape and murder) were left out of this analysis because the small number of cases involved did not make the exercise worthwhile.
5.16 As Table 5.4 shows, taking only cases of assault, a sentence of imprisonment was more likely to result where the case involved a victim statement (20% of statement cases compared to 15% of non-statement cases). This relationship was also apparent in robbery cases (80% of statement cases compared to 74% of non-statement cases) and, although to a lesser extent, in aggravated assault cases (37% of statement cases compared to 35% of non-statement cases). In cases of theft by housebreaking, however, the opposite was true and imprisonment was actually less likely in cases where a victim statement was made (61% of statement cases compared to 76% of non-statement cases). Indeed, the finding that imprisonment was more likely in cases of theft by housebreaking than it was in cases of aggravated assault (regardless of the existence of any victim statement) suggests that sentencing is a complex process, as aggravated assault would, all other things being equal, seem to be the more serious offence. It may be that those found guilty of theft by housebreaking are more likely to have previous convictions or to be guilty of multiple offences. It should also be remembered that this analysis is based only on the fact of the victim statement and not its content. No account has been taken of the relative seriousness of the effects actually reported by victims in their statements.

5.17 All that can really be concluded as a result of this analysis is that there are a multitude of factors that affect sentencing decisions of which the existence of a victim statement is only one. There does seem to be a relationship of sorts between the existence of a victim statement and the disposal in a particular case, but there is no indication that this is a causal relationship. There is no firm evidence of any such relationship.

74 On this, see the views of sheriffs interviewed reported in chapter 7.
CHAPTER SIX: INTERVIEWS WITH STATEMENT MAKERS AND NON-STATEMENT MAKERS

6.1 This chapter reports on the findings of the programme of interviews with statement makers and non-statement makers.

6.2 As chapter 2 outlined, telephone interviews were undertaken in 3 batches over the course of the evaluation. The first was a pilot survey in July 2004, followed by 2 further surveys in December 2004 and September 2005. Over the course of the 3 surveys, attempts were made to contact and interview 404 victims. Interviews took place with 182, an overall response rate of 45%.75

6.3 Of the 182 victims who were interviewed, 88 had made victim statements, while 94 had not. A copy of the questionnaire used for the telephone interviews is contained in Annex 4. Details of the sample in terms of age, gender, nature of the offence, employment status and educational background are provided in Annex 5.

6.4 The telephone interviews were supplemented by 20 in-depth interviews undertaken with 10 statement makers and 10 non-statement makers.76 Separate discussion guides were used for statement makers and non-statement makers and copies can be found in Annex 6 (non-statement makers) and Annex 7 (statement makers) respectively. The interviews were tape recorded and transcribed. Brief characteristics of the sample of victims who took part in these interviews are outlined in Annex 8.

6.5 The remainder of this chapter of the report presents the principal findings of the interview programme. All tables below refer to the telephone interviews: in reading these, it should be borne in mind that not all of the respondents answered all of the questions. Some of the questions in the questionnaire were only asked of either statement makers or non-statement makers. Other questions were only asked of those who had given specific responses to a previous question. For example, question 13 (how easy was the initial information about the victim statement scheme to understand?) was only asked of those who recalled receiving the written material. The number of respondents to each question is shown below each of the tables.

6.6 In all of the tables that follow, the percentage figures do not always add up to 100% because they have been rounded to the nearest whole number. In addition, in some tables respondents were able to give more than one answer which again means that the percentage totals do not always add up to 100% (where this is the case, it is indicated in the accompanying text or footnotes).

6.7 Where quotations below are taken from statements made by victims who participated in the face-to-face interviews, they are identified as such by giving the gender of the victim, the offence concerned, and the number by which the respondent is identified in Annex 8. Other quotations are from the telephone interviews.

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75 The remainder of the sample either declined to be interviewed or proved to be unobtainable using the contact details provided.

76 The process by which these interviewees were selected is described above, paras 2.14-2.15.
EFFECT OF THE CRIME ON VICTIMS

6.8 Respondents were asked initially whether or not they had suffered physical, emotional or financial problems as a result of the crime and, if so, whether or not they perceived these problems as serious. Tables 6.1 to 6.3 present the results of this exercise.

6.9 Table 6.1 records the distribution of “serious” effects among the sample of 182 respondents. It indicates the number of respondents that perceived themselves as having suffered serious effects in none, one, 2 or all of the physical, emotional or financial categories.

Table 6.1: Distribution of ‘serious’ effects

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 out of 3 serious effects</td>
<td>50</td>
</tr>
<tr>
<td>1 out of 3 serious effects</td>
<td>25</td>
</tr>
<tr>
<td>2 out of 3 serious effects</td>
<td>18</td>
</tr>
<tr>
<td>3 out of 3 serious effects</td>
<td>7</td>
</tr>
</tbody>
</table>

n = 182

6.10 Overall, 50% of victims did not report any “serious” effects in any of the 3 categories, with, at the other end of the spectrum, 7% of respondents reporting that the crime had resulted in them suffering serious physical, emotional and financial effects. There was a relationship between the objective seriousness of the offence and the effect as perceived by the respondent. For example, respondents who had been victims of relatively serious offences (judged objectively – aggravated assault, for example) were more likely to report that they had suffered serious emotional effects than victims of theft by housebreaking or assault without any aggravating features. This does not mean, though, that victims of what might be considered relatively minor offences are not seriously affected by the crime. For example, 2 of the 39 victims of theft by housebreaking reported serious effects in all 3 categories and 11 reported serious effects in 2 of the categories.

Table 6.2: Percentage of statement makers/non-statement makers reporting serious effects

<table>
<thead>
<tr>
<th></th>
<th>Statement makers (n=88)</th>
<th>Non-statement makers (n=94)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 out of 3 serious effects</td>
<td>38%</td>
<td>62%</td>
</tr>
<tr>
<td>1 out of 3 serious effects</td>
<td>28%</td>
<td>22%</td>
</tr>
<tr>
<td>2 out of 3 serious effects</td>
<td>25%</td>
<td>11%</td>
</tr>
<tr>
<td>3 out of 3 serious effects</td>
<td>9%</td>
<td>5%</td>
</tr>
</tbody>
</table>

n = 182

6.11 It has already been concluded that the uptake of the opportunity to make a victim statement increases in line with offence seriousness, as measured objectively. This finding

77 For the purposes of this Table, the 2 respondents who answered “don’t know” to questions asking whether they regarded particular effects as serious are treated as having not reported serious effects.

78 See above, paras 4.17-4.23.
is mirrored in the telephone questionnaire survey. As Table 6.2 above shows, statement makers were far more likely than non-statement makers to report serious effects in at least one of the categories. In total, only 38% of statement makers did not report any serious effects compared to 62% of non-statement makers.

6.12 The correlation between offence seriousness and uptake of the opportunity to make a victim statement was reflected in some of the comments made by non-statement makers in face-to-face interviews when asked if they would make a victim statement in the future:

“Maybe if he had destroyed stuff or stolen personal things, and I don’t mean the video… I don’t care about the video. Certainly if it had been things that my family had passed down, they mean a lot to me, if they had been taken, would it have changed my mind? I may well have opted to do something and thought ‘to hell with it’. But it was a video, stuff that can be replaced, it was enough to know that they had got somebody.” (Female victim of theft by housebreaking (respondent 7), non-statement maker).

“I suppose it would depend on the crime. A serious crime, then something like that I would probably… something like assault.” (Female victim of theft by housebreaking (respondent 16), non-statement maker).

COMPREHENSION OF THE VICTIM STATEMENT SCHEME

6.13 Respondents were asked various questions designed to test their comprehension of the victim statement scheme. The results are shown in Tables 6.3 to 6.8 below.

6.14 Respondents were first asked whether or not they recalled being told that they could make a victim statement. As Table 6.3 shows, 18% of respondents (all non-statement makers) did not recall being told about the opportunity to make a victim statement and the following questions in this section were asked only of the 149 respondents who did recall being offered the opportunity to make a statement.

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>149</td>
</tr>
<tr>
<td>No</td>
<td>33</td>
</tr>
<tr>
<td>n = 182</td>
<td></td>
</tr>
</tbody>
</table>

6.15 The 149 respondents who did recall being told about the victim statement scheme were asked how they first heard about the scheme. As Table 6.4 shows, the vast majority (74%) stated that they first heard about the scheme via a letter from the procurator fiscal. A further 11% of respondents stated that they first heard about the scheme from the police, although this may simply be an inaccurate recollection on their part.
Table 6.4: How did you first hear about making a victim statement?

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter from procurator fiscal</td>
<td>110</td>
</tr>
<tr>
<td>Personal contact with police</td>
<td>16</td>
</tr>
<tr>
<td>Through VSS</td>
<td>8</td>
</tr>
<tr>
<td>Some other way</td>
<td>10</td>
</tr>
<tr>
<td>Don’t know/can’t remember</td>
<td>5</td>
</tr>
</tbody>
</table>

n = 149

6.16 Respondents were then asked whether or not they thought that it was compulsory to make a victim statement. As Table 6.5 shows, it was generally understood that making a statement was optional, with only 10 respondents (7% of the sample) thinking that it was compulsory (although a further 5% did not know whether it was compulsory or optional). Somewhat surprisingly, 2 of the 10 respondents who thought that making a statement was compulsory were non-statement makers.

Table 6.5: Do you think it is compulsory for victims to make a victim statement?

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
</tr>
<tr>
<td>No</td>
<td>132</td>
</tr>
<tr>
<td>Don’t know</td>
<td>7</td>
</tr>
</tbody>
</table>

n = 149

6.17 The telephone questionnaire then explored whether or not respondents understood that any victim statement they made would be shown to the offender and his or her lawyer (assuming that the case ended in a conviction). In total, 83 respondents (56% of the sample) were aware of this, but 64 (43% of the sample) were not. As might be expected, statement makers were more likely to be aware of this than non-statement makers (64% of statement makers were aware of this compared to 44% of non-statement makers). Of more concern is the fact that 36% of statement makers did not know that their statement would be shown to the offender.

6.18 The 83 respondents who were aware that the offender could read any statement they made were asked if this encouraged them or discouraged them to make a victim statement. As Table 6.6 shows, for 57% (47 of the 83 respondents) it made no difference. Of the remainder, slightly more victims (23%/19 out of 83) were encouraged to make a statement by knowing that the offender would read it than were discouraged (21%/17 out of 83). Some victims saw making the statement as an opportunity to attempt to make the offender aware of their wrongdoing:

“It was between myself and the person who committed the crime, it was me kind of releasing it and letting her know that I wasn’t happy. Whatever people’s actions are, it has an effect on somebody else’s life. To her it might have been ‘I need some money and I need to walk into somebody’s house and I need to do that’ but to me, it was

79 The fact that they chose not to make a statement despite thinking it was compulsory was not explored with these respondents given the structured nature of the telephone questionnaire survey.
somebody violating my space and coming in uninvited… The person who commits that crime should know, I mean it might have no effect at all.” (Female victim of theft by housebreaking (respondent 12), statement maker).

“I didn’t like the fact that she was knowing how it had impacted me. It sort of made me think in a way that it was giving her satisfaction to know that it had actually caused so many things to happen. It would have been better if it was a private thing between you and the judge… Despite that, I was hoping she’d feel some sort of remorse on hearing some of those things.” (Female victim of assault (respondent 13), statement maker).

Table 6.6: Did the fact that the victim statement would be shown to the offender and his/her lawyer encourage or discourage you to make a statement?

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encouraged me</td>
<td>19</td>
</tr>
<tr>
<td>Discouraged me</td>
<td>17</td>
</tr>
<tr>
<td>Made no difference</td>
<td>47</td>
</tr>
</tbody>
</table>

n = 83

6.19 Respondents were then asked whether or not they were aware that, if the case went ahead, they could be asked questions about their victim statement in court.80 In total, 88 respondents (59% of the sample) were aware of this, but 58 respondents (39%) were not. (The remaining 3 respondents indicated that they did not know.) There was some overlap between the different types of misunderstanding: 42 respondents were unaware both that the offender would see any statement they made and that they could be questioned about their statement in court. A further 42 respondents were unaware of one or the other of these facts about the victim statement scheme, but not both.

6.20 As in relation to the previous question, statement makers were more likely to be aware that they could be asked questions about their statement in court than non-statement makers (68% of statement makers compared to 46% of non-statement makers). Of some concern are the 31% of statement makers who did not know that they could be asked questions about their statement in court.81

6.21 The 88 respondents who were aware that they could be asked questions about their statement in court were asked if this encouraged them or discouraged them to make a victim statement. As Table 6.7 shows, for 76% of respondents (67 of the 88 who were aware that this could happen) this made no difference. Perhaps surprisingly, slightly more respondents (14%/12 of the 88) stated that this encouraged them to make a victim statement than discouraged them (8%/7 of the 88).

80 To our knowledge, and on the basis of the interviews undertaken with those involved in the scheme, although it was possible, it never actually happened.
81 For the relationship between knowledge of the scheme and the extent to which the respondent read the victim statement literature, see Table 6.8 below.
Table 6.7: Did the fact that you could be asked questions about the victim statement in court encourage or discourage you to make a statement?

<table>
<thead>
<tr>
<th>Encouraged me</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discouraged me</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>Made no difference</td>
<td>76</td>
<td>8</td>
</tr>
<tr>
<td>Not sure/don’t know</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

n = 88

6.22 The scheme literature highlighted both the fact that the statement would be shown to the offender and the fact that the victim might be asked questions about his or her statement in court, which makes the findings in paras 6.17 and 6.19 a little surprising. It may simply be that respondents did not read this aspect of the literature in the first place. With this in mind, the relationship between the extent to which respondents read the victim statement scheme literature and their knowledge of these specific aspects of the scheme was examined.

6.23 As Table 6.8 shows, there is some correlation between the extent to which respondents read the victim statement scheme literature and whether or not they were aware that the statement would be shown to the offender and that they may be asked questions about the statement in court. For example, 65% of those who reported reading “all or almost all” of the literature were aware that the offender would read any statement they made compared to only 46% of those who read “most” of the literature. The relationship is not straightforward though. For example, respondents who had only read “some” of the literature were more likely than those who had read “all or almost all” of it to be aware that the statement would be shown to the offender (73% compared to 65%). It should be noted, however, that the numbers involved are not large enough to draw any firm conclusions as only 11 respondents in total stated that they had read “some” of the literature, compared to the 83 respondents who stated that they had read “all or almost all” of it.

Table 6.8: Relationship between reading victim statement literature and knowledge about the scheme

<table>
<thead>
<tr>
<th>Read all/almost all literature (n=83)</th>
<th>Read most of the literature (n=37)</th>
<th>Read some of the literature (n=11)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knew statement would be shown to offender</td>
<td>54 (65%)</td>
<td>17 (46%)</td>
</tr>
<tr>
<td>Knew could be asked questions about statement</td>
<td>53 (64%)</td>
<td>21 (57%)</td>
</tr>
</tbody>
</table>

n=131

RECALL AND COMPREHENSIBILITY OF THE SCHEME LITERATURE

6.24 The 149 respondents who recalled being told about the opportunity to make a victim statement were asked whether or not they recalled receiving any written material relating to

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82 Not all respondents were included in this analysis because some could not recall receiving any literature about the victim statement scheme (see Table 6.9 below). In addition, the respondent who did not read any of the literature and the 2 respondents who could not recall how much of the literature they had read (see Table 6.10 below) were left out of the analysis.

83 See Table 6.3 above.
the victim statement scheme. As Table 6.9 shows, 134 of these 149 respondents did recall receiving the letter and accompanying leaflet about the scheme, a figure of 90%.

Table 6.9: Do you recall receiving any written material?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>134</td>
<td>90</td>
</tr>
<tr>
<td>No</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Don’t know/can’t remember</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

n = 149

6.25 Those 134 victims who recalled receiving the letter and accompanying leaflet were then asked how much of the leaflet and letter they read; whether or not they found this information easy to understand; and whether or not it helped them to make their decision about submitting a statement. The results of this exercise are shown in Tables 6.10 to 6.13.

Table 6.10: How much of the leaflet or letter did you read?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>All/almost all</td>
<td>83</td>
<td>62</td>
</tr>
<tr>
<td>Most</td>
<td>37</td>
<td>28</td>
</tr>
<tr>
<td>Some</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>None</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Can’t remember</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

n = 134

6.26 As Table 6.10 shows, the vast majority of respondents (90%) read all or most of the letter and leaflet, with only a single respondent stating that he or she did not read any of it. There were relatively few respondents who reported finding the letter and/or leaflet difficult to understand. As Table 6.11 shows, 38% of respondents thought the written material was “very easy” to understand, with a further 51% of respondents finding it “quite easy” to understand. Only 10 respondents (8%) found it “not at all easy” or “not very easy” to understand.

Table 6.11: How easy was this letter/leaflet to understand?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very easy</td>
<td>51</td>
<td>38</td>
</tr>
<tr>
<td>Quite easy</td>
<td>68</td>
<td>51</td>
</tr>
<tr>
<td>Not very easy</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Not at all easy</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Can’t remember</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>

n = 134
6.27 Perhaps unsurprisingly, the majority of the 10 people who did not find the literature easy to understand were non-statement makers (8 were non-statement makers and 2 were statement makers). What is not clear is the nature of the relationship, if any, between these variables. It may be that those who found the literature confusing chose not to make a statement for this reason or it may be that those who decided not to make a statement did not put much effort into reading the literature carefully. The numbers involved are so small that it is difficult to draw any firm conclusions.

6.28 Those victims who were interviewed face-to-face invariably reported that they had no difficulty in understanding the letter and leaflet they had been sent, and were generally positive about the clarity of the literature.

6.29 There was no discernable relationship between finding the victim statement literature difficult to understand and either the age of the respondent or their level of education but, again, given the very low numbers involved, a meaningful analysis is not possible.

6.30 The 10 respondents who did not find the written material easy to understand were asked why they thought that this was the case. Table 6.12 summarises the responses received to this question (which was open-ended, respondents not being limited to any particular answer).

<table>
<thead>
<tr>
<th>Table 6.12: Why was the letter/leaflet difficult to understand?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Found it confusing</td>
</tr>
<tr>
<td>Own inability to understand/state of mind at time</td>
</tr>
<tr>
<td>Needed more detail about what could be included in victim statement and why</td>
</tr>
<tr>
<td>Because it arrived a long time after the crime</td>
</tr>
</tbody>
</table>

n = 10

6.31 The answers shown in Table 6.12 demonstrate that, even in the relatively small number of cases where the victim did not find the literature easy to understand, this was not always due to the material itself, with 4 respondents attributing their confusion to their own state of mind at the time. Seven respondents stated simply that they found the literature confusing (without explaining why) and 2 respondents stated specifically that it was not clear exactly what type of information could be included in a victim statement and why this was the case.

6.32 Finally, respondents were asked whether the literature they received helped them to make up their mind about whether or not to submit a victim statement. As Table 6.13 shows, the majority of respondents (72%) did find the leaflet and letter useful in helping them to make this decision. Perhaps unsurprisingly, statement makers found it more useful than non-statement makers, with 83% of statement makers stating that the literature helped them make up their mind, compared to 57% of non-statement makers.

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84 The total in this column is greater than 10 as some respondents gave more than one reason for their answer.
Table 6.13: Did reading the leaflet/letter help you make your mind up?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>97</td>
<td>72</td>
</tr>
<tr>
<td>No</td>
<td>32</td>
<td>24</td>
</tr>
<tr>
<td>Don’t know/can’t remember</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>

n = 134

REASONS FOR MAKING A VICTIM STATEMENT

6.33 The 88 statement makers in the sample were asked why they had chosen to make a victim statement; what result they hoped making the statement would have; and whether they felt their decision was the right one. The responses to these (open-ended) questions are summarised in the following tables.

6.34 Table 6.14 sets out the reasons that respondents had for making a statement. The most common reason given (by 30 of the 88 statement makers) was simply to express their feelings about the crime. In a similar vein, 9 of the 88 statement makers did so because they felt that it would be therapeutic, with 12 of the 88 statement makers choosing to submit a statement in order to make the accused think about what he or she had done. As Table 6.14 shows, 20 of the 88 statement makers made a statement because they thought it would influence the outcome of the trial (and an additional 4 did so because they thought it would ensure conviction). This seems to indicate a certain level of misunderstanding of the victim statement scheme, as the statement is only put before the court post-conviction, although the 20 respondents who made a statement because they wanted to influence the outcome of the trial might simply have meant that they wished to influence the sentence.\(^85\)

Table 6.14: Reasons for making a victim statement

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>To express my feelings/get my point of view across</td>
<td>30</td>
<td>34</td>
</tr>
<tr>
<td>To influence the outcome of trial/help the case</td>
<td>20</td>
<td>23</td>
</tr>
<tr>
<td>To make accused think about what he/she had done</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>Therapeutic/for own benefit</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>To influence sentencing</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>To ensure conviction</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Because the crime had a serious impact</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Thought it was mandatory</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>19</td>
<td>22</td>
</tr>
</tbody>
</table>

n = 88

6.35 The “other” category in Table 6.14 comprises responses for making a victim statement that were given by only one respondent. It includes reasons such as: “I didn’t see any reason not to”; “[the offence] annoyed me”; “for statistical compilation purposes”; “I thought it

\(^{85}\) Although the fact that 22 of the 88 statement makers hoped that the result of their statement would be “a conviction” suggests that this is not the case (see Table 6.15 below).

\(^{86}\) The total in this column is greater than 100% as respondents could give more than one answer.
would make it easier if I went on the stand”; “[the offence] also affected my 15 year old
daughter and she was traumatised”; “because my mental health advocate said it might be the
best thing to do”; “because I wanted to be helpful”; and “because the guy who attacked me
was still threatening me”. The possibility of compensation did not appear to be a motivation,
and one victim specifically rejected this:

“Money doesn’t matter… if you’re physically injured you can get a few bob for it, but
if you’re scarred inside and hurt inside you just have to go on with that pain.” (Male
victim of racially aggravated harassment (respondent 2), non-statement maker).

6.36 The face-to-face interviews suggested that some victims found the experience of
making a statement therapeutic even though this had not been their motivation in choosing to
make the statement. For example, a statement maker, when asked why she made a statement,
responded:

“On a part of it, it says something about it would go towards giving the judge,
although they might not see us, how we feel and what the sentence would be, it would
go towards a harsher sentence… that’s why I filled it in, because I hoped it would
[influence the sentence].” (Female victim of robbery (respondent 8), statement maker).

6.37 When asked later about the experience of making the statement, she said:

“It actually helped, writing it down. I felt as if after I’d written it all down, it just got
everything rinsed away from you. I would advise anybody in a robbery just to write it
down, supposing you didn’t get that form, just to write it all down. Write it down and
get it out and just tear it up, burn it or anything, you can do anything with it, just to
write everything down, I think it was quite good. I just felt as if there was a weight
lifted off my mind after I’d written it down, and knowing that, fine, if it goes to court
he might plead guilty and I thought if I’m not allowed to give my evidence in court the
judge had got that, they can refer to your sheet.”

6.38 Another victim, however, rejected the “therapeutic” justification for the scheme:

“I think it’s worthwhile because it gives you the chance for your side to be heard in
the court… And the most important point I think is if it does make a difference to the
sentence. If it doesn’t then… you know, I can take a piece of A4 paper and write it
out if it’s going to help me. That is, I think, fundamentally the whole purpose of the
system. And if it’s not making a difference to the sentence then it’s either the system
that’s failing or the sheriff is failing the system.” (Female victim of assault
/respondent 5), statement maker).

6.39 Table 6.15 sets out the result that statement makers hoped for in making their victim
statement. Mirroring the findings of Table 6.14, by far the most common result hoped for
from making a victim statement was a conviction (22 of the 88 statement makers), indicating
a certain level of misunderstanding about the victim statement scheme. A further 6
respondents (7%) hoped that their victim statement would provide more evidence for the case.
In the normal course of events, a statement would have no such effect.87

87 Procurators fiscal did comment, however, that they occasionally obtained additional information as a result of
a victim statement being made. See para 7.23.
Table 6.15: Result hoped for by making victim statement

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>A conviction</td>
<td>22</td>
</tr>
<tr>
<td>Getting my point of view across (generally)</td>
<td>16</td>
</tr>
<tr>
<td>A longer sentence</td>
<td>13</td>
</tr>
<tr>
<td>The accused understands the impact of the crime</td>
<td>12</td>
</tr>
<tr>
<td>The judge understands the impact of the crime</td>
<td>6</td>
</tr>
<tr>
<td>More evidence for the case</td>
<td>6</td>
</tr>
<tr>
<td>A more lenient sentence</td>
<td>1</td>
</tr>
<tr>
<td>The accused is deterred from re-offending</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know/didn’t care</td>
<td>16</td>
</tr>
</tbody>
</table>

n = 88

6.40 Respondents also hoped that their statement would influence the sentencing process, with 13 respondents (15%) hoping that it would result in a longer sentence, but one respondent hoping that it would result in a more lenient sentence. In face-to-face interviews, 2 victims explained that they specifically wanted to avoid the accused receiving a light sentence as a result of a guilty plea. For example:

“People who plead guilty to me are looking for a lighter sentence, but if the judge reads through how the victims are and how they’ve been since the robbery, they’ll maybe get a harsher sentence instead of a wee slap on the wrist.” (Female victim of robbery (respondent 8), statement maker).

6.41 Statement makers were asked whether, with the benefit of hindsight, they thought that making a victim statement was the right decision. As Table 6.16 shows, the vast majority (75 of the 88 respondents) considered that making a victim statement was “definitely” or “probably” the right decision. Only 5 respondents thought that it was “probably not” or “definitely not” the right decision.

Table 6.16: Was making a victim statement the right decision?

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitely the right decision</td>
<td>55</td>
</tr>
<tr>
<td>Probably the right decision</td>
<td>20</td>
</tr>
<tr>
<td>Probably not the right decision</td>
<td>3</td>
</tr>
<tr>
<td>Definitely not the right decision</td>
<td>2</td>
</tr>
<tr>
<td>Don’t know/can’t say</td>
<td>8</td>
</tr>
</tbody>
</table>

n = 88

6.42 The 5 respondents who thought that making a statement was not the right decision were then asked why they held this view. This was an open-ended question. Respondents were not limited to any particular answer and could (and indeed did) give more than one reason. The results are shown in Table 6.17. As the table shows, the most common reason for thinking that making a statement was the wrong decision related to the fact that the statement had not been used as expected: because it did not help the case (4 respondents); it

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88 The total in this column is greater than 100% as respondents could give more than one answer.
was not used in court (3 respondents); or because the sentence did not seem to take account of it (3 respondents). Rather worryingly, 2 respondents stated that they thought that making a statement was the wrong decision because there had been some sort of reprisals as a result.

**Table 6.17: Why was making a statement the wrong decision?**

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>It didn’t help the case</td>
<td>4</td>
</tr>
<tr>
<td>It wasn’t used in court</td>
<td>3</td>
</tr>
<tr>
<td>The sentence didn’t seem to take account of it</td>
<td>3</td>
</tr>
<tr>
<td>There have been reprisals</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
</tbody>
</table>

n = 5

6.43 The fact that the statement was not used in court did not, however, inevitably result in the victim regretting the decision to make a statement. A female victim of robbery who had made her statement in order to influence the sentence (see the quote at para 6.36 above), remained positive about her decision despite the trial having ended in a verdict of not proven and the statement having not been used. When asked whether she would make a victim statement again, she responded:

“Yes, and I would advise anyone who’s with me to do the same... Yes, it’s worthwhile definitely... it seemed to wash the things out of me, because I was very bitter, I was very bitter towards this person. I’m not so bad now. I don’t know what would happen if I saw him, but there was a lot of anger in me, and when I wrote that out, I felt a lot better. Knowing that if he pled guilty, someone would know how I feel, know how the victim feels.”

**EXPERIENCE OF MAKING THE VICTIM STATEMENT**

6.44 The 88 respondents who made a victim statement were asked a number of further questions about their experience of doing so. First, respondents were asked whether or not anyone helped them to make the statement. As Table 6.18 shows, 18 respondents (20%) received some help in making the statement, most commonly from a family member or a friend (8 respondents) or from a victim support worker (5 respondents).

**Table 6.18: Did anyone help you make your victim statement?**

<table>
<thead>
<tr>
<th>Help</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes – family/friend</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Yes – victim support worker</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>Yes – procurator fiscal</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Yes – social worker/similar</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Yes – don’t know</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>No</td>
<td>70</td>
<td>80</td>
</tr>
</tbody>
</table>

n = 88

89 The total is this column is greater than 5 as respondents could give more than one answer.
6.45 The 18 respondents who did receive help in making their statement were asked about the nature of that help. Table 6.19 shows the responses received to this question, which was open ended, respondents not being limited to any particular answer. The most common answer was simply help with writing the form (in the sense of helping to put the victim’s experience into writing). Responses grouped as “other” were those given by only one respondent and comprised “proof reading”; “moral support”; and “answering my questions about the form”.

<table>
<thead>
<tr>
<th>Nature of help received with victim statement</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Help with writing the form (e.g. choosing precise words, spelling)</td>
<td>9</td>
</tr>
<tr>
<td>Talked through form, explaining form</td>
<td>5</td>
</tr>
<tr>
<td>Wrote form from my dictation</td>
<td>4</td>
</tr>
<tr>
<td>Prompting for forgotten details</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
</tr>
</tbody>
</table>

6.46 The 18 respondents who were helped to make their statement were then asked how much influence the person who helped them had over the content of their statement. As Table 6.20 demonstrates, 13 respondents stated that their helper had little or no influence of this nature, with only one respondent stating that they were influenced “a lot” by the person who helped them. One of the victims who was interviewed face-to-face was very positive about the support she had received from a VSS officer:

“She was giving me good advice and guidance. She was more concerned about not making things difficult for me in court and that I left myself open to the prosecution or defence… There was a good point in one of them that [she] didn’t think I should put in because it could leave me open to, it could cause trouble for me. But I felt quite strongly about it because it’s what happened, so I left it in. But she was very good at guiding me through it.” (Female victim of assault (respondent 5), statement maker).

<table>
<thead>
<tr>
<th>How much influence did they have?</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Some</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>Little or no influence</td>
<td>13</td>
<td>72</td>
</tr>
</tbody>
</table>

6.47 Respondents were then asked whether making the victim statement was upsetting and whether or not it made them feel any better. As Table 6.21 shows, 34 of the 88 statement makers (39%) did find the experience of making their victim statement upsetting although, as Table 6.22 illustrates, 54 of the 88 statement makers (61%) indicated that they felt better after making the statement.

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90 The total in this column is greater than 18 as some respondents gave more than one answer.
Table 6.21: Was making the victim statement upsetting?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>34</td>
<td>39</td>
</tr>
<tr>
<td>No</td>
<td>54</td>
<td>61</td>
</tr>
</tbody>
</table>

n = 88

Table 6.22: Did making the victim statement make you feel better?

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>54</td>
<td>61</td>
</tr>
<tr>
<td>No</td>
<td>33</td>
<td>38</td>
</tr>
<tr>
<td>Don’t know</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

n = 88

6.48 It should be noted that finding the process of writing the statement “upsetting” was not necessarily seen by victims in a negative light:

“It was upsetting to have to go over it, at the time it was very raw, it had only just happened, I was very annoyed… it was upsetting to have to go over it, but at the end of the day, it had to be done, it had to be written... I would say that it’s very therapeutic, being able to get it out, to release it, to put it down into words and then just let it go basically. Because otherwise it’s just milling round your head and you’ve got no way of telling anybody about it.” (Female victim of theft by housebreaking (respondent 10), statement maker).

This is supported by the finding that 20 of the 34 respondents who found the process of making the statement upsetting also reported that making the statement made them feel better.

6.49 Perhaps unsurprisingly, the more serious the effect of the offence as perceived by respondents, the more likely they were to find the process of making the statement upsetting. Only 8 of the 33 statement makers (24%) who reported no serious effects found making a statement upsetting, compared to 28 of the 55 statement makers (51%) who reported serious effects in at least one category (physical, emotional or financial).

6.50 There was little relationship, however, between the exact nature of the offence and whether or not respondents found the experience of making the victim statement upsetting. Victims of assault were no more or less likely to find the process of making a statement upsetting than victims of theft by housebreaking. There is a possible exception in relation to victims of sexual offences: while 34 of the 88 statement makers interviewed found the experience upsetting, 3 of the 4 victims of sexual offences interviewed reported that they had found the experience upsetting. It is not, however, possible to draw firm conclusions from such a small sample.

6.51 There may be some relationship between the exact nature of the offence and whether or not making a statement made respondents feel better. Overall, 9 of the 11 victims of theft by housebreaking felt better after making their statement, compared to 54 of the 88 statement makers as a whole. (There was no noticeable difference between other types of offence.) Once again, though, the total number of respondents involved is small (there were 11 victims
of theft by housebreaking in the sample of statement makers) so the finding is not very reliable. There was no noticeable relationship between the perceived seriousness of the offence and whether or not making a victim statement made respondents feel better.

6.52 Within the terms of the pilot victim statement scheme, it was possible to update a victim statement but not to withdraw it. Respondents were asked whether or not they attempted to do either of these things. Of the 88 respondents who did make a victim statement, 2 did take the opportunity to update it. Awareness of this possibility was generally low. Only 21 of the 88 statement makers (24%) were aware that it was possible to update a victim statement. There was also some confusion among the sample over whether or not a victim statement could be withdrawn once it had been made, with 19 respondents (22% of statement makers) being under the mistaken impression that it was possible to do this. A further 46 statement makers (52%) did not know whether or not this was a possibility, with only 23 statement makers (26%) stating correctly that it was not possible. None of the 19 respondents who thought that it was possible to withdraw a statement had actually attempted to do so.

6.53 Respondents were then asked about what had happened to their statement after it had been made. First, they were asked how much consideration they felt was given to their statement in court. As Table 6.23 shows, the most common response to this question was that respondents simply did not know (44 of the 88 statement makers). A further 25 respondents felt that “a lot” or “some” consideration was given to their statement, with 16 respondents being under the impression that “little or no consideration” was given to it.

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot of consideration</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Some consideration</td>
<td>18</td>
<td>21</td>
</tr>
<tr>
<td>Little or no consideration</td>
<td>16</td>
<td>18</td>
</tr>
<tr>
<td>Case did not go to court</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>44</td>
<td>50</td>
</tr>
</tbody>
</table>

n = 88

6.54 In a similar vein, statement makers were asked whether or not they felt that their statement had been taken into account in sentencing. Once again, the most common response was that this was not known (47 of the 88 respondents). A further 22 respondents considered that their statement had been taken into account in the sentencing process, whilst 19 felt that it had not. As might be expected, these figures are roughly consistent with those relating to the question of how much consideration respondents felt that their statement had been given.

6.55 Finally, statement makers were asked, in the light of their experience, how likely they would be to make a victim statement if they were a victim of a similar crime in the future.91 As Table 6.24 illustrates, 58 of the 88 respondents stated that they “definitely” would, with a further 18 respondents stating that they “probably” would. Six respondents stated that they “probably” or “definitely” would not.

91 Non-statement makers were also asked this question but their responses are reported separately: see Table 6.28 below.
Table 6.24: How likely are you to make a victim statement if you were the victim of a similar crime again? (Statement makers only)

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitely would</td>
<td>58</td>
</tr>
<tr>
<td>Probably would</td>
<td>18</td>
</tr>
<tr>
<td>Probably would not</td>
<td>2</td>
</tr>
<tr>
<td>Definitely would not</td>
<td>4</td>
</tr>
<tr>
<td>Can’t say/don’t know</td>
<td>6</td>
</tr>
</tbody>
</table>

n = 88

6.56 The 6 respondents who stated that they would not make a victim statement again if they were the victim of a similar offence in the future were asked what their reason was for this. All 6 stated that this was because they felt that their statement had not made any difference to the outcome of the case. Further support for this finding is the fact that, of the 6 respondents who stated that they would probably or definitely not make a victim statement in the future, none had indicated in response to an earlier question that they felt their statement had been taken into account in sentencing. Four of the 6 felt that it definitely had not and the remaining 2 stated that they did not know whether or not it had. One face-to-face interviewee suggested that she might not make a statement in the future because of the effort involved, but concluded that she probably would:

“I would if there were some wee tweaks to how you have to hand it over. It’s that handwriting – pages and pages and pages! I would, yes.” (Female victim of assault (respondent 5)). [This victim had gone through a number of drafts of her statement and suggested that she would have preferred to have been able to fill out an electronic form.]

6.57 Four of the 6 telephone interviewees stated in addition that they would be wary of making a statement in the future because, in the light of their experience, they would not now want the offender to see the statement.

REASONS FOR NOT MAKING A VICTIM STATEMENT

6.58 The 94 non-statement makers were asked why they had chosen not to make a statement. The responses to this (open ended) question were grouped by the researchers and are summarised in Table 6.25 below. By far the most common reason given for not making a statement was that the respondent did not feel like a victim or felt that the impact of the crime was not sufficiently serious (33 of the 62 non-statement makers who gave a response to this question).

“I wasn’t too fussed about doing a victim statement because it was just too much hassle, it wasn’t anything major. It was just something that goes with the territory of this job [working in a pub]” (Male victim of assault (respondent 19), non-statement maker).
<table>
<thead>
<tr>
<th>Reason</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Didn’t feel like a victim/impact of crime not serious</td>
<td>33</td>
<td>53</td>
</tr>
<tr>
<td>Didn’t want accused to see it/know name and address</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Fear of reprisals from accused</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Didn’t think it would make a difference</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Wanted to forget the incident</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Didn’t receive letter/wasn’t given opportunity</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Length of time that had passed since incident</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Didn’t understand documentation/needed help</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>7</td>
</tr>
</tbody>
</table>

n = 62

6.59 A small minority of respondents chose not to give a statement because they feared reprisals from the accused (5 of the 62 respondents) or because they did not want the accused to see the statement or to find out their name and address (a further 5 respondents).

“Basically because once the person got sentenced and still got to live in [name of town]... I felt that if I’d made things worse, then retribution factors would maybe have come into it... basically the accused is a known violent person and I’ve got 3 children and a wife... I was just concerned for my family basically and I didn’t want to make things any worse than they already were.” (Male victim of assault (respondent 1), non-statement maker).

“[the documentation] seemed to suggest that if he pleaded guilty my statement would then be read out and it seemed a case of my details would be read out. Now, I know he might know anyway, having burgled my house, but I wasn’t too keen to let him see anything bad I had to say about him... I would have preferred if it had just been the judge or whoever had read it.” (Female victim of theft by housebreaking (respondent 7), non-statement maker).

6.60 Other reasons given were that respondents did not think their statement would make any difference (4 of the 62 respondents); that they wanted to forget the incident (4 respondents) and (perhaps of some concern) that they did not receive the letter inviting them to do so (4 respondents).

6.61 Responses given by only a single respondent were grouped together under the category “other”. They included missing the deadline; feeling that they had made enough statements already; and not wanting the statement to be read out in court. In the face-to-face interviews, 2 victims explained that they had not wanted to fill out a victim statement because they did not feel vindictive towards the accused (who was known to them). As one explained:

“...basically I didn’t want [the accused, her former long-term partner] to get any harsher sentencing. I really didn’t want anything to happen to him because my motivation for accusing him in the first place was to stop him harming himself

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92 The total in this column is greater than 100% as respondents could give more than one answer.
93 Only 62 of the 94 non-statement makers gave any response to this question.
94 A misconception of the scheme as the statement is not read out in court but is simply passed to the judge or sheriff to read.
because I was just so afraid for him.” (Female victim of assault (respondent 14), non-statement maker).

6.62 Three respondents specifically mentioned the length of time that had passed since the incident as a reason for not making a statement. All 94 non-statement makers were asked specifically if they would have been more likely to make a statement if they had been able to do so more quickly after the incident in question. Whilst 36 respondents stated that this would have made no difference, 26 respondents said that they would have been more likely to do so if the opportunity had been offered sooner. (The remainder did not know.)

6.63 Non-statement makers were then asked if they were aware that they could have changed their mind and submitted a statement even after their initial decision not to do so (at any point up to conviction). Only 15 non-statement makers (16%) were aware that this was a possibility. Forty-six respondents (49% of non-statement makers) indicated that they did not think this was possible, with a further 33 respondents (35%) stating that they did not know whether or not this was possible.

6.64 The 46 respondents who were under the impression that they could not change their mind were asked if they would have made a victim statement at a later date had they known that it was possible. As Table 6.26 shows, a small proportion (11 of the 46 respondents) stated that they would have been “very” or “quite” likely to do so, suggesting that the possibility of making a statement at any point up to the point of conviction might be something that could be emphasised more strongly in the victim statement literature.

Table 6.26: Had you known you could change your mind, do you think you might have made a victim statement at a later date?

<table>
<thead>
<tr>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very likely</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Quite likely</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Quite unlikely</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>30</td>
</tr>
<tr>
<td>Very unlikely</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>46</td>
</tr>
</tbody>
</table>

6.65 Finally, non-statement makers were asked if they thought, with the benefit of hindsight, their decision not to make a statement was the right decision and how likely they would be to make a victim statement if they were the victim of a similar crime in the future. Table 6.27 displays the responses to the first of these questions. As Table 6.27 shows, only 10% of the 94 respondents thought that their decision not to make a statement was the wrong decision, although the majority of the 94 respondents (37%) stated that they did not know whether it had been the right decision or not. In face-to-face interviews, 2 victims expressed regret about not making a statement, one because he had been assaulted by members of the accused’s family again afterwards, and another because he felt he had missed an opportunity to make the effects of the crime on him known:

“Yeah, I do regret it, yeah, because we need the support… people knowing what we’re going through. We need that support, we need people to understand that it’s not just name-calling. It can be very very painful.” (Male victim of racially aggravated harassment (respondent 2), non-statement maker).
Table 6.27: Was your decision not to make a statement the right decision?

<table>
<thead>
<tr>
<th>Decision Description</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitely right decision</td>
<td>25</td>
<td>27</td>
</tr>
<tr>
<td>Probably right decision</td>
<td>24</td>
<td>26</td>
</tr>
<tr>
<td>Probably wrong decision</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Definitely wrong decision</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>35</td>
<td>37</td>
</tr>
</tbody>
</table>

n = 94

6.66 In a similar vein, Table 6.28 indicates the likelihood that the non-statement makers in the sample would make a victim statement if they were the victim of a similar crime in the future. In total, 50 respondents stated that they “definitely” or “probably” would (54% of non-statement makers), although this high figure might be attributable at least in part to the telephone questionnaire survey raising their awareness about the victim statement scheme rather than to any change of view they had experienced prior to being interviewed.

Table 6.28: How likely are you to make a victim statement if you were the victim of a similar crime again? (Non-statement makers only)

<table>
<thead>
<tr>
<th>Decision Description</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitely would</td>
<td>25</td>
<td>27</td>
</tr>
<tr>
<td>Probably would</td>
<td>25</td>
<td>27</td>
</tr>
<tr>
<td>Probably would not</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Definitely would not</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Can’t say/don’t know</td>
<td>13</td>
<td>14</td>
</tr>
</tbody>
</table>

n = 94

6.67 Some non-statement makers indicated that they might choose to make a statement in the future if they were the victim of a more serious crime, or if other circumstances were different:

“If I didn’t know the person and the person wasn’t from the same town and there was no likelihood of me ever crossing their path again then obviously depending on how serious the crime was then I would imagine I would make a statement... If [the crime] was just something minor I don’t really feel that a statement would be much use to anyone.” (Male victim of assault (respondent 1), non-statement maker).

“The only reason I would have made the statement would have been if I felt it could have done some good. I didn’t feel vindictive… and I didn’t feel any emotional damage or trauma.” (Male victim of assault (respondent 15), non-statement maker).

6.68 It should not, incidentally, be assumed that victims who chose not to make a statement did not benefit from the scheme. One non-statement maker remarked that she found simply being asked to make a statement helpful:

95 Statement makers were also asked this question, but the results of this are reported separately: see Table 6.24 above.
“Because this came very soon after the incident, that in itself was hugely supportive. That there was someone out there. Because I think you can feel very vulnerable, very isolated in a situation like that, and frightened. I think the fact that there’s someone there who’s offering you some sort of support is really important… I think I was surprised actually, initially. It was some scheme I had no idea about. And I remember thinking at the time ‘oh God I have to make a decision’. And there was a deadline… which was giving me about a month… But when I actually thought about it logically, [it] was giving me a huge opportunity to support me. And I think I did feel very vulnerable. It made me feel that there was someone out there who would care about this, who would listen to this.” (Female victim of assault (respondent 16), non-statement maker).

GENERAL PERCEPTIONS OF THE CRIMINAL JUSTICE SYSTEM

6.69 A number of questions explored the general satisfaction (or otherwise) of victims with their experience of the criminal justice system. Respondents were first asked how well informed they felt they had been kept about the progress of the case. A total of 46% of victims considered that they had been kept “very well” or “quite well” informed, with 52% feeling that they had not been kept well informed (the remainder did not comment). All respondents were asked if there was any information about the case that they would like to have known but were not given. Forty-three percent of respondents stated that there was nothing additional that they wished to know. Of those who indicated that they would have liked further information, the nature of that information varied. As Table 6.29 shows, 23 respondents would have liked to have known the date of the court hearing; 12 respondents wanted to know whether anyone was caught; and 10 wanted to know whether they would have to give evidence.

Table 6.29: What other information about the case would you have liked to have known?

<table>
<thead>
<tr>
<th>Information</th>
<th>Number of responses</th>
<th>% of respondents^66</th>
</tr>
</thead>
<tbody>
<tr>
<td>What was happening with case</td>
<td>36</td>
<td>20</td>
</tr>
<tr>
<td>Date of court hearing</td>
<td>23</td>
<td>13</td>
</tr>
<tr>
<td>Whether anyone caught</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>Whether would give evidence</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Location of court hearing</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Something else</td>
<td>58</td>
<td>32</td>
</tr>
<tr>
<td>Nothing</td>
<td>79</td>
<td>43</td>
</tr>
</tbody>
</table>

n = 182

6.70 Respondents were then asked about the outcome of the case. A total of 104 respondents (57% of the sample) indicated that the case resulted in a conviction, with a further 14 (8%) stating that the case resulted in an acquittal, was abandoned or did not go to court. A total of 51 respondents (28%) did not know what the outcome was. Non-statement makers were more likely than statement makers to be unaware of the outcome.

^66 The total in this column is greater than 100% as respondents could give more than one answer.
6.71 The 104 respondents who stated that the case had resulted in a conviction were asked about the nature of the sentence that was passed. A total of 30% of respondents stated that the sentence was custodial; 32% that there was a fine; and 25% that there was another type of sentence. Twenty percent indicated that they did not know the nature of the sentence. Custodial sentences were more likely where the respondent was a statement maker, but this is likely simply to reflect the broader finding that the propensity to make a statement increases with offence seriousness, rather than the statement itself making a custodial sentence more likely.

97 These figures total more than 100% as the offender could have been given more than one type of sentence (for example community service and a fine).

98 See paras 4.17-4.23 above.

99 A point already made in relation to the case outcome analysis: see para 5.13 above.

6.72 The 104 respondents who stated that the case had resulted in a conviction were also asked how satisfied they were with the sentence passed. A total of 32% indicated that they were “very” or “quite” satisfied with the sentence, with 44% indicating that they were not satisfied with the sentence. (A further 25% either could not say or were neither satisfied nor dissatisfied.) There was no discernible difference between statement makers and non-statement makers in this respect.

6.73 Respondents were asked how satisfied they were with their treatment by the police, the procurator fiscal service and the judge or sheriff respectively. In response, 71% were “very” or “quite” satisfied with their treatment by the police; 43% were “very” or “quite” satisfied with their treatment by the procurator fiscal service; and 30% were “very” or “quite” satisfied with their treatment by the judge or sheriff. Levels of expressed dissatisfaction were relatively low, however, with 18% expressing dissatisfaction with their treatment by the police; 32% with their treatment by the procurator fiscal service and 14% with their treatment by the judge or sheriff. (The remainder were neither satisfied nor dissatisfied with their treatment by these agencies.)

6.74 Finally, respondents were asked what improvements, if any, they would suggest to the way in which victims are treated by the criminal justice system. A total of 127 respondents made a suggestion of some sort; the nature of these is shown in Table 6.30. As the table shows, very few respondents made suggestions relating to the victim statement scheme or indeed to any desire to put their point of view across more generally. The most common suggestion by far was for victims to be given more information on the progress of the case. Indeed, the vast majority of suggestions focussed on victims’ ‘information needs’ rather than victims indicating a desire to have any input into decisions taken within the criminal justice system. (On the difference between these two types of victims’ rights, see Ashworth, 1993; Fenwick, 1997.)
Table 6.30: Suggested improvements to the criminal justice system

<table>
<thead>
<tr>
<th>Suggested Improvement</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>More information for victim on progress of case</td>
<td>79</td>
</tr>
<tr>
<td>To take victims’ views into account</td>
<td>19</td>
</tr>
<tr>
<td>Tell victim what sentence is</td>
<td>17</td>
</tr>
<tr>
<td>More support in court/information about court process</td>
<td>13</td>
</tr>
<tr>
<td>Harsher sentences/more ‘criminals’ being caught</td>
<td>10</td>
</tr>
<tr>
<td>More contact with/more support from procurator fiscal</td>
<td>8</td>
</tr>
<tr>
<td>Telephone contact/visits from victim support workers</td>
<td>6</td>
</tr>
<tr>
<td>Cases dealt with more swiftly</td>
<td>6</td>
</tr>
<tr>
<td>To be informed of any plea bargaining/change of plea</td>
<td>5</td>
</tr>
<tr>
<td>Return items taken as evidence/speedier return of these items</td>
<td>3</td>
</tr>
<tr>
<td>Help with victim statement</td>
<td>2</td>
</tr>
<tr>
<td>Notify victim when offender released</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
</tr>
</tbody>
</table>

n = 127

6.75 This was reflected by comments made by victims in face-to-face interviews. When asked whether victims’ views should be taken into account by the criminal justice system, some responded positively but others were more cautious. The following responses are representative:

“I don’t know if I want to be able to influence people too much, I think they’re better qualified to decide.” (Female victim of theft by housebreaking (respondent 7), non-statement maker).

“I don’t think they should have [much influence]. I mean, if he’d been found guilty and they’d asked me, ‘what do you think he should get?’ I’d have said ‘just hang him’ or ‘just give me something to hit him with’. But no, I think, if they give the statement and the judge looks at it, that should be enough”. (Female victim of robbery (respondent 8), statement maker).

“I think so, yeah, definitely... when you’re considering sentencing somebody, you need to know how they’ve affected the victim. The whole system seems not to be very victim or customer orientated.” (Male victim of assault (respondent 15), non-statement maker).

“To a certain extent, ‘cause you know there will be some victims out there who will go ‘chop him up and feed him to the dogs’ and just go silly about it. But yeah, to a certain extent listen to what the victims have to say ‘cause it’s them it’s happening to.” (Male victim of assault (respondent 19), non-statement maker).

6.76 Some victims, although responding positively to the suggestion that victims’ views should be taken into account in sentencing, did so in terms that suggested they were more concerned that the court should know about the effect of the crime on the victim rather than the victim’s views on how the case should be dealt with.

\[
^{100} \text{The total in this column is greater than 127 as some respondents gave more than one answer.}
\]
6.77 In Table 6.30, responses that were given by only a single respondent were grouped as “other”. They included: allowing anonymous victim statements; ensuring that the victim was kept separately from the accused in court; training for officers in dealing with female victims; allowing the victim to go to court even when the offender pled guilty; and making more information available on the support offered to victims.

6.78 The desire to be kept informed was reflected in face-to-face interviews, where victims were asked if they had been kept up-to-date with the progress of their case. The following responses demonstrate the range of different answers to that question:

“Quite frequently… by mail from the procurator fiscal’s office, from victim support.”  
(Male victim of assault (respondent 1), non-statement maker).

“One of the women from the procurator fiscal office kept in touch with me… quite often I had to phone the procurator fiscal office but they’d always find out what was happening.”  
(Female victim of assault (respondent 9), non-statement maker).

“Not at all… it’s not the fact that the case was dropped that concerns me, just the fact that I didn’t get any information up to the trial, when the case was dropped I wasn’t given an explanation as to why.”  
(Male victim of assault (respondent 15), non-statement maker).

“I never had any contact with the procurator fiscal and I think that people who’ve been victims of crimes should be kept updated.”  
(Male victim of assault (respondent 17), non-statement maker).

6.79 The evidence from this research strongly suggests that victims generally place a greater priority on being informed about proceedings than they do on influencing outcomes. This is consistent with the findings of a much earlier study of victims (see Shapland et al, 1985).

6.80 In face-to-face interviews, 2 victims expressed a desire to be able to communicate with the accused in some way.

“A good point I can possibly think of is – and I don’t know if it happens – is where the person’s found guilty or they get a chance to basically say they’re sorry or some kind of ‘making it up to’ the victim… I think it would have helped me because I’m still in a state of limbo of whether anything’s going to backfire on me because of what’s happened. And maybe the accused would be made to realise what their actions do to people and maybe stop future incidents from taking place. And thinking maybe twice about being violent or stealing that kiddie’s bike or whatever. My daughter at the time had her cycling proficiency when the bike was stolen and she couldn’t participate in that and that upset her greatly. And say the accused or the person who stole the bike is made to realise how the wee girl suffered, then perhaps…”  
(Male victim of assault (respondent 1), non-statement maker).

[When asked how the system might be improved]: “The two of us sitting at a table and somebody saying, well you’re going to talk about it… meet up, shake hands, rather

101 It is not clear whether the theft of the bike was related to the assault in respect of which the victim had been given the opportunity to make a statement.
than it going through the court. The one idea I think could improve it is instead of going through the courts all the time, sit the victim and the accused down together over a table.” (Male victim of assault (respondent 18), statement maker).

SUGGESTED IMPROVEMENTS TO THE VICTIM STATEMENT SCHEME

6.81 All interviewees were asked what improvements, if any, they would make to the victim statement scheme. Suggestions were made by 35 of the respondents and these are shown in Table 6.31 below.

Table 6.31: Suggested improvements to the victim statement scheme

<table>
<thead>
<tr>
<th>Suggested Improvement</th>
<th>Number of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Someone to help complete form</td>
<td>10</td>
</tr>
<tr>
<td>More consideration given to statement in court</td>
<td>7</td>
</tr>
<tr>
<td>Complete statement sooner after the crime</td>
<td>6</td>
</tr>
<tr>
<td>Anonymity/offender shouldn’t see it</td>
<td>4</td>
</tr>
<tr>
<td>Inform victim of case outcome/updates on process</td>
<td>4</td>
</tr>
<tr>
<td>Change wording/layout of statement form</td>
<td>4</td>
</tr>
<tr>
<td>Face-to-face contact delivering the forms</td>
<td>3</td>
</tr>
<tr>
<td>Check to make sure form received</td>
<td>2</td>
</tr>
<tr>
<td>More sensitivity from victim support</td>
<td>2</td>
</tr>
<tr>
<td>Possibility of emailing statement</td>
<td>2</td>
</tr>
<tr>
<td>Stress more clearly that the form can be updated at any time</td>
<td>2</td>
</tr>
<tr>
<td>Stress more clearly that accused can see the statement</td>
<td>1</td>
</tr>
</tbody>
</table>

n = 35

6.82 As Table 6.31 indicates, the suggestion that was most commonly made (by 10 respondents) was that assistance should be given in completing the form.103 Not all victims, however, were keen on receiving such assistance:

“If there had been people to help me, they might have wanted to influence what I put down and things like that. And also, it would be like when they heard it, they would be getting upset, and I’d rather just do it on my own ‘cause I wasn’t feeling upset about having to do it.” (Female victim of assault (respondent 13), statement maker).

6.83 Seven respondents suggested that more consideration be given to the statement in court; 6 that the statement be completed sooner after the crime actually occurred; and 4 that the form should not be shown to the offender for fear of reprisals. Four respondents indicated that the layout of the form should be changed, for example by not structuring it so that different types of effect should be written in different sections or by tailoring it more specifically to the nature of the offence.

6.84 These various suggested improvements were reflected in the face-to-face interviews. One victim elaborated on the desire for anonymity as follows:

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102 The total of this column is greater than 35 as some respondents gave more than one answer.

103 This would have been available from victim support, but it may be that the respondents were unaware of this or thought that assistance should be provided as a matter of course (at present victims have to request it).
“I didn’t like it [the accused’s access to the statement], as soon as I realised that, I didn’t like it. You’re putting down your weaknesses, it’s as if you’re exposing yourself. And you’re being honest about what that has done to you, how it’s changed your life. And let’s face it, a lot of women go back [to abusive partners], and that person’s read it so they know the weaknesses. Not only that, it could also aggravate a situation where they get irate, angry and they go charging. I don’t think his solicitor should see it either. I don’t see why she should see it.” (Female victim of assault (respondent 5), statement maker).

6.85 Against this, it must be remembered that a number of victims saw the fact that the accused might see the statement as a positive factor (see above, para 6.18).

**SUMMARY OF MAIN FINDINGS FROM THE INTERVIEWS**

6.86 In summary, the main findings from the interviews with statement makers and non-statement makers are as follows.

6.87 Eighty-two percent of respondents recalled receiving information about the victim statement scheme.

6.88 The documentation was generally thought to be clear. A total of 89% of respondents found the initial letter and accompanying leaflet ‘very easy’ or ‘quite easy’ to understand and 72% stated that they found the leaflet helpful in making their mind up about whether or not to submit a victim statement.

6.89 The majority of respondents (8 out of 10) who found the literature difficult to understand were non-statement makers. There is no discernible relationship between finding the literature difficult to understand and either the age or level of education of the respondent.

6.90 Despite the majority of respondents reporting that the statement scheme document was easy to understand, comprehension of the victim statement scheme was mixed. A total of 89% of respondents were aware that it was optional and not compulsory to make a statement, but 43% were unaware that any statement made would be shown to the offender and 39% were unaware that a statement maker could be asked questions about their statement in court. There was some correlation between the extent to which the respondent read the literature and his or her understanding of the scheme, but the relationship was not a straightforward one.

6.91 Of the 83 respondents who were aware that their statement would be shown to the offender, 23% were actually encouraged to make a statement by this knowledge. A further 21% were discouraged and 57% stated that it made no difference.

6.92 The most common reason for making a victim statement was ‘to express my feelings’ or ‘to get my point of view across’ (34% of the 88 statement makers). A further 27% of statement makers made a statement in order either to ‘assist in the outcome of the trial’ (23%) or to ‘ensure conviction’ (5%).104 illustrating that a proportion of statement makers probably held a misconception as to the purpose of the scheme. This was backed up by the finding that, when asked what they hoped for as a result of making a statement, 25% of statement

104 Taken together, these two categories total 27% rather than 28% due to rounding.
makers stated that they hoped it would ensure that the accused was convicted. Ten percent of respondents made a statement for ‘therapeutic reasons’ and 14% made a statement in order to ‘make the accused think about what he/she had done’. Only 5% of statement makers made a statement in order to influence sentence.

6.93 Overall, only 5% of those who made a statement thought, in retrospect, that it was ‘probably’ or ‘definitely’ the wrong decision. Eighty-six percent of the 88 statement makers thought that making a statement was ‘probably’ or ‘definitely’ the right decision (the remainder of respondents were unsure). The main reasons given by those who thought that making a victim statement was the wrong decision were that they did not feel that it helped the case (4 out of 5 respondents); that it was not used in court (3 out of 5 respondents); or that the sentence did not seem to take account of it (3 out of 5 respondents).

6.94 In total, 61% of the 88 statement makers reported that making a victim statement made them feel better. Thirty-eight percent of respondents felt that it had not made them feel better. Thirty-nine percent of respondents found the process of making a victim statement upsetting. The more serious the effect of the offence as perceived by respondents, the more likely they were to find making the statement upsetting.

6.95 Twenty-two percent of statement makers were under the mistaken impression that a statement could be withdrawn once made. No statement maker, however, actually attempted to do this.

6.96 Around half of the 88 statement makers (53%) were unaware of the extent to which their statement was taken into account in the sentencing process. A further 25% felt that their statement had been taken into account in sentencing the offender, but 22% felt that it had not.

6.97 The vast majority of the 88 statement makers (86%) were of the opinion that they would make a victim statement again if they were a victim of a similar offence in the future. Only 7% of respondents stated that they ‘probably’ or ‘definitely’ would not make a statement if the opportunity arose in future to do so. The most common reason given for this was that they felt that their statement had made no difference to the outcome of the case.

6.98 The most common reason for not making a victim statement was that the respondent did not consider him or herself to be a victim or that the crime had no significant impact (53% of the 94 non-statement makers). A total of 8% of non-statement makers chose not to make a statement because of a fear of reprisals from the accused and a further 8% because they did not want the accused to see their name and address. A total of 7% of non-statement makers did not make a statement because they simply wanted to forget about the incident.

6.99 Of some concern are the 7% of the 94 non-statement makers who did not make a statement because (as they claimed) they had not received a statement pack.105 Only 3% of respondents stated that they did not make a statement because they did not understand the documentation.

6.100 Only 10% of the 94 respondents who chose not to make a victim statement now regretted their decision. A total of 53% of the 94 non-statement makers still thought that not

105 Although it may be that at least some of these respondents had simply forgotten about receiving a pack.
making a statement was ‘definitely’ or ‘probably’ the right decision. The remainder of non-statement makers were unsure.

6.101 When respondents were asked about improvements they would like to see made to the criminal justice system, the most commonly mentioned factors all related to a need for improved information and support: more information for the victim on the progress of the case (43% of respondents); for the victim to be told the sentence imposed on the offender (9%) and for more support in court/more information about the court process (7%). Factors relating to influence over the criminal justice process such as ‘taking victims’ views into account’ or ‘harsher sentences, more criminals being caught’ were much less frequent (10% and 5% respectively).

6.102 Finally, all respondents were asked how they thought the victim statement scheme might be improved. The most common response was: ‘someone to help with the form’ (5% of respondents); followed by ‘give more consideration to the statement in court’ (4%); ‘send the form sooner after the crime’ (3%); and ‘offer anonymity/prevent offender from reading it’ (2%).
CHAPTER SEVEN: INTERVIEWS WITH CRIMINAL JUSTICE PERSONNEL

7.1 As chapter 2 outlined, formal interviews have been undertaken with 2 High Court judges; 11 sheriffs; 5 procurators fiscal; 3 representatives of VIA; 4 defence agents; and 4 representatives of VSS. Many of these participants were interviewed on more than one occasion. In addition to these formal interviews, the research has been informed by many informal contacts with those associated with the pilot schemes. This chapter reports the views of these individuals under 7 headings: take-up rates; workload and delay; the information provided by victim statements; the effect of victim statements on sentencing; the issue of fairness to the accused; the format of the scheme; and the future of the victim statement scheme.

7.2 In the remainder of this chapter, the masculine gender is used to refer to all respondents, regardless of their actual gender. This is to protect the anonymity of the relatively small number of female respondents.

TAKE-UP RATES

7.3 All those interviewed who expressed an opinion on response rates perceived them as being low. The first batch of interviews with sheriffs, carried out between 7 and 10 months after the commencement of the pilot schemes, revealed that none of them had actually seen many victim statements – around 3 or 4 on average. The second batch of interviews undertaken with sheriffs towards the end of the pilots revealed a similar picture, with some respondents indicating that they were surprised by the low numbers of victim statements. Neither of the High Court judges interviewed had ever seen a victim statement and thus had little to contribute to the evaluation.106

7.4 Procurators fiscal and the administrative staff responsible for running the schemes also perceived response rates to be low. While the perception in different offices as to which crimes were most likely to produce a victim statement varied slightly, it was generally agreed that most responses related to housebreakings and assaults, excluding domestic violence and assaults upon the police. The response rate for s50A107 (racially aggravated harassment) was thought to be low in one office but was perceived to be one of the more common offence types in another office. Various reasons for the low take-up rates were suggested by respondents, particularly VSS staff who had clearly thought about this a great deal.

7.5 First, it was suggested by several respondents that the initial letter is too formal and off-putting, despite its revision in July 2004 in order to make it more ‘user-friendly’.108 One VSS worker stated that it was often the case that VSS got a phone call saying “What on earth

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106 It must be remembered that, because cases necessarily take some time to proceed to a conclusion, there is an inevitable time-lag between a statement being made and its being put before a judge or sheriff, assuming the case results in a conviction. In a significant number of cases, the statement will be put before the court some time (possibly a considerable time) after the pilots were brought to an end in November 2005, because the right to make a statement will have been acquired before the relevant date.
107 Of the Criminal Law (Consolidation) (Scotland) Act 1995.
108 See Annex 1 for a copy of the letter used prior to July 2004 and Annex 2 for a copy of the revised letter. See Annex 3 for a copy of the victim statement form.
is this? Am I in trouble?” and observed that “I think the letterhead alone sends people into a spin.” Another VSS worker said:

“I’ve no doubt about it. It’s still the letter that’s putting people off. It’s too official.”

7.6 Procurators fiscal from one office had “the feeling that people find it quite intimidating and are not sure what things might mean”. A procurator fiscal from another office made the same point, commenting that “it definitely can’t be described as touchy feely”. A sheriff similarly noted that the “official” nature of the letter and form was not helpful in terms of securing a high take-up rate. Some defence solicitors observed that the form was not “friendly” and there were far too many bits of paper with it, one commenting that it was “like junk mail”.

7.7 Picking up on the latter point, a further possible problem in Edinburgh is that victims may be confused by the volume of official paperwork they receive, because of the involvement of VIA, and the roles of the different victim support agencies. In a typical case, a victim is likely to receive 3 sets of documentation through the post: (1) a letter from VIA offering their services as an information provision agency; (2) a letter from VSS offering their services in general as a victim support organisation and (3) a letter from VIA offering the opportunity to make a victim statement (which is on COPFS headed paper and in which VSS contact details are provided if help is required with the statement). On top of all this, the victim will probably also be receiving letters about precognition and appearing as a witness. There is less scope for confusion of roles between support agencies in Ayr/Kilmarnock as the letter inviting the victim to make a statement comes from COPFS and not from VIA.109

7.8 Secondly, there is a possibility that the deadline set for the return of the statement is too tight. A vulnerable victim might need more time than this simply to come to terms with the effect of the crime before he or she feels able to write about it. VSS officers, who were particularly worried by this possibility, negotiated extensions to this deadline for some victims but thought that there might have been others who simply saw the deadline and gave up entirely. On the other hand, procurators fiscal generally thought that the time limit was entirely appropriate. For instance, staff in one office commented that the victim statement either came back within 2 weeks, well within the time limit, or not at all. Neither sentencers nor defence solicitors raised this issue.110

7.9 Thirdly, all communication in relation to the scheme was in writing (and in relatively official language) and it was felt that this discouraged some people from making statements, especially those with low literacy levels. One of the defence solicitors interviewed commented that many victims are from the same sector of society as offenders and they are not comfortable with complicated forms, often having difficulties with reading, far less understanding, the material. One sheriff expressed the opinion that the postal nature of the contact, combined with the lengthy nature of the form, largely explained the low response rate. Another observed that the form was official and “off-putting”. A third sheriff opined that post is “not a very satisfactory way of doing it … it’s very half-baked”.111 VSS were helping a relatively large number of victims referred to them (in terms of the total number of

109 See para 1.5 above for an explanation of the 2 different modes of operation used in the pilot scheme.
110 In the telephone interviews, only one respondent gave the short deadline as the reason for not making a statement: see para 6.61 above.
111 However, it should be noted that in the English pilot schemes, postal administration of victim statements resulted in a higher response rate than the other methods employed. See para 3.14 above.
statements made), most of whom were confused by the scheme: as early as mid-September 2004, there had been almost 70 such cases across the 3 pilot areas.

7.10 VSS considered that this problem could have been overcome by allowing the VSS victim statement officers to make a follow-up phone call to all of those who received a statement pack. They stressed that this would not have been specifically to encourage people to make statements (as this would be inappropriate), but rather would have been to alert people to the scheme and explain its purpose. During the pilots, VSS had the resources in place to do this and indeed were keen to do so. It was suggested that an opt-out clause could have been included in the initial letter allowing victims to opt out of their details being passed to VSS. An alternative suggestion was that the covering letter in the victim statement pack could have been a letter from VSS rather than VIA or the procurator fiscal’s office.

7.11 Fourthly, it was observed that the fact that victims were informed that the defence would see the statement might have been a major concern as regards some crimes. A procurator fiscal suggested that some victims would be put off from submitting a statement because they would be concerned about the form being made available to the accused.\textsuperscript{112} Some victims, it was suggested, understood this from the booklet sent with the victim statement pack, others only when it was explained to them.\textsuperscript{113} Some other victims did not want to relive the experience; others were scared of reprisals. Of the small number of victims who contacted VSS but subsequently decided not to make a statement, ‘fear of reprisal’ was the most common reason given (there were 4 such cases between the 1 April and 31 August 2004). Procurators fiscal in one office observed that where victims phoned up their office, which was admittedly not common, it was usually because of a fear of reprisals.\textsuperscript{114}

7.12 Fifth, a number of respondents pointed out that for a variety of reasons some victims simply had no interest in making a victim statement. One sheriff commented that many victims were connected with the accused and “did not want to make things worse” for him or her. Another noted that many victims were “not particularly interested” in the justice system, a view with which defence solicitors agreed, and 2 other sheriffs thought that the natural reluctance of Scots to express feelings and disclose personal problems militated against victim statement schemes.

**WORKLOADS AND DELAY**

7.13 Generally, procurators fiscal thought that the extra administrative workload created by victim statement schemes was quite heavy, particularly in one office because of the duplication of effort with VIA and the lack of the electronic system which operated in the other 2 offices. The point was made that even where no statement was forthcoming, there were a variety of different systems to be updated. In the 2 offices employing an electronic system, however, the perception was that the additional administrative staff employed to deal with victim statements seemed to be sufficient to deal with the increased workload falling upon these offices (although it was obviously necessary to supervise the additional administrative work which was being done). Nevertheless, procurators fiscal in one of those offices

\textsuperscript{112} A view confirmed to some extent by the findings of the telephone interviews: see Table 6.25 above.

\textsuperscript{113} In the telephone survey undertaken, 56% of respondents were aware of this (see para 6.17 above).

\textsuperscript{114} Telephone and face-to-face interviews confirmed that this was of concern to some victims, although a larger proportion of victims were encouraged to make a statement by the fact that the accused would see it than were discouraged. See Table 6.25 and para 6.18 above.
2 offices commented that victim statements caused them some extra work which could not be delegated to the new administrative staff. They had to remember this possibility while marking cases and also read any victim statement which was returned. On the other hand, procurators fiscal from the other of those 2 offices did not think that victim statements were causing them much in the way of extra work. At the outset, they had been worried that their office might be inundated with calls from victims but this had not happened. Procurators fiscal from the third office had reached the same view: occasionally victims phoned up but they were simply passed on to VIA.

7.14 The general perception among both sheriffs and procurators fiscal was that victim statements had not caused any delays in dealing with cases nor wasted any significant amount of court time. Sheriffs, in particular, were positive in this regard, 2 commenting that earlier fears about potential delay that might be caused by victim statements had proved unfounded. None of the sheriffs interviewed were of the view that victim statements impacted unfavourably on the efficiency of court business or on their own workload. One sheriff commented, typically, that “I don’t find it adds a huge burden to my work.”

7.15 All of the procurators fiscal interviewed were of the same view. One commented that there was usually a slight pause in dealing with the case because, once the victim statement was submitted, the defence might want to consult the client and the sheriff would want to read the statement but the delay was never for more than “a few minutes”. All respondents were agreed that victim statements did not take long to read and to digest. It was also observed by several respondents that, in the more serious cases, the case would often be adjourned for sentencing anyway and this provided ample opportunity for the defence to familiarise itself with the contents of the victim statement.

7.16 Prior to the implementation of the pilot victim statement schemes, some respondents had been worried by the prospect of having to hold proofs in mitigation (a procedure involving hearing evidence after conviction but before sentence) in order to allow accused persons to dispute the content of victim statements. This would have caused considerable delay in the relevant cases and, if frequent, could have significantly increased the workload of the courts but none of those interviewed were aware of any proofs in mitigation having occurred during the operation of the pilots. As explained below, this was thought in part to reflect the fear that the accused might well receive a heavier sentence if he was perceived to have forced the victim to attend court proceedings of this nature and also the desire of all criminal justice personnel not to prolong cases.

THE INFORMATION PROVIDED

7.17 With the exception of one respondent, who held generally negative views about the scheme, all of the sheriffs interviewed considered that victim statements could be useful in that they did potentially provide the sentencer with more information, particularly of a medical nature, about the impact of the crime upon the victim. One sheriff commented that the victim statement brings a “human flavour” to the case and added that, without it, a sentencer “just had to imagine how awful it would be”; another commented that it brings a guilty plea “more to life” (where the sentencer had not heard evidence at trial). Another respondent thought that this was particularly so in summary cases, where the procurator fiscal

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115 See para 7.41.
(or a precognition officer) does not interview the victim and the police statement is not primarily concerned with the effect on the victim.

7.18 Two sheriffs, from different courts, commented that it had often been their practice even before the implementation of the pilot scheme, and particularly in cases of serious assault, to adjourn sentencing in order that more information could be obtained about the impact of the crime upon the victim. Indeed, one sheriff thought the scheme was entirely unnecessary for this reason. Another cited an example of a ‘glassing’ case that occurred prior to the pilot schemes where he had asked the procurator fiscal to get further information to ascertain whether all the glass had been removed from the victim’s eye. If the glass had been removed, leaving the victim with no lasting effect, in contrast to the situation where permanent irritation was involved, it would have made a significant difference to the sentence, placing it in the region of 2 years’ imprisonment compared to 4 years.

7.19 By contrast, one of the other sheriffs interviewed stated that, prior to the implementation of the pilot scheme, he would not have requested or received this type of information and now found it valuable. It was clear from the comments of procurators fiscal that, before the introduction of victim statements, sheriffs in the relevant courts varied in how active they were in asking the prosecution for information about the impact of the crime on the victim.

7.20 One concern that was raised by some respondents (3 of the 11 sheriffs interviewed raised this point) was the accuracy of the information contained in victim statements. One commented:

“What if it’s wrong? There’s no check on it. I’m not thinking of the extreme case … How can you test it?”

Another commented:

“How could I check it? I couldn’t even tell if it was in the victim’s handwriting!”

One remembered a case of unlawful sexual intercourse with an under-age girl where 3 girls had gone to the house of a man who was in his mid-twenties. The victim statement gave a completely different account of events to that of the accused but the sheriff was sure that the complainer was deliberately exaggerating and believed the accused.

7.21 For this reason, 2 of the sheriffs interviewed stated that they would find it more acceptable for victim statements to somehow be endorsed by the procurator fiscal and incorporated into their agreed narrative, one stating that:

“I would be happier if it was only shown to you if it was endorsed by the procurator fiscal in some way.”

7.22 Likewise, the main concern of defence solicitors interviewed was with the accuracy of the information supplied by victims. Some were worried that no-one checks the information, that victims would exaggerate and that victims might not even write the statements themselves. One solicitor remarked that many of his firm’s cases stem from ‘family feuds’ in

116 On this, see also the concerns raised in paras 7.30-7.41 below about fairness to the accused.
small villages and if a member of one family was filling in a victim statement in respect of an assault by a member of the other family, he might “paint as black a picture” of his injuries as he could.

7.23 Procurators fiscal from one office were more positive about the information received in victim statements than procurators fiscal from the other 2 offices, stating that they were “definitely” getting information over and above what would previously have been available. For example, it was observed that in cases involving biting, where all that the procurator fiscal initially knows is that the victim went to hospital, the victim statement had sometimes revealed that the victim had to return for tests and had been warned to be ‘careful’ with his or her partner for a while (because of the risk of HIV or hepatitis transmission). Procurators fiscal from another office felt that they now got more information on physical and emotional effects but little additional information on financial effects. Procurators fiscal from the third office were less convinced that victim statements provided them with significant new information, mainly because they felt that the police reports submitted to their office were good, particularly in more serious cases.

7.24 Two respondents wondered whether better information would result if victim statements were taken earlier (for example at the same time as the police witness statement) but views on this were mixed. One respondent noted that victims’ memories would be better at that stage and liked the English system, whereby the police take the victim statement at the same stage when they take the normal evidential statement to the police.117 Another respondent commented, however, that the police statement was taken in the aftermath of the crime and sometimes the effects of the crime did not manifest themselves immediately; thus it was better that the victim statement was taken at a later stage. Several other respondents observed that the main benefit of victim statements was precisely that they picked up on longer term effects which would not have manifested themselves at the earlier stages of the investigation.

EFFECT ON SENTENCING AND OTHER DECISIONS

7.25 All of the sheriffs interviewed did say that they would (as the relevant legislation requires them to do)118 take account of any victim statement received when passing sentence on an offender. This was subject to a caveat: that they must ignore any information contained in the victim statement that is irrelevant to the offence of which the accused has been convicted.119

7.26 On the subject of whether sentences tend to be more severe in cases where there is a victim statement, the view of all of the sheriffs interviewed was that it was almost impossible to isolate the impact of a victim statement on their sentencing decisions. The existence and content of any victim statement was only one factor that sentencers take into account, alongside matters such as the previous convictions of the offender, any mitigating factors, and

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117 See para 3.6 above for an explanation of the way in which the victim personal statement scheme operates in England and Wales.

118 As s14(5) of the Criminal Justice (Scotland) Act 2003 provides, the court must “have regard to” any victim statement made when sentencing an offender.

119 The legislation specifically provides for this, requiring sentencers only to have regard to as much of the statement “as it considers to be relevant to [the] offence” (s14(5)). On the issue of irrelevant information contained in victim statements, generally, see paras 7.30-7.39 below.
so on. One sheriff stated that he “couldn’t honestly say” whether or not victim statements had had any effect on the sentences he had imposed. Another commented that it was “impossible to say” whether the victim statement makes any difference to the sentence.

7.27 There were, however, a few examples given to us by respondents where the information contained in the victim statement had either made a difference to the sentence imposed or had caused the sentencer at least to consider the imposition of a different sentence. One sheriff gave the example of a case of theft by housebreaking, which was a summary case, but where the victim statement noted that the items taken had been of sentimental value. This, the sheriff stated, would not normally have involved a custodial sentence, but the victim statement caused him to consider it as an option. He adjourned the case until after lunch but, after the adjournment, the offender revealed that he had the means to compensate the victim, so in the end the sheriff concerned decided to impose a compensation order instead. Another respondent stated that the fact that the victim had listed in the victim statement the value of the items taken in a theft by housebreaking case had prompted him to impose a compensation order.120

7.28 By contrast, all of the sheriffs and procurators fiscal interviewed who expressed a view on the issue argued very strongly that victim opinion about sentence should not affect the sentence passed and most also commented that, in their opinion, victims should not have a say in sentencing whether through this or any other mechanism.121

7.29 All of the procurators fiscal interviewed were clear that the information contained in victim statements would – and should – only very rarely affect any of their decisions. It was noted that, in any event, the victim statement is received too late to influence the formulation of the charges or the initial bail decision. One procurator fiscal did cite an example of where the existence of a victim statement, rather than any of the information contained therein, would influence the prosecution process. He observed that at the stage of charge bargaining, if an accused was facing 10 housebreaking charges and was willing to plead guilty to 4 of these in return for the others being dropped, most procurators fiscal would ensure that any charge for which there was a victim statement would be one of the 4 to which a guilty plea would be negotiated. It was, however, clear from discussions with other procurators fiscal that this factor clearly did not always rule out dropping a charge in respect of which there was a victim statement in return for guilty pleas to other charges in relation to which there were no victim statements.

FAIRNESS TO THE ACCUSED

7.30 A major concern about victim statements, which was raised by 3 of the sheriffs interviewed, was that of the risk of prejudice to the accused. These respondents took the view that victim statements were highly problematic in an adversarial system of justice, with its traditional focus on the accused and ensuring that he or she was dealt with appropriately. One sheriff asked rhetorically:

120 Compensation orders appeared to be a more likely case disposal where a victim statement was made: see para 5.14 above.
121 Although, as the content analysis of victim statements revealed, victims very rarely expressed opinions about sentence in their victim statements.
“If you’re a 17-year-old boy who goes house-breaking, are you honestly supposed to get a heavier sentence because you happen to break into the house of someone who’s vulnerable?”

Another commented that:

“My experience is that if you start overdoing it for victims, you start bringing unfairness to the accused in, and the one cardinal principle we must never lose sight of is fairness to the accused.”

7.31 There was particular concern about the situation where the victim statement contained information which went beyond the charges of which the accused was convicted or was otherwise irrelevant but potentially prejudicial. As one sheriff stated:

“What is a real problem in law is information that has been held by the prosecutor not to have happened.”

7.32 At least 2 of the sheriffs had experience of such cases, both involving sexual offences, where the information relating to the conduct of the accused which was contained in the victim statement indicated that this was not confined to the charges of which he was eventually convicted. In each case, the sheriff had felt that there was no alternative but to ignore the victim statement completely for fear of prejudicing the position of the accused in the process of sentencing.

7.33 For instance, one case involved the sexual assault of a woman by a relative some twenty years ago when she was under the age of consent. It was at the ‘lower end of the spectrum’ and hence was being prosecuted in the Sheriff Court but the victim statement revealed a long history of sexual relations between the victim and the accused, which had involved the victim giving birth to the accused’s child at some stage. Further, the victim expressed a view that there was little point in sending the accused to prison. The sheriff decided simply to ignore the victim statement because it went well beyond the charges and thus it would be entirely inappropriate to take the information in it into account. As a result of these concerns about the risks to the accused posed by victim statements, at least 2 of the sheriffs interviewed remain opposed to them.

7.34 There was also concern among sheriffs about cases where a plea had been negotiated between the Crown and the defence, that is, where the prosecution had dropped or amended some of the charges in return for a guilty plea on others. One sheriff described a “troubling” case where an offender had pled guilty at an early stage to the statutory offence of unlawful sexual intercourse with a girl under 16, which covers the situation where the intercourse is consensual but unlawful because of the girl’s age. The victim statement described a rape, with the victim recounting the trauma involved and its subsequent psychological impact on her. The agreed narrative of the offence, recounted in court by the prosecution, bore no relationship to this account of a forcible rape. The sheriff asked the defence agent if he wished to comment on this second scenario but the latter simply commented that it reflected something quite different from the agreed account. In sentencing, in order to avoid any

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122 The same respondent did say later, however, that “I don’t think, in my experience, they’re doing much harm to the accused.”
impression that the accused might have been prejudiced by the victim statement, the sheriff stated quite clearly that he had not been influenced by the victim statement.123

7.35 Another similar case, described to us by both a procurator fiscal and the defence agent, led to a devolution minute (a challenge based on the accused’s rights under the European Convention on Human Rights) being raised and rejected. The charge had originally contained a sexual element which had been deleted but the victim statement contained significant detail of this sexual element, as well as a lot of background information about the relationship between the parties and various other allegations against the accused. The sheriff had not wanted to accept the victim statement but the prosecution’s view was that they had no discretion either to edit it or withhold it from the court. After debate on the devolution minute, the sheriff took the unedited statement and made it clear in open court that he had disregarded the irrelevant parts. A copy of the opinion issued by the sheriff (with the names of the complainer and accused anonymised) in that case is included in this report at Annex 10.

7.36 The defence agent who informed us of the case (it was not his own case, but one with which he was familiar) considered this course of action to have been appropriate. At this stage, it should be noted that procurators fiscal made the point that it is entirely legitimate to withhold a victim statement where the charge has been dropped altogether or the accused has been found not guilty on that charge. Those are, of course, different situations from that described above, where the statements are still relevant, although they go beyond what is appropriate. One sheriff was convinced that procurators fiscal did not always show him victim statements even where they were relevant but he appeared to be alone in coming to this conclusion.

7.37 The view that the victim statement scheme raised issues of fairness to the accused was not universally held; in fact 3 sheriffs specifically stated that they did not think this was a concern. One commented:

“I’ve never been convinced by the argument that the thing in principle is unfair to the accused.”

7.38 In any case, the unanimous view of all of the sheriffs interviewed, including those who raised concerns about fairness to the accused, was that in cases where the victim statement contained irrelevant or prejudicial information, they would be able to put it out of their mind and disregard it when it came to passing sentence. One commented that “a judge is perfectly capable of putting irrelevant material out of his mind”. Another stated that: “I don’t mind irrelevant information in some respects … I find I can filter that out.”

7.39 The majority of procurators fiscal and defence agents interviewed agreed that, by and large, sheriffs seemed well able to disregard any irrelevant information. The point was made that they are well accustomed to doing this in summary cases as regards evidence found to be inadmissible. One defence agent, however, thought that while most sheriffs were capable of this compartmentalisation of thinking, not all of them would be able to put the irrelevant information out of their minds. In addition, one of the procurators fiscal interviewed stated that he had come across “a couple of maverick sheriffs” who took the view that statements

123 This may be read alongside the finding that 18% of statement makers surveyed by telephone believed that little or no consideration had been given to their statement (table 6.23 above).
which contained irrelevant information were worthless and would entirely disregard them;\(^{124}\) most, however, would simply disregard the irrelevant parts.

7.40 In principle, some sheriffs were worried by the difficulties an accused would face if seeking to challenge the information contained in a victim statement, but those interviewed did not cite any examples where this had manifested itself in practice.

7.41 A procurator fiscal told us of a case involving a domestic assault where the victim statement revealed a long history of abuse (including a breach of bail conditions not to make contact with the victim). The defence initially wanted a proof in mitigation, primarily because the accused denied harassing the victim by sending her text messages, but eventually the depute and defence were able to agree the facts and avoid this step. Procurators fiscal generally thought that challenging a statement was a high risk strategy for the defence because forcing the victim to come to give evidence might result in a heavier sentence. Some sheriffs also made this point and, in the view of those respondents who expressed an opinion, it is one of the main reasons why there have been no proofs in mitigation. This explanation is consistent with the findings of research into victim statement schemes in other jurisdictions (see Erez and Rogers, 1999; Sanders, 1999). The defence solicitors interviewed further explained that it was in all the professionals’ interest to process cases as quickly as possible: the Crown was under pressure, sheriffs had no wish to prolong cases, and defence solicitors would not get paid for the extra court appearance entailed. Thus, none of the legal players wanted to become bogged down with proofs in mitigation.

THE FORMAT OF THE SCHEME

7.42 Aside from the comments about the format of the scheme already noted,\(^{125}\) respondents were asked specifically whether or not any victim statement made should be read out in open court at the stage of sentencing, either by victims themselves or by someone else. The universal response was that this would be a bad idea and that, in the interests of fairness, the present system of putting the information contained in the victim statement before the court was correct. There was concern that the press might well be present and the accused’s position might be prejudiced if the victim’s testimony went beyond the charges. Similarly, if the procurator fiscal was reading out the statement, he would have to edit it as he went along. As one of those interviewed stated:

“\text{I think it’s a minefield … we would have to have some form of editing and add a lot of procedures on.}”

7.43 Another respondent commented that victims themselves might well find it stressful to read out their statement in court.

\(^{124}\) None of the sheriffs interviewed by us stated that they would automatically take such an approach to all statements which contained irrelevant information, although some noted that they had received statements where so much of the information contained therein was irrelevant that they were effectively of no use.

\(^{125}\) For example the comments about the documentation raised by victim support workers (see para 7.5); the comments of the sheriffs who thought that information on the impact of the crime would be better filtered through the procurator fiscal (see para 7.21); and the view of some respondents that victim statements should be taken earlier in the process (see para 7.24).
THE FUTURE

7.44 The majority of sheriffs, procurators fiscal and defence agents interviewed were neutral about whether or not the victim statement scheme should be rolled out across Scotland following the pilots. Few expressed any strong views either for or against a full roll out. A typical comment, made by one of the sheriffs interviewed, was:

“I don’t actively object to the principle. The place of the victim in general terms has been obscured until recently. Whether this is the right model or not I have no idea but I don’t actually object to it.”

7.45 A minority of those interviewed did express strong views about an eventual roll out. All of the respondents from victim support organisations were strongly in favour of rolling out the scheme, as were procurators fiscal in one of the pilot offices and 2 of the sheriffs. By contrast, 2 of the sheriffs interviewed were strongly against rolling out the pilot scheme.

7.46 Some of the respondents did, however, express a degree of scepticism about the reasons for implementing the pilot schemes, 3 in particular observing that, in their opinion, it had been done largely for political reasons. These respondents felt that politicians were continually seeking to make political capital out of the criminal justice system. One commented that, in his view, there were far too many initiatives stemming from the Scottish Executive, most of which were politically driven and not properly thought through. This respondent described the victim statement schemes as “hare-brained”; another described them as a “political gambit”. Defence solicitors were particularly cynical about victim statements, perceiving them to be a political ploy which no-one in the criminal justice system wanted. An experienced defence solicitor commented that the scheme was “a bit gimmicky” and thus no-one was very enthusiastic about it. In his view, it was simply a “sop” to victims to “make victims feel as if they’re involved in the process”.

7.47 Another respondent commented that the perception in his area was that victim statements had only a marginal impact on sentence and no practitioner had seen a “sheriff do more than pay lip-service to them”. On the other hand, one sheriff felt very strongly that the criminal justice system had to maintain public confidence and that rightfully acknowledging the victim’s position would contribute to this. He and another respondent both argued forcefully that, given the traditional concentration of resources on the accused, the criminal justice system must do more – and be seen to do more – for victims.

7.48 As described above, however, the 2 sheriffs who were particularly unenthusiastic about victim statement schemes were primarily concerned that their introduction – and possible expansion – risked prejudicing the traditional fairness of Scottish criminal procedure to the accused. One commented:

“I still don’t like them. I don’t think we should have them. I didn’t think we should have them before and nothing’s happened to change my mind.”

He continued:

“We cannot satisfy both the victim and the accused at the same time … I think victims should understand that they’re not the primary consideration of the court.”
7.49 Worries were also expressed by several respondents that the schemes would raise victims’ expectations that their statement would have an impact on the outcome of the case when, in reality, it would have little or no effect.

7.50 One procurator fiscal made precisely this point specifically as regards financial losses and cited the victim statement of an elderly housebreaking victim which listed all such losses.\footnote{Incidentally, these went well beyond the charges: on which, see the concerns raised generally about victim statements that contain information about conduct other than that of which the accused has been convicted (in para 7.30-7.39 above).} There was no hope of compensation being awarded by the court because the offender was an unemployed drug user, thus the victim would inevitably have been disappointed. Other respondents (primarily from victim support organisations) commented that some victims had an expectation that their statements would be read out in court and were disappointed when this did not happen. One procurator fiscal told us that in several cases, a charge in respect of which there was a victim statement had been dropped as part of the charge bargaining process and in another very serious case, the jury returned a not proven verdict.\footnote{Our own analysis of case outcomes suggests that in 24% of cases a completed victim statement is not put before the court because the accused is found not guilty or not proven or the case is deserted (see Table 5.1).} Obviously, the risk of disappointing victims might be particularly acute in such cases.

7.51 A number of respondents also expressed the view that the victim statement scheme was a waste of resources because of the low number of statements returned. One sheriff commented:

“I don’t feel it’s something so obviously important and significant that it ought to be rolled out if the figure is so low.”

Another respondent (a procurator fiscal) stated that:

“I think [the scheme is] a waste of time personally… The amount of work for the amount of statements you get back is a waste of resources, quite frankly. In most summary cases where there is any dispute as to the facts, the victim would give evidence at trial and their story would come out; in solemn cases you would get their side of the story when they’re precognosed.”

Some defence solicitors observed that the money spent on victim statement schemes would have been better spent on alleviating the shortage of Crown resources.

7.52 It was suggested by one of those interviewed that while he would support greater involvement by victims in the criminal justice scheme, it was not necessary to have the expense of a formal victim statement scheme in order to achieve this. A similar effect could be achieved, in his opinion, by simply letting victims know that they are welcome to send a letter to the procurator fiscal letting them know how the crime has affected them.

7.53 On the other hand, one procurator fiscal observed that he occasionally received extremely useful statements, and cited an example of a commercial housebreaking where the statement revealed that the offence had upset the elderly owner of the shop so badly that he had simply closed it down. One respondent generally favoured rolling out victim statements because they allow victims to be involved “albeit not in an earth shattering way”.

126 Incidentally, these went well beyond the charges: on which, see the concerns raised generally about victim statements that contain information about conduct other than that of which the accused has been convicted (in para 7.30-7.39 above).
127 Our own analysis of case outcomes suggests that in 24% of cases a completed victim statement is not put before the court because the accused is found not guilty or not proven or the case is deserted (see Table 5.1).
7.54 One sheriff, who was convinced of the value of victim statements, commented:

“I’ve always taken the view that the court exists for the benefit of the public. An important player is the accused; another is the person who has suffered.”

Another thought that, while victim statements were not working particularly well, they had potential if the schemes were “refined” or “tweaked”. He firmly believed that the criminal justice system should take more account of victims and that the “dinosaurs” among his colleagues who were opposed to such developments were slowly retiring. Another sheriff, who had no strong views one way or the other, pointed out that, given victim statements had not caused the anticipated problems and increased court workloads, extending victim statement schemes would not cause any harm and might be of some limited value. One member of VSS, interviewed midway through the pilots, stated that he was “still optimistic” and that the victim statements initiative was “a fantastic scheme and will work once it gets off the ground”.

7.55 To summarise, it would be fair to say that the majority of those interviewed held no strong views either way about whether or not the victim statement scheme should be rolled out across Scotland. As noted above, the exceptions to this were those interviewed from victim support organisations, procurators fiscal at one of the pilot offices and 2 of the sheriffs, who were strongly in favour of roll out; and 2 of the sheriffs interviewed, who were strongly against.

7.56 Those who were against roll out (as well as some of those who were simply neutral) expressed 2 main concerns about the scheme: the issue of fairness to the accused when there was no check on the type of information that could be included in the victim statement; and whether or not the scheme represented value for money, given the low response rate. Concerns were also expressed about whether the scheme unduly raises victim expectations about the influence their statement will have.

7.57 Those who expressed opinions strongly in favour of roll out all did so because they felt that the criminal justice system should do more for victims and the statement scheme was a way in which this could be achieved.
CHAPTER EIGHT: VICTIM STATEMENT CONTENT ANALYSIS

8.1 In order to identify the type of information victims included in their statements, along with recurring themes, a content analysis of victim statements was undertaken. This chapter reports the results of this analysis.

8.2 A total of 160 victim statements were selected for analysis, drawn from all 3 courts (40 from Ayr, 65 from Edinburgh and 55 from Kilmarnock) and across the 2 year period of the pilot victim statement scheme. The statement makers were approximately equally split between males and females (80 male and 78 female). There were also 2 instances of a statement being filled in jointly by a male and a female. A range of age groups were represented, with the oldest statement maker being 68, and the youngest, whose statement was completed on his behalf by his mother, aged one. A variety of offences were covered.

THE NATURE OF THE INFORMATION PROVIDED

8.3 The victim statement form was divided into 4 main sections, covering in turn the physical impact of the crime (section 2 of the form); the emotional and psychological impact of the crime (section 3); the financial impact of the crime (section 4); and any additional impact that the crime has had that does not fall within the previous categories (section 5). The accompanying guidance booklet *Making a Victim Statement* instructed statement makers as follows:

“Although you can refer to the crime, do not describe the circumstances of the crime as the court will hear about this during the trial. Only describe how it has affected you since. Don’t include any views on the accused, or what sentence you think he or she should receive.”

This instruction was repeated both on the front of the victim statement form and at the start of section 5 of the form.

8.4 The first part of the analysis focused on whether or not statement makers did indeed confine themselves to providing information about the impact of the crime or whether comments were also made about the accused or the nature of the sentence he or she should receive.

8.5 The content analysis demonstrated that some statement makers did disregard instructions not to include views on the accused, with a total of 45 statement makers (28%) making comments about the accused. This still means that the majority of statement makers (72%) did not do so, showing that, by and large, statement makers did stay within the boundaries of the scheme in terms of the nature of the information they provided.

8.6 Of the 45 statement makers who did make comments about the accused, 11 of these referred to things the accused had done before the offence; 13 referred to things the accused had done after the offence; 22 worried about the possibility of future reprisals from the accused; 5 expressed an opinion as to the sentence they felt the accused should receive; and

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128 In both cases the parents of deceased victims.
129 Section 1 relates to the personal details of the statement maker. For a copy of the statement form, see Annex 3.
17 made negative comments about the accused’s character. Four made comments stressing the accused’s good character and 2 expressed concern for the accused.\textsuperscript{130}

8.7 Examples of comments describing previous conduct of the accused included:

“[The accused] is a very abusive person mainly verbal abuse sometimes very threatening behaviour” [female victim of theft by housebreaking].

“… it was obvious the youth was on drugs at the time (in my opinion)” [male victim of assault].

“During this incident I found out that the person responsible for biting me is an intravenous drug user, a known prostitute and was contagious” [male victim of assault].

“There is a history of the accused assaulting my partner whom he used to stay with. There is also a history of him damaging the house, breaking windows for example … [The local police] have been involved in many of the incidents in the past. [The local hospital] have details of injuries sustained by my partner in the past” [male victim of assault].

“I’m hoping my kids won’t suffer like their mother now, I don’t want to contemplate any longer on horrific memories as it’s not just the first incident like this they’ve seen … Many more incidents were reported to the police previously over the 7 years I was with him” [female victim of a sexual offence].

“[Name of victim] has been attacked on 4 separate occasions by [name of the accused], all of which have been reported to the police” [male victim of assault].

8.8 Examples of comments describing the accused’s conduct before or after the initial crime included:

“[The accused] is a constant offender” [female victim of housebreaking].

“After the attack I was threatened by the accused and this makes me feel worried” [male victim of assault].

8.9 Examples of comments worrying about reprisals included:

“I am scared to go out for messages in case I bump into him, because he always told me if I got the police involved he would kill me and burn my house to the ground” [female victim of domestic assault].

“His obsessive behaviour of texting, phoning, standing outside my flat made me very afraid and now I’m scared of what will happen after court … I feel very scared he’ll come after me again since he told me afterwards that he wished he’d killed me” [female victim of assault].

\textsuperscript{130} The total does not add up to 45 as some statement makers fall into more than one category if they made more than one type of comment on the accused.
“Knowing that my ex-husband is capable of anything it makes me paranoid” [female victim of assault].

“I think if the accused saw me again he would assault me again, probably using a weapon. I am also aware that if he is in the area he may vandalise the house or my car” [male victim of assault].

8.10 Furthermore, one victim [female victim of assault] only wanted to participate in the scheme after the accused (her partner) had been convicted. This suggests a reluctance to participate due to fear of reprisals.

8.11 Examples of comments giving opinion as to sentence included:

“I feel (not that it is my decision, it is My Lord’s [the judge’s] decision) that a prison sentence would take everything away from under his feet again and we would all be back to square one trying to help him” [female victim of assault].

“If [name of accused] is really getting help and not to drink I would really like the restriction order to be removed” [female victim of assault].

8.12 Examples of comments relating to the character (good or bad) of the accused included:

“I am certainly unhappy with what has happened to me at the evil hands of a junkie” [female victim of housebreaking].

“He is a person with no respect for women and feels he has done nothing wrong. He has contacted me several times to get me to drop the charges and not testify. He is very devious and cunning” [female victim of assault].

“I can even communicate with my brother now he has the help he needed. What a different person and character he has become, just like my brother I knew before he got into the mess with drugs” [female victim of assault].

8.13 Examples of comments expressing concern for the accused included:

“It’s not up to us to pass comment on the attacker but there must be something more that could be done to help these people, something in the way of counselling or maybe something has made them like that from their past (who knows)” [female victim of assault].

“I have been preoccupied by questions of why the attack happened, fears of what might have happened if it had not been interrupted and paradoxically, by the state of mind and future prospects of my attacker” [female victim of assault].
RECURRENT THEMES

8.14 The second part of the analysis involved looking at the various effects being mentioned by statement makers. Table 8.1 shows the recurring themes and how often these were reported.\(^{131}\)

Table 8.1: Analysis of comments made by theme

<table>
<thead>
<tr>
<th>Theme</th>
<th>Total</th>
<th>Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>General fearfulness/insecurity/inability to cope</td>
<td>65</td>
<td>26M 39F</td>
</tr>
<tr>
<td>Unable to sleep/sleeping problems/nightmares</td>
<td>62</td>
<td>30M 32F</td>
</tr>
<tr>
<td>Afraid to go out</td>
<td>44</td>
<td>20M 24F</td>
</tr>
<tr>
<td>Depression</td>
<td>42</td>
<td>21M 19F 2J</td>
</tr>
<tr>
<td>Fear of reprisal/recurrence</td>
<td>39</td>
<td>17M 22F</td>
</tr>
<tr>
<td>On medication</td>
<td>37</td>
<td>14M 21F 2J</td>
</tr>
<tr>
<td>Concern about effect on others (e.g. family members)</td>
<td>30</td>
<td>12M 18F</td>
</tr>
<tr>
<td>Work affected/time off work/unable to work</td>
<td>28</td>
<td>14M 13F 1J</td>
</tr>
<tr>
<td>Panic attacks/anxiety</td>
<td>28</td>
<td>10M 18F</td>
</tr>
<tr>
<td>Fear of seeing the accused</td>
<td>28</td>
<td>12M 16F</td>
</tr>
<tr>
<td>Social life affected</td>
<td>26</td>
<td>13M 12F 1J</td>
</tr>
<tr>
<td>Relationships affected (family, friends and/or partners)</td>
<td>24</td>
<td>13M 11F</td>
</tr>
<tr>
<td>Afraid of being alone</td>
<td>22</td>
<td>5M 17F</td>
</tr>
<tr>
<td>Loss of confidence</td>
<td>20</td>
<td>11M 9F</td>
</tr>
<tr>
<td>Left with physical scarring</td>
<td>19</td>
<td>10M 9F</td>
</tr>
<tr>
<td>Unable to concentrate</td>
<td>17</td>
<td>6M 11F</td>
</tr>
<tr>
<td>Loss of trust/suspicious</td>
<td>16</td>
<td>7M 9F</td>
</tr>
<tr>
<td>Afraid at night</td>
<td>15</td>
<td>6M 9F</td>
</tr>
<tr>
<td>Worsening of pre-existing medical conditions</td>
<td>13</td>
<td>7M 5F 1J</td>
</tr>
<tr>
<td>Having to/wanting to move home</td>
<td>12</td>
<td>6M 6F</td>
</tr>
<tr>
<td>Loss of personal/sentimental items</td>
<td>11</td>
<td>7M 4F</td>
</tr>
<tr>
<td>Fear of going back to where it happened/where accused lives</td>
<td>9</td>
<td>5M 4F</td>
</tr>
<tr>
<td>Suicidal thoughts/suicide attempts</td>
<td>9</td>
<td>2M 6F 1J</td>
</tr>
<tr>
<td>Financial loss generally</td>
<td>8</td>
<td>6M 2F</td>
</tr>
<tr>
<td>Afraid of crowds</td>
<td>8</td>
<td>5M 3F</td>
</tr>
<tr>
<td>Counselling</td>
<td>7</td>
<td>2M 3F 2J</td>
</tr>
<tr>
<td>Having to change locks/fit alarms etc</td>
<td>7</td>
<td>2M 5F</td>
</tr>
<tr>
<td>Degraded/violated/ashamed</td>
<td>7</td>
<td>1M 6F</td>
</tr>
<tr>
<td>Anger</td>
<td>7</td>
<td>3M 3F 1J</td>
</tr>
<tr>
<td>Feeling like a bad parent</td>
<td>7</td>
<td>7F</td>
</tr>
<tr>
<td>Sexual performance affected</td>
<td>6</td>
<td>4M 2F</td>
</tr>
<tr>
<td>Unable to eat</td>
<td>5</td>
<td>1M 4F</td>
</tr>
<tr>
<td>Blaming self/victim(^{134})</td>
<td>5</td>
<td>1M 4F</td>
</tr>
<tr>
<td>Flashbacks</td>
<td>4</td>
<td>4F</td>
</tr>
<tr>
<td>Worry about court case</td>
<td>4</td>
<td>4F</td>
</tr>
<tr>
<td>Fear of what could have happened</td>
<td>4</td>
<td>1M 3F</td>
</tr>
<tr>
<td>Alcohol abuse</td>
<td>4</td>
<td>3M 1F</td>
</tr>
<tr>
<td>Dependence on family or friends/feeling like a burden</td>
<td>3</td>
<td>2M 1F</td>
</tr>
<tr>
<td>Self harming</td>
<td>3</td>
<td>3F</td>
</tr>
</tbody>
</table>

131 The total does not add up to 160 as some statement makers fell into more than one category if they made comments on more than one theme.
132 ‘J’ refers to where the comment was made in one of the 2 ‘joint statements’, filled out by one male and one female victim.
133 Only one of these statements was made in relation to a sexual offence.
134 Where the statement was filled in by someone other than the victim, e.g. a parent.
One thing that is clear from this analysis is that there was a tendency for statement makers to be led by the vocabulary being used in the rubric of the question. This is particularly apparent in relation to section 3 (emotional and psychological impact), where statement makers often used the words that appeared in the rubric as examples of possible emotional or psychological effects. There were frequent references to feeling generally “fearful” or “depressed”, to a “loss of concentration” and to being “unable to work as normal”, all of which were terms or phrases that appeared on the form. For example:

“Yes, I do not have the ability to cope, I am very fearful, depressed, unable to concentrate. No, I have no social life at all” [female victim of assault].

“I feel depressed, fearful, suicidal, unable to concentrate” [female victim of assault].

GENERAL OBSERVATIONS

Aside from the points made so far, a number of further general observations can be made about the content of the victim statement forms analysed.

First, there was a great deal of overlap between the various sections of the form. Statement makers did not stick neatly to the sections of the form provided for physical, emotional and financial effects. This may perhaps be due to the wording of the form itself, particularly in the physical section (section 2) where victims were invited to state how their injuries, “have affected or are affecting [their] day to day life”. This may have prompted the victim to mention things such as not being able to socialise or work, which could just as easily have been accommodated under section 3 (emotional impact) or section 4 (financial impact) respectively. Several victims typed up statements on separate sheets of paper, rather than using the actual form, and dispensed with the section headings altogether.

Second, the space allocated to each of the 3 categories of impact did not correspond to the relative length of the comments made by statement makers. On the statement form, one and a half sides of paper were provided to detail physical impact, approximately three quarters of a side of paper was provided for emotional impact and approximately two thirds of a side was provided for financial impact. For the vast majority of statement makers, however, the most detailed comments were made in the emotional impact section, with several individuals continuing their account on the back of the page or adding in extra sheets of paper. One statement maker [a female victim of assault] added 5 extra pages to the emotional impact section. The accounts of physical impact tended to be far shorter, with very few individuals providing more than half a side of information. This may suggest that the emotional impact of a crime is felt more keenly than any other. In terms of the implications for the design of the victim statement scheme, consideration might be given to changing the relative size of the boxes on the statement form (or perhaps even to removing the division of the form into categories of impact entirely). There may also be wider implications for the way in which victims are supported within the criminal justice system, but this issue lies beyond the scope of the research.

Third, the nature of some of the statements suggests that some statement makers may have been unclear about the purpose of the victim statement in terms of who would read the

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135 For a copy of the statement form, see Annex 3.
136 For a copy of the statement form, see Annex 3.
form and the use to which it would be put. Several victims asked for compensation for their injuries or damaged property, sometimes specifying that this should be provided by the accused. For example:

“I have been informed that my injuries, both physical and emotional do not meet the criteria for a criminal injuries claim. I do, however, feel I should be compensated in some way for the stress, strain and pressure put on me and my family as a result of this unprovoked drunken attack” [male victim of assault].

“Feel strongly that the culprit should reimburse me for the loss (broken watch, chain, bloodstained jacket) and promptly” [male victim of assault].

“I would like [name of accused] to sort it [her damaged car] because it is only right he does” [female victim of assault].

8.20 Other statement forms contained requests for further assistance, either in terms of emotional support (e.g. “Please help to resolve this and give us the help, advice counselling (sic) whatever there is for us” [female victim of housebreaking]) or financial advice.

8.21 Fourth, a tendency for some victims to be vague about their injuries was noted. This was demonstrated by comments such as “bruising from head to toe” and “I was black and blue all over” [both female victims of assault] when reporting physical effects.

8.22 Fifth, some victims also expressed what might be interpreted as negative comments about the victim statement scheme. For example:

“One of the hardest things has been to take out these forms and complete! To write everything down is just refreshing everything and is like reliving the whole thing again” [female victim of assault].

“There was no physical injury and there will be no long term effects … Things were made up between [the accused] and [the victim] and things in the house were getting back to normal until this letter came in!” [male victim of assault].

8.23 Sixth, it is clear that some victims were using their statement to convey their belief that the crime in fact had no effect on them or to encourage the procurator fiscal to drop the case. For example:

“There was no impact to me and I have written a letter to say that I do not wish the case to continue if that is possible … Sorry for any inconvenience” [female victim of housebreaking].

8.24 There is some overlap here with those statement makers who expressed views that the accused is in fact of good character.137

8.25 Seventh, and finally, the statements varied considerably in terms of the level of detail they contained and the care with which they were presented. At one end of the spectrum, it is clear that, for some victims, the form was used as a form of catharsis. Some of these

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137 See para 8.12 above.
statements were extremely lengthy and elaborate and great care was taken in their preparation (several were typewritten or word processed; one included a poem). Others expressed gratitude for simply providing the opportunity to make a statement (“I did not ask for any of this to happen to me and I suppose I will just have to live with it. Thanks for your help in this matter … I will also try to put this problem to the back of my mind and get back to a better quality of life. Thanks again … Financially, I don’t know how things go for me but thank you for being able to put my side of the problem” [male victim of assault]). At the other end of the spectrum, some of the statements were extremely brief and focused solely on reporting the physical impact of the offence. There was no real correlation between the length and detail of the statement and the objective severity of the offence.
CHAPTER NINE: ANALYSIS OF ‘LOST CASES’

9.1 An early aim of the research was to establish the number of cases that are lost to the victim statement scheme due to the offender pleading guilty from custody at the first opportunity and being sentenced immediately, without an adjournment.\(^{138}\) Where this happened, it was not possible for the victim to be offered the opportunity to make a victim statement.

9.2 Court records at Edinburgh, Kilmarnock and Ayr Sheriff Courts were examined in order to assess the extent of the lost case problem. The period of analysis was 25 November 2003 (the date of commencement of the pilot victim statement schemes) to 31 January 2004 inclusive.\(^{139}\) The findings are presented in Table 9.1.\(^{140}\)

Table 9.1: The extent of the lost case problem

<table>
<thead>
<tr>
<th></th>
<th>Number of VS cases where the accused appeared from custody</th>
<th>Number of these in which the accused pled guilty</th>
<th>Number of lost cases (because offender sentenced immediately)</th>
<th>Estimate of number of lost cases over 12 month period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edinburgh Sheriff Court</td>
<td>138</td>
<td>13</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Kilmarnock Sheriff Court</td>
<td>70</td>
<td>12</td>
<td>5</td>
<td>26</td>
</tr>
<tr>
<td>Ayr Sheriff Court</td>
<td>36</td>
<td>4</td>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>

9.3 As Table 9.1 shows, there were 2 lost cases in Edinburgh, 5 in Kilmarnock and one in Ayr. Assuming that these figures remain relatively constant over a 12 month period, the number of lost cases per year in Edinburgh, Kilmarnock and Ayr can be estimated at 15, 26 and 6 respectively (as the final column of Table 9.1 shows). These figures demonstrate that lost cases account for only a very small proportion of the total number of cases qualifying for the victim statement scheme and thus do not represent a major problem.

9.4 The slightly higher figure for Kilmarnock is possibly due to accused persons being more likely to plead guilty on first appearance at Kilmarnock Sheriff Court and to the sentencing sheriffs being less likely to adjourn before sentencing. Evidence to support both of these claims was found by the researchers in an earlier project involving Kilmarnock Sheriff Court (Leverick and Duff, 2001). Even in Kilmarnock, however, the number of lost cases is still small, especially when considered in relation to the total number of eligible cases.\(^{141}\)

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\(^{138}\) Henceforth referred to as “lost cases”.

\(^{139}\) The exception to this was Edinburgh Sheriff Court where data collection stopped at 15 January 2004, as this was the week in which the researchers visited the court.

\(^{140}\) These figures relate only to summary cases. The problem should not arise in relation to solemn cases where the accused cannot plead guilty on first appearance from custody as at this stage he or she would have only been presented with a petition and not an indictment. It is not competent to plead guilty to a petition.

\(^{141}\) Over the 2 year period of the pilots, 1900 statement packs were sent out in Kilmarnock.
CHAPTER TEN: ANALYSIS OF PRESCRIBED OFFENCES

10.1 This chapter contains the results of an analysis of the offences included within the scope of the pilot victim statement scheme. If the scheme is to be rolled out across Scotland, it is important that the list of “prescribed offences” is clearly drafted so that it is consistently applied across the country. As this chapter indicates, there were some differences in interpretation of the list of offences which led to minor differences in practice between the different pilot sites and which might be expected to lead to variations in practice were the scheme being applied across a larger area.

10.2 The list of offences “prescribed” for the purposes of the victim statements scheme can be found in the Victim Statements (Prescribed Offences) (Scotland) Order 2003, as amended by the Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2003 and the Victim Statements (Prescribed Offences) (Scotland) Amendment (No. 2) Order 2004. The 2003 Amendment Order added robbery, which was omitted from the 2003 Order. As the 2003 Amendment Order came into force prior to the start of the pilots, this omission had no effect on the operation of the scheme. The 2004 Amendment Order corrected (a) a typographical error in the original list (the Road Traffic Act 1988 having been referred to as the “Road Traffic Act 1998”) and (b) the inadvertent omission of offences of procuring under section 7(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.

10.3 Three distinct issues can be noted regarding the scope of the list of offences prescribed for the purposes of the victim statement scheme.

10.4 First, the list of prescribed offences includes “an offence of conspiring or inciting the commission of a [prescribed] offence”, and “an offence of aiding, abetting, counselling or procuring the commission of such an offence”. It does not, however, appear to include attempts to commit prescribed offences.

10.5 It has been suggested to the research team that attempts are included in the list of prescribed offences as a consequence of s87 of the 2003 Act (which defines an offence as “any act, attempt or omission punishable by law”, as per s307(1) of the Criminal Procedure (Scotland) Act 1995). However, this definition only means that attempts are offences for the purposes of the 2003 Act as a whole. It does not make them prescribed offences for the purposes of the victim statements scheme. This would only follow if the s87 definition equated attempts with complete offences, which it does not.

10.6 Despite this, the guidance issued to pilot site offices on the operation of the victim statements scheme stated that attempts to commit prescribed offences are within the scope of the scheme, and the pilot offices proceeded on this basis.

10.7 Second, the list does not include hamesucken (although assault is included). It is sometimes assumed that hamesucken charges are no longer brought, but the researchers

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142 SSI 2003 No. 441.
143 SSI 2003 No. 519.
144 SSI 2004 No. 287. This revoked the Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2004 (SSI 2004 No. 246), as an error in that Order was noted after it had been made.
145 Sections 24-25 of the Schedule to SSI 2003 No. 441.
146 Verbal report to the research team from member of Crown Office Policy Unit made at the Research Advisory Group meeting of 21 June 2004.
147 Hamesucken is constituted by “assault[ing] a man in his own house after having invaded the house for that purpose”: Gordon (2001), para 29.09.
148 See Gordon (2001): “now that hamesucken is no longer capital it is not charged as a specific crime” (para 29.09).
noted a number of instances of hamesucken charges in their examination of court sheets at Edinburgh Sheriff Court at an early stage of the research project.\footnote{Brown v HM Advocate 1989 GWD 35-1604 is a reported example of a charge of hamesucken. Ross (1994) also notes that the charge is still used on occasion.} Indeed, the data supplied to the researchers indicates that 2 statement packs were actually sent out in a hamesucken case stemming from the Edinburgh pilot site.

10.8 Third, the list does not include housebreaking with intent to steal (although theft by housebreaking is included). The data supplied to researchers indicates that 9 statement packs were sent out in cases of housebreaking with intent to steal, 2 in Ayr and 7 in Kilmarnock.\footnote{Email from member of Crown Office Policy Unit to the research team, 19 April 2004. OSSE is the Office of the Solicitor to the Scottish Executive.}

10.9 Following communications between the research team and Crown Office, it has been established that both hamesucken and housebreaking with intent to steal were considered for inclusion in the list of prescribed offences. They were not specifically included in the list of prescribed offences because “the advice given by OSSE solicitors was that both of these would be included in terms of the offences prescribed: hamesucken because it is an assault and HBWI under the ambit of theft by housebreaking.”\footnote{Prior to the Criminal Procedure (Scotland) Act 1887. See, e.g., David Robertson Williamson (1853) 1 Irv. 244.}

10.10 The research team have some doubts about this interpretation, for the following reasons. First, it is at least arguable that hamesucken has always been regarded as a separate crime from assault under Scots law,\footnote{So, for example, the institutional writers devoted entirely separate chapters to hamesucken and assault: see Hume (1844), vol i, chapters 8 (“Of Hamesucken”) and 9 (“Of Real Injuries”); Alison (1832), chapter 5 (“Assault and Real Injury”) and 6 (“Hamesucken”). See also Hume (1844), vol ii, p466 (noting that to charge assault instead of hamesucken would be to allege “a new denomination of crime”).} as demonstrated by the former practice of charging hamesucken and aggravated assault in the alternative when the former was still a capital offence.\footnote{Prior to the Criminal Procedure (Scotland) Act 1887. See, e.g., David Robertson Williamson (1853) 1 Irv. 244.} (It is, of course, the case that every instance of hamesucken must involve an assault, but equally every instance of robbery must involve an assault,\footnote{See Gordon (2001), p.91, defining robbery as “theft accomplished by means of personal violence or intimidation”; Cromar v HM Advocate 1987 SCCR 635, per Sheriff Pirie at 635.} and it was felt necessary to specifically list robbery as a prescribed offence.\footnote{It was added to the list by the Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2003 (SSI 2003 No. 519). This order was made by the Executive following concern expressed by the Justice 1 Committee “that the list of prescribed offences [included in the initial Order] may exclude some offences, where violence is threatened but not carried out, from the victim statements scheme”. See Justice 1 Committee (2003).}

10.11 The view that housebreaking with intent to steal is covered by the reference to theft by housebreaking is presumably based on the view that the former is an inchoate form of the latter: that is, it amounts to attempted theft by housebreaking. The appeal court has, however, reserved opinion on the question of whether breaking into a house with the intention of committing a crime therein amounts to an attempt to commit that crime,\footnote{HM Advocate v Forbes 1994 SLT 861 (where the appeal court reserved opinion on whether housebreaking with intent to rape amounted to attempted rape).} and so the point cannot be taken as clear-cut. In any case, as noted above, attempts to commit prescribed
offences do not appear to be within the scope of the schedule. The issue has been discussed with 2 procurators fiscal from different pilot scheme offices. In one case, the procurator fiscal to whom the researchers spoke was of the view that housebreaking with intent to steal was within the scope of the scheme; in the second, the procurator fiscal was of the view that it was not.
CHAPTER ELEVEN: SUMMARY AND CONCLUSIONS

11.1 This chapter summarises the main findings of the research and draws some overall conclusions.

SUMMARY OF FINDINGS

11.2 Our findings in relation to 6 aspects of the research (response rates; victims’ views on the pilot schemes; criminal justice professionals’ views on the pilot schemes; the content of victim statements; the impact of the victim statement scheme on workload and court processes; and the outcome of cases in which a victim statement was made) are summarised below.

Response rates

11.3 Over the 2 year period of the pilot victim statement scheme, 14.9% of eligible victims took the opportunity to make a statement. At first glance, this figure may seem low in comparison to victim statement schemes in other jurisdictions, most notably the pilot victim statement scheme in England and Wales, where 30% of eligible victims took the opportunity to make a statement. It cannot be stressed too highly, however, that the two schemes are not directly comparable. The range of offences included in the English scheme was more serious and, as this research found that response rates are related to offence seriousness (see para 11.4 below), the difference in response rates is only to be expected.

11.4 Response rates vary notably according to the seriousness of the offence. Response rates were highest among victims (or the next of kin of victims) of death by dangerous driving (60%); murder (60%); sexual offences (46% for rape, 51% for sexual offences excluding rape); abduction (50%); and attempted murder (40%).

11.5 By contrast, response rates were 24% for robbery; 21% for aggravated assault; 17% for assault without any aggravating features; and 14% for theft by housebreaking.

11.6 The lowest response rates were found among victims of an offence under s50A of the Criminal Law Consolidation (Scotland) Act 1995 (racially aggravated harassment) (6%) and victims of an offence under s41 of the Police (Scotland) Act 1967 (assault on a police officer) (4%). These findings, however, almost certainly reflect the general trend for response rates to increase with the seriousness of the offence and not the fact that police officers or victims from minority ethnic groups are inherently less likely to make victim statements than the population at large. For example, assaults on police officers that involve physical violence are more likely to be prosecuted as the common law offence of assault than they are under s41, which has a maximum penalty of 3 months imprisonment compared to the unlimited sentencing powers available for assault generally.157

157 Subject to the normal restrictions of the level of the court and any sentencing guidance issued by the Appeal Court.
11.7 There is no notable relationship between response rates and gender. There is some relationship between response rates and age (the older the victim, the more likely he or she is to make a statement), but it is not a strong one.

11.8 There is no trend, either upwards or downwards, in response rates over time. The re-draft of the initial letter sent to victims, which was simplified in July 2004, had no effect on response rates.

11.9 Response rates were 15% in Ayr; 14.1% in Kilmarnock and 15.5% in Edinburgh. Thus there is no evidence to suggest that the different methods of operation utilised in the pilots, whereby statement packs were sent out by VIA in Edinburgh and by the procurator fiscal service in Ayr and Kilmarnock, had any effect on response rates.

**Victims’ views about the victim statement scheme**

*The views of non-statement makers*

11.10 The most common reason by far for not making a victim statement was simply that the impact of the crime was not perceived as serious (53% of the 62 non-statement makers answering this question). The second most common reason was a fear of the accused: either a general fear of reprisals (8% of the 62 respondents) or because the victim did not want the accused to know his or her address (8% of the 62 respondents). Six percent of the 62 respondents did not make a statement because they wanted to forget about the incident; and a further 6% did not make a statement because (as they claimed) they had not received a statement pack. Only 3% of the 62 respondents did not make a statement because they did not understand the documentation.

11.11 Only 10% of the 94 respondents thought that their decision not to make a victim statement was the wrong decision. A total of 53% of the 94 non-statement makers still thought that not making a statement was ‘definitely’ or ‘probably’ the right decision. The remainder of non-statement makers were unsure.

*The views of statement makers*

11.12 The most common reason for making a victim statement was simply a desire for the victim to express his or her feelings about the offence (34% of the 88 statement makers interviewed). The second most common reason was to influence the outcome of the trial (23% in general and a further 5% specifically to ensure conviction), indicating a possible misconception as to the purpose of the scheme. This is supported by the finding that, when asked what they hoped for as a result of making a statement, 25% of the 88 statement makers hoped it would ensure that the accused was convicted. A further 10% of the 88 statement makers made a statement for ‘therapeutic reasons’ and 14% made a statement in order to ‘make the accused think about that he/she had done’. Only 5% of the 88 statement makers made a statement in order to influence sentence.

11.13 Statement makers were interviewed after the conclusion of their case and the vast majority (86% of the 88 statement makers) still thought that their decision was ‘definitely’ or ‘probably’ the correct one.
11.14 Only 6% of the 88 respondents who made a statement thought that it was ‘probably’ or ‘definitely’ the wrong decision. Likewise, the vast majority of statement makers reported that they would make a victim statement again if they were a victim of a similar offence in the future. Only 7% of the 88 statement makers reported that they ‘probably’ or ‘definitely’ would not make a statement if the opportunity arose in future to do so. There was a large overlap between these respondents and those who thought that making a statement was the wrong decision. The most common reason given in both cases was that respondents did not feel that their victim statement had made any difference to the outcome of the case.

11.15 In something of a contrast to these findings, 61% of the 88 statement makers reported that making a victim statement had made them feel better, but 38% reported that it had not. Thirty-nine percent of the 88 statement makers found the process of making a victim statement upsetting. The more serious the effect of the offence as perceived by respondents, the more likely they were to find making the statement upsetting. This may not be an entirely negative finding, however, as some statement makers indicated that while the process had been upsetting, they had found it cathartic.

11.16 Statement makers were divided on the extent to which they felt their statement had been taken into account in sentencing. The majority (53% of the 88 statement makers) simply did not know whether it had or not; 25% felt that their statement had been taken into account in sentencing the offender; 22% felt that it had not.

Comprehension of documentation

11.17 The majority of respondents (89%) described the initial letter and accompanying leaflet as ‘very easy’ or ‘quite easy’ to understand and 72% stated that they found the leaflet helpful in making their mind up about whether or not to submit a victim statement. Most of those (8 out of 10 respondents) who found the literature difficult to understand were non-statement makers.

11.18 Despite this, comprehension of the victim statement scheme was mixed, with 43% of respondents unaware that any statement made would be shown to the offender; 39% unaware that a statement maker could be asked questions about their statement in court; 22% under the mistaken impression that a statement could be withdrawn once made; and 12% unaware that making a victim statement was optional. This may, of course, simply be because the respondent did not read the relevant part of the victim statement literature, rather than a lack of understanding. The limited analysis that it was possible to undertake suggests that there may be some relationship between the extent to which the respondent read the literature and his or her understanding of the scheme, but this was not a straightforward one, with those who only read “some” of the literature being equally well or even better informed than those who read “most” of it.

11.19 Of the 83 respondents who were aware that their statement would be shown to the offender, 23% were encouraged by this to make a statement. A further 21% were discouraged and 57% stated that it made no difference.
General views

11.20 Respondents’ suggested improvements to the criminal justice system tended to focus primarily on improving information and support: more information for the victim on the progress of the case (43% of respondents); for the victim to be told the sentence imposed on the offender (9%); and for more support in court or more information about the court process (7%). Factors relating to influence over the criminal justice process such as ‘taking victims’ views into account’ or ‘harsher sentences, more criminals being caught’ were secondary concerns (10% and 5% respectively).

11.21 The most common suggestion for improving the victim statement scheme was providing someone to help with the form (5% of respondents). This was followed by: giving more consideration to the statement in court (4%); sending the form sooner after the crime (3%); and preventing the offender from reading the statement (2%).

Criminal justice professionals’ views about the victim statement scheme

11.22 The majority of criminal justice professionals interviewed were neutral about whether or not the victim statement scheme should be rolled out across Scotland, with only a minority of respondents expressing any strong views one way or the other. All of the respondents from victim support organisations were strongly in favour of rolling out the scheme, as were procurators fiscal in one of the pilot offices and 2 of the sheriffs. Two of the sheriffs interviewed were strongly against rolling out the pilot scheme.

11.23 The 2 sheriffs who held strong views against rolling out the victim statement scheme did so primarily because of concerns that victim statements risked prejudicing the traditional fairness of the Scottish criminal justice system towards the accused. This was on the basis that prejudicial or irrelevant information could be included in the statement, as there is no independent check or filtering system. The interviews conducted with other practitioners, however, suggest that this has not been a particular problem in practice. Although victims do sometimes go beyond the scope of the charges of which the accused is convicted in their statements, sentencers universally stated that they were able to put this information out of their minds when passing sentence.

11.24 The other main concerns expressed about the pilot scheme (both by those against its expansion and those who were neutral about roll out) were that the scheme did not represent value for money, given the relatively low response rates, and that the scheme may unduly raise the expectations of victims about the influence their statement will have.

11.25 Various reasons for the relatively low response rates were suggested in the interviews. The first was that the initial letter to victims is, even after being revised, still too formal and off-putting. The second was that the deadline set for the return of statements is too tight. The third was that all communication relating to the scheme is in writing and this may discourage victims with low literacy levels. The fourth was that the fact that the offender is able to see the statement may be putting some people off. The interviews undertaken with victims themselves support these perceptions to a certain extent, although the main reason given for not making a statement was that the offence was not perceived as especially serious. It should

158 See chapter 6 above.
also be remembered, however, that the sample of victims interviewed as part of the research may not be representative. Given that the researchers were more likely to have accurate telephone contact numbers for those who had completed written reply slips, it cannot be ruled out that those with low literacy rates are under-represented and thus the research underestimates the extent to which victims do not make statements because all communication is in writing.

11.26 It was suggested by respondents from victim support organisations that at least the first 3 of these perceived barriers could be overcome by allowing VSS to make a follow-up telephone call to those who had received a statement pack to alert victims to the scheme and explain its purpose. This suggestion was made during the operation of the pilots but was not adopted. Some other respondents suggested that response rates could be improved by changing the scheme so that victim support officers personally took statements from eligible victims on a face-to-face basis, rather than operating the scheme entirely by post.

11.27 A number of respondents – sheriffs and procurators fiscal – commented that the information they were now getting in victim statements was useful and went beyond what would previously have been available. A minority of sheriffs stated, however, that they had always asked for information about the effect of the offence on the victim even before the introduction of the scheme and thus the statement scheme, at least for the sentencer’s own purposes, was unnecessary.

11.28 All of the sheriffs interviewed stated – quite properly, given that they are required to do so under s14(5) of the Criminal Justice (Scotland) Act 2003 – that they would take account of any victim statement when sentencing,159 or at least as much of it as is relevant to the offence of which the accused was convicted.160 The consensus was, however, that it is almost impossible to isolate the effect of the victim statement on the eventual sentence passed, given the vast number of factors that are taken into account in arriving at an appropriate sentence. Thus it is not possible to state conclusively whether or not sentences are more severe in cases where there is a victim statement. The interviews did indicate, however, some examples of cases where the victim statement has influenced the sentencer at least to consider a sentence of a different nature to the one he or she was initially minded to impose.

11.29 Opinion was divided over whether or not the victim statement should be taken at an earlier stage in the process. On the plus side, the memory of the victim may be better at an earlier stage in the process and the statement would be available to the procurator fiscal making the decision on whether or not to prosecute. On the minus side, sometimes the impact of the offence might not manifest itself until a later stage and if statements were taken at, say, the same time as the police witness statement,161 they might be out of date by the time of sentencing (although this could be mitigated to a certain extent by allowing the statement to be updated).

11.30 Opinion was generally negative on the idea of the victim statement being read out in court. Concerns were raised by a number of respondents that the accused’s position could be prejudiced if the information contained in the statement went beyond that of the offence of

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159 Or, as the legislation states, “have regard to” the victim statement.
160 The legislation specifically provides for this, requiring sentencers only to have regard to as much of the statement “as it considers to be relevant to [the] offence” (s14(5)).
161 As presently occurs under the victim personal statement scheme in England and Wales.
which he or she was convicted. As the system operates at present, the sentencer can simply disregard ‘irrelevant’ information without it being made public.

11.31 All of the sheriffs and procurators fiscal interviewed who expressed a view on the matter were of the opinion that the scheme should not be extended to allow victims to express an opinion about sentence or to have any direct influence over the sentencing process.

The content of victim statements

11.32 Content analysis suggested that victims who make statements wish primarily to comment on the emotional impact of the crime rather than the financial or physical impact. This is not reflected in the design of the form, in which the largest box is for physical impact.

11.33 Content analysis also revealed that the most commonly reported impacts in the sample of statements analysed for the purposes of this report were all emotional impacts: that the victim was unable to sleep (39% of the 160 statements analysed); was suffering a general fearfulness or inability to cope (41% of statements); was afraid to go out (28% of statements); or was suffering from depression (28% of statements).

11.34 It was rare for a victim to disregard instructions and express an opinion about the sentence that the accused should receive, if convicted. Only 5 of the 160 victim statements analysed (3%) contained comments of this nature.

11.35 A larger minority of statement makers disregarded instructions not to make comments about the accused, with 45 of the 160 statements analysed (28%) containing comments of this nature. (This figure includes the 5 statements in which the victim expressed a view about sentence.) This still means that the majority of statement makers (72%) kept within the boundaries of the scheme in terms of the information provided.

The impact of the victim statement scheme on workload and court processes

11.36 Given the additional resources made available during the operation of the pilots, the victim statement scheme did not appear to have placed a significant extra burden on either the pilot site offices or on court time.

11.37 To the knowledge of the research team, there were no cases over the course of the pilot scheme in which a defence objection to the content of a victim statement led to a proof in mitigation. Thus it appears that no victims had to face cross-examination about the content of their statement.

11.38 Research to estimate the extent to which potential victim statement cases were “lost” – because the accused pled guilty from custody and was sentenced immediately, thus meaning that there was no opportunity to make a victim statement – has suggested that the number of such cases was relatively low (ranging from 6 over a 12 month period in one court to 26 in another).
The outcome of cases in which a victim statement was made

11.39 Cases in which a victim statement was made were less likely to be deserted than those in which a statement was not made (15% of statement cases compared to 23% of non-statement cases). This may simply be a result of the relationship between offence seriousness and the existence of a victim statement, with procurators fiscal being more reluctant to desert relatively serious offences. The relationship does hold, however, even within the offence categories of assault, aggravated assault and theft by housebreaking (for example 21% of theft by housebreaking cases where no victim statement was made were deserted compared to 9% of theft by housebreaking cases where there was a statement).

11.40 Over the course of the pilot scheme, it is estimated that there were 175 cases in which a victim statement was made but was not put before the court because the accused was not convicted (either because the trial resulted in a not guilty/not proven verdict; the case was deserted; or the accused pled guilty to an offence that did not fall under the auspices of the pilot scheme). These 175 cases represent 24% of all the cases in which a victim statement was made.

11.41 The analysis of disposals undertaken indicates that cases in which there was a victim statement were slightly more likely than cases in which there was not to result in a sentence of imprisonment. This relationship holds in all categories of offence except for theft by housebreaking where a sentence of imprisonment was actually more likely in a case where there was not a victim statement than a case in which there was a victim statement. All that can really be concluded is that there are a multitude of factors that affect the nature of the sentence, of which the victim statement is only one. This conclusion is supported by the findings of the interviews undertaken with sentencers.

11.42 Compensation orders were more likely to be made in a case where there was a victim statement than they were in a case where there was no victim statement (they were made in 8% of statement cases compared to 4% of non-statement cases).

OVERALL CONCLUSIONS

11.43 Over the course of the pilot scheme, only 14.9% of those eligible to make a statement actually did so. It might be concluded that this response rate is low, but it must be seen in the context of the range of offences that were included in the pilots. Response rates varied considerably according to offence seriousness, from 60% for murder and death by dangerous driving to 4% for assault on a police officer prosecuted under s41 of the Police (Scotland) Act 1967. Given this, and the fact that the most common reason for not making a statement was that the impact of the offence was not regarded as sufficiently serious, response rates would almost certainly increase if the range of offences prescribed for the scheme were altered, perhaps, similarly to what was done in England and Wales, including only aggravated assault and not assault with no aggravating features.

11.44 The second most common reason for not making a statement was the knowledge that the accused would see the form, alongside a more general fear of reprisals from the accused (the most common reason was that the impact of the offence was not felt to be sufficiently serious). Thus one way to improve response rates might be to prevent the accused from seeing the statement or, perhaps more realistically, making it anonymous. But this solution is
more problematic than it might initially seem. For one thing, it would raise issues of fairness to the accused. But even if this barrier could be surmounted (which is unlikely), it would deprive some statement makers of a positive opportunity. In the telephone survey of victims, 14% of the 88 statement makers interviewed made a statement because they wanted the accused to see it and to think about what he or she had done. Of the 83 respondents who were aware that any statement made would be shown to the accused, more were encouraged by this to make a statement (23%) than were discouraged (21%). For all of these reasons, preventing the accused from seeing the completed statement form is not something that is recommended. It is likely anyway that this aspect of the findings is merely a manifestation of a wider problem that a small minority of victims feel intimidated by the accused and it is best addressed by improving the level of support and protection given to victims generally rather than by adjustments to the victim statement scheme.

11.45 As to what other changes might be made to the scheme to improve response rates, the other reasons most commonly given in the survey of victims for not making a victim statement were that the respondent did not think their statement would make any difference to the outcome of the case; that the respondent simply wanted to forget the incident; and, in a very small minority of cases, that the respondent claimed not to have received the documentation or did not understand it.

11.46 It should be stressed that all of these were secondary reasons compared to the reason that the impact of the offence was not considered serious. At least some of these issues could be addressed, however, by giving a greater role to victim support organisations. Most radically, the scheme could, as was suggested by some of the criminal justice professionals interviewed, be re-designed so that the victim statement is taken in person by a victim support worker.\textsuperscript{162} Less radically, the suggestion of VSS themselves that they be permitted to telephone victims after they have received their statement pack could be implemented.

11.47 Having said all of this, the view might be taken that the ‘low’ response rates are of little consequence and are certainly not a reason not to roll out the victim statement scheme across Scotland. The impact on the workload of either the courts or the procurator fiscal service – taking into account the resources made available to procurator fiscal offices to employ additional administrative staff – did not appear to be too adversely affected by the pilots and very few of those interviewed held strong views against roll out. In the telephone survey of victims, of the 88 respondents who made a victim statement, 61% reported that it had made them feel better, compared to 38% who reported that it had not. Only 6% of the 88 statement makers thought, in retrospect, that making a statement was probably or definitely not the right decision.

11.48 In fact, there were very few objections to the victim statement scheme among the criminal justice professionals interviewed. The issue of fairness to the accused was raised by some interviewees but the experience of the pilots did not reveal this to be an issue of any practical concern. Where issues did arise of statements containing information beyond that of relevance to the charges of which the accused was convicted, sentencers seemed able to put the irrelevant information out of their mind when passing sentence. There were no instances where a defence challenge went as far as a formal proof in mitigation.

\textsuperscript{162} Or by another party. In England and Wales the statement is taken by the police at the same time as the police witness statement.
11.49 While not denying that there were occasional statements where the victim concerned strayed far beyond the remit of the scheme, the content analysis of victim statements indicated that, by and large, the majority of victims kept within the terms of the scheme in relation to the nature of the information included. It was rare for a victim to express a view on the sentence the accused should receive if convicted and the majority of victims commented only on the impact of the offence and refrained from commenting about the accused more generally.

11.50 The research did reveal a number of practical issues that could be addressed if the victim statement scheme is to be rolled out across Scotland.

11.51 First, there were some misconceptions among the victims interviewed as to the nature and purpose of the victim statement scheme. There was a degree of ignorance about the fact that the statement would be shown to the accused, if convicted; the fact that a statement maker could be asked questions about their statement in court (although this never actually happened); the fact that a victim statement could not be withdrawn once made; and, to a lesser extent, the fact that making a victim statement is not compulsory. In addition, among those who made a statement, there was a degree of misunderstanding about its purpose, with 25% of the 88 statement makers interviewed hoping that their statement would ensure that the accused was convicted. It may be that some of these misunderstandings were the result of victims simply not reading the statement scheme literature (where all of these issues are addressed) or it may be that a further educational effort is necessary.

11.52 Second, a small minority of those who made a statement regretted doing so because they felt that it was not taken into account by the court. Our own analysis of the outcome of cases in which a victim statement was made indicates that, in 24% of cases, the statement was not put before the court because the offender was not convicted (or at least was not convicted of an offence coming under the auspices of the victim statement scheme). It is very difficult to know how this issue can be addressed, if at all. It may be that it is an unavoidable downside of victim statement schemes generally that the expectations of some of those who make a statement will be raised only for them to be disappointed (on this, see Sanders et al, 2001).

11.53 One issue that can very easily be addressed, however, is the design of the victim statement form. The box relating to emotional impact is too small, both in itself and as a proportion of the form as a whole (the physical impact box is bigger but rarely contained more than a few lines; the emotional impact box was often full or had extra pages added). This is especially important if the purpose (or one of the purposes) of the victim statement scheme is a therapeutic one. Indeed, the most common reason for making a victim statement among those interviewed was simply to express their feelings about the offence. A more radical approach would be to abandon the categories altogether and simply ask the victim to comment on the impact of the offence generally. More generally, these findings provide evidence that victims may attach more significance to the emotional effects of crime – as compared to physical or financial effects – than is commonly assumed.

11.54 Finally, the initial letter sent to victims inviting them to make a statement still lacks a certain element of ‘user-friendliness’, even after it was re-drafted in July 2004. If there is a desire to improve response rates, taking a radically simplified approach to this letter (and perhaps including some of the detail in the accompanying leaflet) may well be effective.
REFERENCES


Dear [name of victim]

PF v [name of accused]

I refer to the above case. The victim statement scheme is being piloted by the Scottish Executive in certain areas – namely, Kilmarnock, Ayr and Edinburgh and in relation to certain crimes. When this crime was reported to the police they may have told you that you would be eligible under section 14 of the Criminal Justice (Scotland) Act 2003 to make a victim statement.

This is a statement you can make about how you, or the person on whose behalf you are making the statement, have/has been affected by a crime.

I enclose a victim statement form, and a guidance booklet called “Making a Victim Statement – Guidance for Victims” and two pre-paid envelopes. The guidance booklet will help you to decide if you want to complete the victim statement form, and if you do, will help you to fill the form in. It explains what a victim statement is and what sort of information you should include in it. If you would like to speak to someone about making a statement, there are contact details of support organisations on the back of the guidance booklet. Victim Information and Advice, part of the Procurator Fiscal’s Office, issue the forms and guidance booklets to victims who fall within the scheme and will place any completed statement before the court if there is a conviction, but cannot provide advice about what should be put in the statement.

A sheriff or judge can have regard to a victim statement when passing sentence if the accused is/are found guilty or pleads guilty.

If you want to make a victim statement you should:

1. Complete and return the reply slip attached to this letter in a pre-paid envelope immediately.
   - Fill in your personal details where indicated on the reply form;
   - tick the box indicating that you wish to make a victim statement; and
   - consider whether you wish to tick the box which means that your details will not be passed to a research team evaluating the pilot schemes

AND
(2) **Complete the victim statement form** enclosed and return it in the other pre-paid envelope as soon as possible, but no later than [date].

If you do **not want** to make a victim statement you should:

(1) **Complete and return the reply slip** attached to this letter in a pre-paid envelope **immediately**.
- Fill in your personal details where indicated on the reply form;
- tick the box indicating that you do **not** wish to make a victim statement; and
- consider whether you wish to tick the box which means that your details will **not** be passed to a research team evaluating the pilot schemes.

The pilot schemes will run for 2 years and will be evaluated by a team of independent researchers, to allow a decision to be made about applying the scheme nationally. The researchers may interview victims of crime or their representatives who have received a victim statement form. **Whether you complete a victim statement or not, your details may be passed to the research team unless you indicate that you do not wish this to happen.** It is therefore important that you complete and return the reply slip indicating if you do **not** wish your details passed on.

Yours sincerely

[Name]
[Position/Designation]
**REPLY SLIP**

<table>
<thead>
<tr>
<th>CASE REFERENCE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
<td></td>
</tr>
<tr>
<td>ADDRESS</td>
<td></td>
</tr>
<tr>
<td>AGE/ DATE OF BIRTH</td>
<td></td>
</tr>
<tr>
<td>TELEPHONE NO.</td>
<td></td>
</tr>
<tr>
<td>SEX</td>
<td></td>
</tr>
</tbody>
</table>

Please mark **one** of the following with ‘X’:-

- I **want** to make a victim statement
- I **do not want** to make a victim statement

Please read and mark the following **if appropriate** with ‘X’:-

- I **do not want** my details passed to the research team conducting the evaluation of the pilot scheme.
Dear [name of victim]

PF v [name of accused]

VICTIM STATEMENT SCHEME

I am writing to tell you about the victim statement scheme, and your right to take part in it.

The Criminal Justice (Scotland) Act 2003 introduced a new right for the victims of crime to make a statement telling the court about the impact the crime has had on them. The scheme is being piloted by the Scottish Executive in this area, in relation to certain crimes.

I enclose a victim statement form, and a guidance booklet called “Making a Victim Statement – Guidance for Victims”. The guidance booklet helps explain why you are considered eligible to make a statement and help you decide if you want to complete the victim statement form.

I WANT TO MAKE A VICTIM STATEMENT

If you choose to complete the form there is information contained in the guidance booklet that will assist you or you can contact [Name], Ayrshire Victim Support, on [telephone number] or one of the other support organisations listed at the back of the guidance booklet. You should:

(1) Complete and return the reply slip attached to this letter in the pre-paid envelope immediately.

- Fill in your personal details where indicated on the reply form;
- Mark an “X” indicating that you wish to make a victim statement; and
- Consider whether you wish to mark an “X” to say that you do not want to be contacted by a research team evaluating the pilot schemes.

(2) Complete and return the victim statement form in the pre-paid envelope as soon as possible, but no later than [date]

I DO NOT WANT TO MAKE A VICTIM STATEMENT

If you do not want to make a victim statement you should:

(1) Complete and return the reply slip attached to this letter in the pre-paid envelope immediately.
- Fill in your personal details where indicated on the reply form;
- Mark an “X” indicating that you do not wish to make a victim statement; and
- Consider whether you wish to mark an “X” to say that you do not want to be contacted by a research team evaluating the pilot schemes.

All reply slips and victim statement forms must be returned to the Procurator Fiscal Office in the enclosed pre paid envelopes. We will ensure that your completed victim statement is given to the court if there is a conviction or a guilty plea.

However, you should be aware that in High Court cases, your statement will only be given to the court, if the accused is found or pleads guilty in the High Court at Edinburgh or Kilmarnock. This is because the scheme only applies in specific pilot courts. If the case is heard elsewhere, the prosecutor will tell the court about the impact of the crime on you as described in your statement, where appropriate.

Please note, we cannot provide advice about whether you should complete the statement or advise you on what information should be included in the statement.

EVALUATION OF THE PILOT SCHEME

The Victim Statement pilot schemes will run for 2 years and will be evaluated by a team of independent researchers. The Researchers will report their findings back to the Scottish Executive, and then a decision will be made about applying the scheme throughout Scotland. The researchers may wish to interview you even if you have chosen not to make a statement. Any information that you give to the researchers will be confidential and there will be nothing in their report to the Scottish Executive that would allow you to be identified. If you do not wish to be contacted by them you should indicate this on the reply slip, as well as on the victim statement form if you choose to complete it.

Yours sincerely

[Name]
[Position/Designation]

Encs: [Reply Slip
Victim Statement Form
Guidance Booklet
2 pre-paid envelopes
Translation form]
REPLY SLIP

CASE REFERENCE

NAME __________________________________________

ADDRESS __________________________________________

AGE/ DATE OF BIRTH __________________________________________

TELEPHONE NO. __________________________________________

SEX __________________________________________

Please mark one of the following with 'X':-

I want to make a victim statement __________

I do not want to make a victim statement __________

Researchers are evaluating the victim statements schemes. As part of this, they may read your statement and may also contact you later to discuss it. They may also contact you to discuss your decision not to make a victim statement. Please mark the following with 'X' if you do not want the researchers to read your form or contact you.
If you decide to make a statement, please use the attached form. The guidance booklet, ‘Making a Victim Statement: Guidance for Victims’ and the prompts contained in the form will give you guidance to help you complete it. The guidance pack also contains contact details of organisations that can help you to complete your victim statement.

If you are completing this form because a family member has died, please state how the crime has affected you and any close family members. If the victim is not capable of filling the form out him/herself or is a child under the age of 14, please state the effect on the victim, taking any references to ‘you’ in the form to refer to the victim.

Please give information on the impact that the crime has had on you/the victim. Remember that you should not include any views about the accused person or the sentence in your victim statement. Remember too that what you say must be truthful and that deliberately giving false information to the court is against the law.

**The form has 6 sections. Please read the form first and then complete each section.**

The questions provided in the form act as a guide. If a question is not relevant to the effect of the crime on you/the victim, please write 'not applicable' or 'n/a' in that box. If you wish to include information that is not covered by the questions, there is a box at the end of the form for you to give additional information.

Once you have completed the form, please return it in the pre-paid envelope provided by [insert date].
Section 1: Personal Details

<table>
<thead>
<tr>
<th>Name of main victim: (the person who experienced the crime)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>If you are not the main victim, please state your name and relationship to the victim:</td>
<td></td>
</tr>
<tr>
<td>Case reference number:</td>
<td></td>
</tr>
<tr>
<td>Date of birth: (of the main victim)</td>
<td></td>
</tr>
<tr>
<td>Sex: (of the main victim)</td>
<td>Male</td>
</tr>
</tbody>
</table>

Section 2: The physical impact of the crime

In this section you should record the physical impact that the crime has had on you.

If you were physically injured during or as a result of the crime, please state how the injury or injuries have affected or are affecting your day to day life. If you think they will have longer term consequences for you, please describe them.
Physical impact continued…
Section 3: The emotional and psychological impact of the crime

This section gives you the chance to tell the court about any emotional or psychological impact you think the crime has had on you.

Do you think that the crime has had any lasting effects on your feelings and ability to cope? For example, do you feel fearful, depressed, unable to concentrate, or to work as normal? Are you able to go out as before, socialise, or maintain relationships? These examples are for illustrative purposes only – they may or may not apply to you, and there may be other effects not described here.
Section 4: Financial impact

In this section, you should give details of any financial impact the crime has had on you. You may consider that the crime has had an immediate effect on your financial situation – for example, damage to or loss of property. Alternatively, you may consider that loss has resulted from the physical or emotional impact of the crime – for example, loss of earnings because you have had to take time off work. Please note that this form cannot be used to claim criminal injuries compensation.

Has the crime had an impact on your financial situation, for example in terms of loss or damage to property, or your ability to work? Has the crime affected the cost of home insurance?
Section 5: Additional Information

In this section, you can provide any additional information that has not been included in the sections above. Please remember that this should be relevant to the impact of the crime on you and should not contain your opinion on the character of the accused or on the sentence that you think he/she should receive.

Please provide any other information about the impact of the crime that you feel is relevant to you.

Section 6:

Please sign and date the form. If you are unable to sign the form yourself because you are injured or have a disability, you may get a representative to sign it for you.

Name (block capitals)__________________________________________

Are you the victim? Yes □ No □

If no, please describe your relationship with the victim?_____________________________

Researchers are evaluating the victim statements schemes. As part of this, they may read your statement and may also contact you later to discuss it. Please tick this box if you do not want the researchers to read your form or contact you. □

Signature____________________________________________________

Date________________________________________________________

WARNING: Deliberately giving false information can result in prosecution.

Please return this form in the pre-paid envelope provided by [insert date].
Evaluation of Victim Statements (P2437)

Questionnaire for victims

A. Introduction

Good morning/afternoon. My name is ________, from the Scottish Centre for Social Research. We recently sent you a letter about a research study we are carrying out with Aberdeen University about the experiences of people who have been victims of crime. The research is being carried out for the Scottish Executive. Is it convenient to talk to you now?

B. The offence and its impact

We want to talk to you about your experiences when you reported being a victim of (INSERT RELEVANT OFFENCE FROM LABEL)

First of all, I’d like to ask you about the impact the crime had on you.

1. As a result of this crime, have you suffered from any physical or medical problems, such as injuries or illness?

   Yes 1  Answer Q2  117
   No 2  Go to Q3

2. Would you describe these physical or medical problems as serious or not serious?

   Serious 1  118
   Not serious 2
ASK ALL

3. As a result of this crime, have you suffered from any emotional or psychological problems, for example anxiety or depression?

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Answer Q4</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Q5</td>
</tr>
</tbody>
</table>

4. Would you describe these problems as serious or not serious?

<table>
<thead>
<tr>
<th>Serious</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not serious</td>
<td>2</td>
</tr>
</tbody>
</table>

ASK ALL

5. As a result of this crime, did you have anything stolen or suffer any other financial loss, for example, not being able to work?

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Answer Q6</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Section C below</td>
</tr>
</tbody>
</table>

6. Would you describe this loss as serious or not serious?

<table>
<thead>
<tr>
<th>Serious</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not serious</td>
<td>2</td>
</tr>
</tbody>
</table>

C. Evidential statement

I’m going to ask some questions now about what happened in the run-up to the case going to court.

7. Did anyone take a witness statement from you giving the facts about what happened when the crime took place?

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Answer Q8</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Q9</td>
</tr>
</tbody>
</table>

8. Who was it that took your witness statement?

- A Police Officer | 1 |
- The Procurator fiscal | 2 |
- Someone else | 3 |
- WRITE IN

(Don’t know/can’t remember | 8 |
D. Awareness of victim statement

9. And did you write a **Victim Statement**? A Victim Statement is a way that victims of crimes can tell the Court about how the crime has affected them. You would have been given the opportunity to do this by post.

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Go to Q11</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Answer Q10</td>
</tr>
</tbody>
</table>

10. Can I just check, do you recall being told – either in person or in writing – that you **could** make a Victim Statement?

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Answer Q11</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Section G on page 8</td>
</tr>
</tbody>
</table>

11. Can you remember how you **first** heard about the possibility of making a Victim Statement?
- **CODE ONE ONLY**

  - Letter from Procurator fiscal 1
  - Personal contact with PF 2
  - Personal contact with Police 3
  - Personal contact with lawyer 4
  - Through Victim Support 5
  - Through media coverage 6
  - Some other way 7
  - WRITE IN

  Can’t remember 8

12. As far as you know, do you think that it is compulsory for victims to make a Victim Statement or do you think that it is voluntary?:

- Compulsory 1
- Voluntary 2
- Don’t know 8
E. Supporting documents

13. Do you recall receiving any written material – for example, a letter or leaflet – explaining what a Victim Statement is and how you should complete it?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Don’t know/can’t remember</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer Q14</td>
<td>1</td>
<td>2</td>
<td>8</td>
</tr>
</tbody>
</table>

14. How easy did you find this letter/leaflet to understand?

Would you say...

<table>
<thead>
<tr>
<th></th>
<th>very easy</th>
<th>quite easy</th>
<th>not very easy or not at all easy</th>
<th>Can’t remember</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer Q15</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>8</td>
</tr>
</tbody>
</table>

15. Why do you say that? WRITE IN

16. Would you say that you read …

<table>
<thead>
<tr>
<th>All or almost all of the letter/leaflet</th>
<th>Most of the letter/leaflet</th>
<th>Some of the letter/leaflet</th>
<th>or none of the letter/leaflet?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer Q17</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

17. Did reading the leaflet/letter help you to make up your mind about whether or not to make a Victim Statement?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer Q17</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

(Can’t remember) 8

The next few questions are about what you knew about the Victim Statement scheme when you decided whether or not to make one.

(continue)
18. Did you know that if the accused was found guilty of the crime any Victim Statement you wrote would be shown to the offender and their lawyer?:

Yes 1 Answer Q19
No 2 Go to Q20

(EXPLAIN ONLY IF ASKED: the accused/their lawyer would not see your address)

19. Did knowing this encourage you to make a Victim Statement, did it discourage you, or did it make no difference?:

Encouraged me 1
Discouraged me 2
Made no difference 3

20. Did you know that if the case went ahead you could be asked questions about the Victim Statement in court?

Yes 1 Answer Q21
No 2 Go to Q22

21. Did knowing this encourage you to make a Victim Statement, did it discourage you, or did it make no difference?:

Encouraged me 1
Discouraged me 2
Made no difference 3

F. Making the statement

22. Can I just check, did you actually make a Victim Statement?

Yes 1 Continue at paragraph below
No 2 Go to Section G on page 8

The next few questions are about making your Victim Statement. Please just think about making the Victim Statement and not about any witness statement you made to the police. (continue)

23. Why did you decide to make a Victim Statement?
PROBE FULLY. WRITE IN
24. What did you hope would happen as a result of you making a Victim Statement?
PROBE FULLY. WRITE IN

25. Did anybody help you to complete your Victim Statement?

<table>
<thead>
<tr>
<th>Yes</th>
<th>1</th>
<th>Answer Q26</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Q29</td>
</tr>
</tbody>
</table>

26. Who was it that helped you? CODE ALL THAT APPLY

- Family or friend 1
- Police officer 2
- Procurator fiscal 3
- Victim Support worker 4
- Social worker or other professional 5
- Someone else 6
- WRITE IN 6

27. What kind of help did they give you?
PROBE FULLY.

28. How much influence would you say they had on what you said in your statement. Would you say that they had … READ OUT…:

- … a lot of influence, 1
- some influence, 2
- or little or no influence on what you said? 3
29. If you were to make your Victim Statement again now, do you think that what you would say about how the crime affected you would be ...READ OUT...

...more or less the same as before,  1       Go to Q31
...or different in some way?  2       Answer Q30

30. In what way would it be different?:
PROBE FULLY

31. Thinking about the experience of making the Victim Statement, would you say that this was upsetting in any way?

Yes  1
No  2

32. And would you say that the experience of making the Victim Statement made you feel better about what happened?

Yes  1
No  2

33. After you made your initial Victim Statement, did you update it or add to it at any point?

Yes  1       Go to Q35
No  2       Answer Q34

34. Were you aware that you were able to do this?

Yes  1
No  2

35. As far as you know or understand, is it possible to withdraw a Victim Statement once it has been made?

Yes  1
No  2
Don’t know  8

36. And did you actually attempt to do this at any stage?

Yes  1       Go to Section H on page 9
No  2       Go to Section H on page 9
G. Non completers

The next few questions are about the reasons why you did **not** make a Victim Statement: (Continue)

37. Why did you decide not to make a Victim Statement?: IF NOT AWARE COULD MAKE VICTIM STATEMENT, TICK HERE AND SKIP TO Q42.

PROBE FULLY. WRITE IN.

38. If you had been given the opportunity to make a Victim Statement more quickly after the crime, do you think you would have been more likely to make a statement or would it have made no difference?:

   More likely 1
   No difference 2

39. Thinking now about your decision not to make a Victim Statement, would you say that this was … READ …

   … definitely the right decision, 1
   probably the right decision 2
   probably the wrong decision, 3
   or definitely the wrong decision? 4

40. Did you know that you could change your mind and make a Victim Statement at a later date in the run up to the trial?

   Yes 1 Go to Q42
   No 2 Answer Q41

41. Had you known this, how likely do you think you might have been to make a Victim Statement at a later date? Would you say…READ OUT…

   Very likely 1
   Quite likely 2
   Quite unlikely, or 3
   Very unlikely 4
Just to recap, a Victim Statement is a way that victims of crimes can tell the Court about how the crime has affected them. The statement is given to the Judge or Sheriff if the accused person is found guilty of the crime. It is up to the victim to decide whether or not to make a statement. (Continue)

42. How likely do you think you would be to make a Victim Statement if you were the victim of a similar crime again? Would you say that you … READ OUT…

… definitely would make a statement, 1
probably would make a statement, 2
probably would not make a statement, 3
or definitely would not make a statement. 4

H. Experience of CJS

I’d like to ask a few questions now about how you felt the case was handled, or is being handled, by the criminal justice system – that is, by police, the procurator fiscal service and the courts.

43. Can I just check, did you report the incident to the police yourself, or did they come to find out about it in some other way?

  Reported self 1
  Found out some other way 2

44. How well have you been kept informed of the progress of the case. Would you say you have been kept…READ OUT…

  …very well informed 1
  quite well informed 2
  not very well informed 3
  or not at all well informed? 4

45. Overall, would you say you have had enough information about the progress of the case or would you have liked more?

  Enough information 1
  Would have liked more 2

46. Was there anything you weren’t told that you would have liked to know?
CODE ALL THAT APPLY

  No, nothing 1
  Whether you would need to give evidence 2
  Date of court case/ hearing 3
  Where case/ hearing was taking place 4
  Whether anyone was caught 5
  What was happening with the case 6
  Other (WRITE IN) 7
47. What happened at the end of the case – was the person on trial…READ OUT…

<table>
<thead>
<tr>
<th>Outcome Description</th>
<th>Answer Q 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>...convicted (found guilty)</td>
<td>1</td>
</tr>
<tr>
<td>...acquitted (found not proven or not guilty)</td>
<td>2</td>
</tr>
<tr>
<td>...was the case abandoned</td>
<td>3</td>
</tr>
<tr>
<td>...or was there some other outcome?</td>
<td>4</td>
</tr>
<tr>
<td>Don’t know/case not concluded</td>
<td>5</td>
</tr>
<tr>
<td>Case did not go to court</td>
<td>6</td>
</tr>
<tr>
<td>Other (SPECIFY)</td>
<td>7</td>
</tr>
</tbody>
</table>

Go to Q50

48. What sentence did the offender receive?

CODE ALL THAT APPLY

<table>
<thead>
<tr>
<th>Sentence Type</th>
<th>Answer Q49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custodial (prison, young offenders institution)</td>
<td>1</td>
</tr>
<tr>
<td>Fine</td>
<td>2</td>
</tr>
<tr>
<td>Other (Write in)</td>
<td>3</td>
</tr>
</tbody>
</table>

Don’t know 8  Go to Q50

49. How satisfied were you with the sentence? READ OUT…

<table>
<thead>
<tr>
<th>Satisfaction Level</th>
<th>Answer Q49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>1</td>
</tr>
<tr>
<td>Quite satisfied</td>
<td>2</td>
</tr>
<tr>
<td>Neither satisfied nor dissatisfied</td>
<td>3</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>4</td>
</tr>
<tr>
<td>Not at all satisfied</td>
<td>5</td>
</tr>
</tbody>
</table>

ASK ALL

50. Have you had any contact with Victim Support at any time since the crime took place?

<table>
<thead>
<tr>
<th>Contact Status</th>
<th>Answer Q49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
</tr>
</tbody>
</table>

51. Do you feel that your Victim Statement was taken into account when the offender was sentenced?

<table>
<thead>
<tr>
<th>Feeling Status</th>
<th>Answer Q49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
</tr>
<tr>
<td>Don’t know</td>
<td>8</td>
</tr>
</tbody>
</table>
52. With hindsight, do you think that making the Victim Statement was the right decision? Would you say it was...READ OUT...

..definitely the right decision 1
probably the right decision 2
probably not the right decision 3
or definitely not the right decision? 4

Why do you say that?
PROBE. WRITE IN.

I. Satisfaction with treatment

ASK ALL
Thinking now about the way you have been treated since the crime took place...
(Continue)

53. How satisfied are you overall with your treatment by the police? Would you say that you are...READ OUT....

Very satisfied 1
Quite satisfied 2
Neither satisfied nor dissatisfied 3
Not very satisfied 4
Not at all satisfied 5

54. And how satisfied are you with your treatment by the Procurator fiscal service? Would you say that you are...READ OUT...

Very satisfied 1
Quite satisfied 2
Neither satisfied nor dissatisfied 3
Not very satisfied 4
Not at all satisfied 5
55. How satisfied are you with your treatment by the Judge or Sheriff. Would you say that you are...READ OUT...

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Very satisfied</td>
<td>1</td>
<td>Go to Interviewer</td>
</tr>
<tr>
<td>Quite satisfied</td>
<td>2</td>
<td>Go to Interviewer</td>
</tr>
<tr>
<td>Neither satisfied nor dissatisfied</td>
<td>3</td>
<td>Go to Interviewer</td>
</tr>
<tr>
<td>Not very satisfied</td>
<td>4</td>
<td>Go to Interviewer</td>
</tr>
<tr>
<td>Not at all satisfied</td>
<td>5</td>
<td>Go to Interviewer</td>
</tr>
<tr>
<td>Or did the case not go to court?</td>
<td>6</td>
<td>Go to Q57</td>
</tr>
</tbody>
</table>

56. And how much consideration do you feel was given by the court to what you said in your victim statement? Would you say that it was given... READ OUT

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>...a lot of consideration</td>
<td>1</td>
</tr>
<tr>
<td>some consideration</td>
<td>2</td>
</tr>
<tr>
<td>or little or no consideration?</td>
<td>3</td>
</tr>
<tr>
<td>Case did not go to court</td>
<td>4</td>
</tr>
<tr>
<td>Don’t know</td>
<td>8</td>
</tr>
</tbody>
</table>

57. Overall, how much consideration do you think has been given to your views and feelings by the criminal justice system, that is the police, Procurator fiscal Service and the courts? Would you say... READ OUT...

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>...a lot of consideration</td>
<td>1</td>
</tr>
<tr>
<td>some consideration</td>
<td>2</td>
</tr>
<tr>
<td>or little or no consideration?</td>
<td>3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>8</td>
</tr>
</tbody>
</table>

58. What improvements, if any, would you suggest to the way victims are treated by the criminal justice system?

PROBE
59. How likely would you be to make a Victim Statement if you were the victim of a similar crime again? Would you say that you … READ OUT …

...definitely would make a statement, 1
probably would make a statement, 2
probably would not make a statement, 3
or definitely would not make a statement? 4
(Can’t say/don’t know) 8

Why do you say that?

60. And what improvements, if any, would you suggest to the operation of the Victim Statement scheme?

PROBE

ASK ALL

61. If you were to be the victim of this type of crime in the future would you report it to the police?

Yes 1  Go to Section J
No 2  Answer Q63
62. Why would you not report it to the police?
PROBE. WRITE IN.

### J. Demographics

Finally a few questions about yourself…

63. What was your age last birthday?
WRITE IN

64. Which phrase would best describe your current marital status? Are you…READ OUT:

<table>
<thead>
<tr>
<th>Marital Status</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single, that is never married</td>
<td>1</td>
</tr>
<tr>
<td>Married and living with husband/wife</td>
<td>2</td>
</tr>
<tr>
<td>Living with partner</td>
<td>3</td>
</tr>
<tr>
<td>Married and separated from husband/wife</td>
<td>4</td>
</tr>
<tr>
<td>Separated after living with partner</td>
<td>5</td>
</tr>
<tr>
<td>Divorced</td>
<td>6</td>
</tr>
<tr>
<td>Or widowed?</td>
<td>7</td>
</tr>
<tr>
<td>Other WRITE IN</td>
<td>8</td>
</tr>
</tbody>
</table>

65. Which of these things are you mainly doing at present? READ OUT
INTERVIEWER: MAIN ACTIVITY IS THE ONE WITH THE MOST HOURS:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>In full-time work (30 or more hours per week)</td>
<td>1</td>
</tr>
<tr>
<td>In part-time work (under 30 hours per week)</td>
<td>2</td>
</tr>
<tr>
<td>Unemployed and looking for work</td>
<td>3</td>
</tr>
<tr>
<td>Looking after the home or family</td>
<td>4</td>
</tr>
<tr>
<td>Retired</td>
<td>5</td>
</tr>
<tr>
<td>In full-time education</td>
<td>6</td>
</tr>
<tr>
<td>In another activity (SPECIFY)</td>
<td>7</td>
</tr>
</tbody>
</table>
66. What age were you when you left full-time education?
WRITE IN AGE OR CODE

WRITE IN

Still in full-time education 1

Researchers from our team are carrying out a small number of face-to-face interviews with some of the people who have taken part in this study in order to explore their experiences and views in greater detail. Would you be willing to be contacted again about the possibility of taking part in a further interview?

EXPLAIN IF NECESSARY:
The information that you have given will be treated in strict confidence by us and the Scottish Executive. No-one will visit you without telephoning to arrange an appointment first and you can refuse to take part at any stage.

Yes - agree to recontact 1
No 2

We are now at the end of the interview. I would like to thank you for taking part and to remind you that any information that you have given is strictly confidential.

CLOSE
ANNEX 5: SAMPLE DETAILS FOR TELEPHONE INTERVIEWS

A total of 182 victims responded to the telephone survey. At the end of the interview they were asked a number of demographic questions, the results of which are reported in this annex. As is to be expected, a very small minority of respondents declined to answer some of the questions. The number of respondents answering each question is indicated below each of the tables.

Gender

<table>
<thead>
<tr>
<th></th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>102</td>
<td>56</td>
</tr>
<tr>
<td>Female</td>
<td>80</td>
<td>44</td>
</tr>
</tbody>
</table>

n = 182

Age group

<table>
<thead>
<tr>
<th>Age group</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 20</td>
<td>13</td>
<td>7</td>
</tr>
<tr>
<td>20-29</td>
<td>39</td>
<td>21</td>
</tr>
<tr>
<td>30-39</td>
<td>35</td>
<td>19</td>
</tr>
<tr>
<td>40-49</td>
<td>47</td>
<td>26</td>
</tr>
<tr>
<td>50-59</td>
<td>26</td>
<td>14</td>
</tr>
<tr>
<td>60-69</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>70+</td>
<td>7</td>
<td>4</td>
</tr>
</tbody>
</table>

n = 182

Employment status

<table>
<thead>
<tr>
<th>Employment status</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>In full time work</td>
<td>93</td>
<td>51</td>
</tr>
<tr>
<td>In part time work</td>
<td>16</td>
<td>9</td>
</tr>
<tr>
<td>Unemployed</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>Looking after home/family</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Retired</td>
<td>17</td>
<td>9</td>
</tr>
<tr>
<td>In full time education</td>
<td>15</td>
<td>8</td>
</tr>
<tr>
<td>In another activity</td>
<td>16</td>
<td>9</td>
</tr>
</tbody>
</table>

n = 181

Age left full time education

<table>
<thead>
<tr>
<th>Age left full time education</th>
<th>Number of responses</th>
<th>% of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-16</td>
<td>97</td>
<td>54</td>
</tr>
<tr>
<td>17-19</td>
<td>33</td>
<td>18</td>
</tr>
<tr>
<td>20-23</td>
<td>27</td>
<td>15</td>
</tr>
<tr>
<td>24 or older</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Still in full-time education</td>
<td>15</td>
<td>8</td>
</tr>
</tbody>
</table>

n = 180
### Marital status

<table>
<thead>
<tr>
<th>Marital Status</th>
<th>Number of Responses</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>59</td>
<td>33</td>
</tr>
<tr>
<td>Married - living with spouse</td>
<td>64</td>
<td>36</td>
</tr>
<tr>
<td>Living with partner</td>
<td>30</td>
<td>17</td>
</tr>
<tr>
<td>Married - separated from spouse</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Separated after living together</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Divorced</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>Widowed</td>
<td>5</td>
<td>3</td>
</tr>
</tbody>
</table>

n = 180

### Category of offence\(^{163}\)

<table>
<thead>
<tr>
<th>Category of Offence</th>
<th>Number of Responses</th>
<th>% of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime involving violence</td>
<td>130</td>
<td>71</td>
</tr>
<tr>
<td>Sexual offence</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Racial offence</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Housebreaking</td>
<td>39</td>
<td>21</td>
</tr>
</tbody>
</table>

n = 182

\(^{163}\) These categories reflect those used by the Edinburgh pilot site (see para 4.17 above).
ANNEX 6: 
DISCUSSION GUIDE FOR IN-DEPTH INTERVIEWS WITH NON-STATEMENT MAKERS

1. Introduction

- Introduce self, University of Aberdeen and the study
- Discuss confidentiality, tape recorder and length of interview
- Explain main interests and purpose of study i.e. it is about what happens to victims after they report a crime and about the VS scheme
- If necessary, explain why we want to talk to them despite the fact they did not complete a VS (interested in reasons and what they thought about scheme and treatment as victim in general)

2. Background and context of crime

- Background to the crime – ask respondent to tell you as little or as much as they want about the background to what happened to them.
- Are they aware of the stage their case is currently at?
- Extent to which they have been kept up to date with case progress? Are they happy with this? Would they have liked more information?

3. Administration of the VS scheme

Explain that you now want to talk a little about the VS scheme.

- Do they remember being told about the VS scheme?
  If necessary, explain that a letter and statement pack would have arrived by post. If hazy, offer reassurance that this is not unusual and explain that we are still interested in their views.
- Before the letter/statement pack arrived, did they have any prior knowledge of the VS scheme? Prompt: seen something on news/in newspaper, heard about it from a friend?

Explain that we now want to ask them for their views about the information they were sent. If necessary, reassure them that it doesn’t matter if they don’t remember it, as you have copies.

- Ask what they thought about the information leaflet, letter and victim statement form.
  Prompts for leaflet: Easy/difficult to understand? Useful? Comprehensive?
Prompts for letter: Easy/difficult to understand? Role of different agencies clear (i.e. letter from PF office/VLA, but VSS provide help/support)? Better to have been told face-to-face?

Prompts for VS form: Easy/difficult to understand? Well designed? Encourages/discourages you to make a statement or makes no difference?

- Ask whether or not they understand the purpose of the VS scheme?

Probe fully - do they think that making a statement would: Help them to seek compensation? Result in a referral to victim support? Inform the court about the effects of the offence?

- Do they understand how a VS would have been used if they had completed it?

Probe fully: do they understand the stage it is used and that it only affects sentencing?

- Did they realise who would see their VS had they made one (i.e. it is seen by the accused?)

Probe fully: how did they feel about that?

4. Decision not to make a VS

- Ask why they decided not to make a VS?

Probe fully: Concerned about intimidation? Didn’t want information made public? Couldn’t be bothered? Didn’t really understand it? Didn’t want to get further involved?

- Did they think very carefully before making their decision or was it easy to make?

- Did they discuss their decision not to make a VS with anyone?

Prompt: family, friends, victim support worker?

- If yes – was this discussion helpful?

- Since deciding not to make a statement, has the effect of the crime got worse in any way?

Prompt: Additional financial losses? Physical impact now more apparent? Emotional impact worsened? Any reason for worsened impact e.g. contact with accused?

- Do they regret their decision not to make a statement?

- Are they aware that they could have changed their mind and made a VS at a later stage (up until the case has concluded and the offender has been sentenced)?

- If a similar thing happened to them in the future, would they make a VS?
Explore: would this answer be different if, for example, they suffered a more serious crime?

- If no – are there any changes that could be made that would persuade them to make a VS?

Prompt: VS given face-to-face e.g. by someone visiting your home, VS made verbally in court, statement not read by offender.

- Any other ideas about how the VS scheme could be improved?

Prompt: Information (quality and method of dissemination), administration, use at other points during the case, additional support available.

5. General experience of and views on criminal justice system

- How satisfied were they with their treatment as a victim of crime?

Probe: extent views taken into account, extent kept informed about case progress (if not discussed already), experience of any contact with CJS agencies such as PF office, VSS.

- Do they think that victims’ views and opinions should be taken into considered when decisions are being made about the case?

- Is the VS scheme a good way of involving victims in the case?

- If not – what might be a better way of doing this?

THANK RESPONDENT VERY MUCH FOR THEIR TIME

LEAVE VSS INFORMATION LEAFLET IF NECESSARY
ANNEX 7: 
DISCUSSION GUIDE FOR IN-DEPTH INTERVIEWS WITH STATEMENT MAKERS

1. Introduction

- Introduce self, University of Aberdeen and the study
- Discuss confidentiality, tape recorder and length of interview
- Explain main interests and purpose of study i.e. it is about what happens to victims after they report a crime and about the VS scheme

2. Background and context of crime

- Background to the crime – ask respondent to tell you as little or as much as they want about the background to what happened to them.
- Are they aware of the outcome of their case?
- Extent to which they have been kept up to date with case progress? Are they happy with this? Would they have liked more information?

3. Administration of the VS scheme

Explain that you now want to talk a little about the VS scheme.

- What do they remember about being told about the VS scheme?
  If necessary, explain that a letter and statement pack would have arrived by post. If hazy, offer reassurance that this is not unusual and explain that we are still interested in their views.

- Before the letter/statement pack arrived, did they have any prior knowledge of the VS scheme? Prompt: seen something on news/in newspaper, heard about it from a friend?

Explain that we now want to ask them for their views about the information they were sent. If necessary, reassure them that it doesn’t matter if they don’t remember it, as you have copies.

- Ask what they thought about the information leaflet, letter and victim statement form.

  Prompts for leaflet: Easy/difficult to understand? Useful? Comprehensive?
  Prompts for letter: Easy/difficult to understand? Role of different agencies clear (i.e. letter from PF office/VLA, but VSS provide help/support)? Better to have been told face-to-face?
  Prompts for VS form: Easy/difficult to understand? Well designed? Encourages/discourages you to make a statement or makes no difference?
4. Decision to make a VS

- Ask why did they decide to make a VS?

  *Probe fully: To let accused know how the crime affected me? To let judge/court know how the crime has affected me? To influence sentence/outcome of case? To gain compensation? To help me in coming to terms with what happened? Just wanted to write it all down?*

- Did they realise that making a VS was voluntary i.e. they had the *choice* whether or not to complete it?

- Did they think very carefully before making their decision or was it easy to make?

- Did they discuss their decision to make a VS with anyone?

  *Prompt: family, friends, victim support worker?*

- If yes – was this discussion helpful?

- Did they realise who would see their VS (i.e. it is seen by the accused?)

  *Probe fully: how did they feel about that?*

5. The experience of completing the statement

At this point (if you haven’t done so already), it may help to produce the copy of the respondent’s victim statement.

- How did they find the experience of completing the statement? Easy? Difficult? Why?

- Can they remember what went through their mind when deciding what to put in the victim statement?

  *Probe fully: any uncertainty about what they were allowed to include, knowledge of the statement being used in court, knowledge that the accused might see it?*

- When they made the statement, was this a long time after the offence took place or was the time gap quite short?

  *Probe fully: Was there a very long time gap? If so, how did they feel about this? Difficult to remember? Traumatic as brought the incident back to them?*

- Was there a deadline for completion of the VS?

- If yes – how did they feel about this? Would they have liked more time?
• Were they given any help or guidance in completing the statement e.g. by a victim support worker?

• If yes – what sort of assistance was given? Was it helpful? Was there any additional help they would have liked?

6. Experiences after completing the statement

• Since making the statement, has the effect of the crime got worse in any way?

  Prompt: Additional financial losses? Physical impact now more apparent? Emotional impact worsened? Any reason for worsened impact e.g. contact with accused?

• Did they know that they could update their statement?

• If yes – did they consider doing this? Why/why not?

• If no – would they have updated their statement if they had known it was possible?

• Do they know the outcome of the case?

  Prompt: was the offender convicted? What sentence did he/she receive?

• If yes – were they in court to see the offender sentenced?

• Do they know whether or not their statement was used by the court at all?

• Were they happy about the use that was made of the statement?

  Prompt: if they were in court to see the offender sentenced, did they see their statement being passed to the judge? How did they feel about this?

• At the time of completion, what were they hoping for as a result of completing a VS?

  Probe fully - did they think that making a statement would: Result in the offender getting a heavier sentence? Make them feel better? Make the offender sorry for what he/she had done? Result in them getting compensation?

• Were these expectations achieved in reality? Or were they disappointed in any way?

  Probe fully in relation to all of the expectations the respondent had.

• Do they think that the decision to make a statement was the right thing to do? Or do they regret their decision at all?

• If a similar thing happened to them in the future, would they make a VS?
• Do they think the VS scheme is a worthwhile scheme?

• Any ideas about how the VS scheme could be improved?

  Prompt: Information (quality and method of dissemination), administration, use made of statement during the case, additional support available, different method of collecting the statement (e.g. given face-to-face to someone visiting home, made verbally in court), statement not read by offender.

7. General experience of and views on criminal justice system

• How satisfied were they with their treatment as a victim of crime?

  Probe: extent views taken into account, extent kept informed about case progress (if not discussed already), experience of any contact with CJS agencies such as PF office/VIA, VSS.

• Do they think that victims’ views and opinions should be taken into consideration when decisions are being made about the case?

• Is the VS scheme a good way of involving victims in the case?

• If not – what might be a better way of doing this?

THANK RESPONDENT VERY MUCH FOR THEIR TIME

LEAVE VSS INFORMATION LEAFLET IF NECESSARY
ANNEX 8: SAMPLE DETAILS FOR IN-DEPTH FACE-TO-FACE INTERVIEWS

A total of 20 victims took part in in-depth face-to-face interviews. Details of the sample are shown below.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Gender</th>
<th>Nature of offence</th>
<th>Age group</th>
<th>Statement maker?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Male</td>
<td>Assault</td>
<td>20-29</td>
<td>No</td>
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<tr>
<td>2</td>
<td>Male</td>
<td>Racially aggravated harassment</td>
<td>50-59</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Male</td>
<td>Theft by housebreaking</td>
<td>40-49</td>
<td>No</td>
</tr>
<tr>
<td>4</td>
<td>Male</td>
<td>Assault</td>
<td>60-69</td>
<td>No</td>
</tr>
<tr>
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</tr>
<tr>
<td>6</td>
<td>Female</td>
<td>Theft by housebreaking</td>
<td>40-49</td>
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</tr>
<tr>
<td>7</td>
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<tr>
<td>20</td>
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<td>Theft by housebreaking</td>
<td>30-39</td>
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</tr>
</tbody>
</table>
ANNEX 9:
SAMPLE DISCUSSION GUIDE FOR INTERVIEWS WITH CRIMINAL JUSTICE PRACTITIONERS

[Introductions and project information sheet]

What has been their experience of the VS scheme to date? E.g.:
- Have they dealt with any cases where there was a VS?
- Were there any practical or procedural problems with receiving the VS (e.g. statement not available when requested)?
- Has the VS scheme taken up additional court time e.g. has it been necessary to adjourn cases because of the absence of a VS?
- Have there been/do they foresee problems arising because defence solicitors attempt to challenge the information contained in VS?

To what extent do they think VS are/will be useful to them in making sentencing decisions? Do VSs tend to add anything useful to information they already have from other sources? Have/would they ever refer(ed) to information contained in VS when passing sentence?

Prior to the introduction of the VS scheme, did they ever specifically request information about the impact of a crime on the victim?

In principle, should the impact of the crime on the victim influence sentence? Should victims be permitted to go further and make representations about appropriate sentence?

Do VSs raise issues of fairness to the accused (given that they may contain irrelevant information that is unlikely to be challenged)? [Another interviewee raised this issue].

Should the statement enter the process at an earlier stage and be filtered through the pf’s narration of events (as another interviewee has suggested) thus opening it up to negotiation?

Do they have any other opinions on the format of the scheme?
- Should the statement be made orally to the court instead of in writing?
- Should the written statement be read to the court?
- Are they happy with the scope of the scheme (in terms of offences covered etc.)?
- Any opinion about the design of the statement form itself? Is it easy to read?

Do they think VSs should be influential at other stages of the decision-making process e.g. bail/custody decisions or the initial decision on whether or not to prosecute?

So … from experience of VSs so far – should they be rolled out across the whole of Scotland?

Did they have preliminary views on the VS scheme which have altered as a result of dealing with VSs in practice?

164 Questions varied depending on the role of the interviewee. This particular discussion guide was used for the interviews undertaken with sheriffs and High Court judges.
EDINBURGH, 22 October 2004

In this case the Accused was originally indicted with two charges in the following terms:-

"(1) On 25 December 2003 at [address], Edinburgh, you [JM] did assault [X], c/o Lothian and Borders Police, Edinburgh and did seize her by her hair, drag her between rooms within said house, attempt to force her to take your private member in her mouth and pull down her trousers and this you did with intent to rape her; and

(2) On 25 December 2003 at [address as above], Edinburgh, you [JM] did steal £180 in cash."

The Accused denied these charges at the First Diet, but when the case called for trial before me on 5 August 2004 he pleaded guilty to Charge (1) under deletion of the words "attempt to force her to take your private member in her mouth and pull down her trousers and this you did with intent to rape her"; in respect of Charge 2, the Accused maintained his plea of not guilty.
These pleas were accepted by the Crown. The Procurator fiscal Depute thereupon moved for sentence and laid before me a Schedule of Previous Convictions relating to the Accused, to which no prior exception had been taken. In terms of section 14(5) of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act") the Depute also laid before me a victim statement completed by [X], the complainer in Charge 1.

Having heard the Crown narrate the circumstances of the offence and the procedural history of the case, I decided to call for Social Enquiry and Community Service Reports. I refrained from reading the victim statement, having been told by Mr Ronnie for the Accused that he had not yet read it himself and might want to make submissions about it; and I was content that any plea in mitigation should only be made when this had been done. I continued the case on bail.

When the case came back before me on 30 August 2004 I learned that a Devolution Issue Minute had been lodged on behalf of the Accused, with intimation to the Crown and to the Advocate General. In order for the matter to be properly argued I therefore deferred sentence for consideration of the Minute until 11 October 2004, when I heard full submissions from Mr Ronnie and Mrs More for the Crown. There was no appearance by or on behalf of the Advocate General. Once more, I refrained from reading the victim statement and, to date, I am still unaware of its terms.

The salient points to be taken from the Minute are to be found in paragraphs 2(h) and (i) thereof. These state:

"2(h) The provision of a victim statement in terms of section 14 of the Criminal Justice (Scotland) Act 2003 is incompatible with the rights of the Minuter under Article 6 of ECHR. It is disproportionate to the rights of the Minuter under Article 6(1).

2(i) The charge as it now stands is much reduced, with the removal of the sexual aggravations. The victim statement relates to the full charge (and more). It is submitted that it goes beyond the information sanctioned by section 14. It is submitted that the provision to the Court of material prejudicial to the Minuter does not allow the charge to be determined by an impartial tribunal. The provision of the victim statement is an act of the Lord Advocate as represented by the Procurator fiscal."

In argument before me, it was accepted that the earliest point at which a Minute raising these matters could have been lodged was when the Crown moved for sentence. Accordingly, there was "cause shown" in terms of rule 40.5 of the Act of Adjournal (Criminal Procedure Rules) 1996 ("the 1996 Rules") for the lodging of the Minute before sentence was passed. No technical point therefore arose.

For the accused, Mr Ronnie submitted that section 14 of the 2003 Act was incompatible with the right of the accused under Article 6(1) of ECHR to a determination of the charge against him by "... an impartial tribunal established by law." By virtue of section 29(1) and (2) of the Scotland Act 1998 ("the 1998 Act") section 14 was not law, being outwith the legislative competence of the Scottish Parliament and thus a devolution issue arose under Schedule 6 para. (1)(a) of that Act. But such an issue also arose under para. 1(d) of Schedule 6 in relation to the act of the Crown under section 14(5) of the 2003 Act in laying before the court the
victim statement when moving for sentence, since section 57(2) of the 1998 Act provided that a member of the Scottish Executive (in this case the Lord Advocate through his representative) had no power to do any act incompatible with any Convention rights.

Dealing first with procedural matters, Mr Ronnie recognised that the sheriff has no power to make a declaration of incompatibility; by virtue of section 4 of the Human Rights Act 1998 that power (in criminal proceedings) was reserved to the High Court of Justiciary sitting otherwise than as a trial court (section 4(5)). He also recognised that any declaration of incompatibility would not affect the validity, continuing operation or enforcement of section 14 of the 2003 Act, nor would it be binding on the parties to the present case (section 4(6)). But his challenge was directed to the *vires* of section 14 of the 2003 Act; and he suggested that in order for the devolution issue based on incompatibility to be determined, it would be necessary for me to refer it to the High Court by virtue of para 9 of Schedule 6 to the 1998 Act, using the procedures for such a reference set out in rules 40.7 and 40.8 of the Act of Adjournal (Criminal Procedure Rules) 1996. Those rules would also allow for procedural dispositions to be made in respect of deferring sentence on the present indictment pending resolution of the devolution issue.

The basis upon which Mr Ronnie submitted that his client’s rights under Article 6(1) of the Convention were in jeopardy related to the alleged impartiality of the tribunal which was due to pass sentence. This was in issue because of the terms of the victim statement, which went much further than the reduced charge to which the accused had pleaded guilty. What the Crown had put before the court was a totally unfiltered document, about which a reasonable apprehension arose that the court could not put out of its mind, in passing sentence, the extraneous matter contained in the statement. While Mr Ronnie recognised that some of the statement was directly relevant, he submitted that so much of it was of no relevance that any “filtering” which the court might carry out would not remove the legitimate fears which, from an objective standpoint, would arise as to the impartiality of the court. Mr Ronnie stressed that there was no suggestion of actual bias or prejudice; he relied on the statements in Reed & Murdoch, *A Guide to Human Rights Law in Scotland* at para 5.42 in respect of objective impartiality, an assessment of which had to be undertaken in the light of the public’s increased sensitivity to the importance of fair and transparent administration of justice. As it had been put in *Findlay –v- UK* (1997) 24 EHRR 221, “the tribunal must be impartial from an objective standpoint; that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect”: para 73, quoting from *Pullar –v- UK* (1996) 22 EHRR 391 at para. 30; see also *Incal –v- Turkey* 1998-IV, 1547 para. 71.

Mr Ronnie submitted further that the legislative history of section 14 of the 2003 revealed misgivings about its compatibility with Article 6. At Stage 1 of what was then the Criminal Justice (Scotland) Bill, the Justice 2 Committee of the Scottish Parliament had expressed its concern: see the Official Report, 5 June 2002, columns 1468 *et seq*. Accordingly, Mr Ronnie suggested that the only way for these points to be resolved was for me to refer the devolution issue(s) to the High Court using the statutory procedure and to defer sentence further, if necessary from time to time, until the matter was resolved.

For the Crown, these submissions were strongly resisted. On the concerns about objective impartiality, Mrs More suggested that these were completely unfounded. In many cases, courts required to ignore irrelevant or extraneous matters which had been put before them; this was part of the judicial function. This was what happened when previous convictions were inadvertently disclosed prior to conviction: see *Carmichael –v- Monaghan* 1986 SCCR 598;
"(5) A prosecutor must:
   (a) in solemn proceedings, when moving for sentence as respects an offence.....
   lay before the court any victim statement which relates (whether in whole or in part) to the offence in question, and the court must in determining sentence have regard to so much of
   (i) that statement.......as it considers to be relevant to that offence"

That subsection clearly envisaged that the court would carry out its normal function of disregarding irrelevant matter. Nothing done by the Crown at its own hand had or would deny the accused a fair hearing; the Crown had no power to filter or redact the contents of a victim statement. It should not be assumed, even from an objective standpoint, that the court would misdirect itself on the effect of the statement any more than it should be assumed that in a jury trial the jury would not apply the court’s directions in law: see Boyd –v- HM Advocate 2000 SCCR 962 at 966; Pullar op cit). There was no objective justification for any fears as to the Court’s impartiality. Mrs More invited me to hold that no devolution issue arose, to refuse to refer the matter to the High Court and to proceed forthwith to sentence the accused.

In a brief word of reply, Mr Ronnie founded strongly on a passage in Penman –v- Stott 2001 SCCR 911 at 914D where it was observed that whether a sheriff could properly disregard evidence which should not be before him must depend on the nature of the evidence. In the present case there was so much extraneous matter in the victim statement that there was a basis for his argument about objective impartiality. While section 15(2) of the 2003 Act seemed to suggest that a proof in mitigation might be appropriate in cases where the accused did not accept some element of a victim statement, the situation here was that the statement contained irrelevant matter.

I have no doubt that no devolution issue arises in respect of the “act” of the Crown in putting the victim statement before the court. The Crown is obliged by section 14(5) to do so when moving for sentence; it has no power to refrain from doing so, far less any power to filter or redact what the victim states. It is the obligation of the court (and not the Crown) to consider the terms of the statement and, in terms of section 14(5) to determine the relevance of what it says to the offence under consideration. This is not a case in which the Crown have done anything which contravenes the Convention rights of the accused; it is within the province of the Crown to move for sentence if it wishes to do so; and if it chooses to do so it must lay before the court any victim statement which relates in whole or in part to the offence in question. The Crown’s obligation stops there; the relevance of that statement and the use to which it is put is a matter for the court. On that simple ground any ECHR challenge to the “act” of the Crown in this case is misconceived.

But the question remains whether section 14 of the 2003 Act is incompatible with article 6(1) of ECHR. The accused is clearly a “victim” within the meaning of section 100 of the Human Rights Act 1998. At this point I require to determine whether I am obliged to refer the compatibility issue to the High Court as suggested by Mr Ronnie, or first to try and decide by myself whether or not section 14 is ultra vires of the Scottish Parliament and is “not law” (see s.29 of the 1998 Act). I should make it clear that in my view no question arises directly under the Human Rights Act 1998; whether section 14 is or is not “law” has to be determined.
according to procedures under the Scotland Act. To that extent, any suggestion that if I were to refer this matter to the High Court that court could make any declaration of incompatibility under s. 4 of the Human Rights Act 1998 is misconceived, at least in the context of the present Minute. An Act of the Scottish Parliament is not “primary legislation” such as would warrant such a course of action. Paragraph 9 of Schedule 6 to the 1998 Act does not require that a devolution issue should be referred to a higher court, although at first blush it might be thought that such a reference is mandatory where the compatibility or otherwise with ECHR of a piece of legislation by the Scottish Parliament is raised.

However, that would be to ignore section 101 of the 1998 Act. This provides:

“(1) This section applies to:

(a) any provision of an Act of the Scottish Parliament ... which could be read in such a way as to be outside competence.

(2) Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly.

(3) In this section “competence”

(a) in relation to an Act of the Scottish Parliament ... means the legislative competence of the Parliament”.

Before proceeding further, I should record that no reference to section 101 was made by either party before me. But as was observed by Lord Hope of Craighead in A –v- The Scottish Ministers 2002 SLT 1331 at 1334K, the aim of this provision is to enable the court to give effect to legislation which the Scottish Parliament has enacted wherever possible rather than strike it down. I deem it my duty to attempt to interpret section 14 of the 2003 in a way which is Convention-compliant, before holding that a devolution issue arises under paragraph 1(a) of Schedule 6 to the 1998 Act.

I am clearly of the view that section 14(5) of the 2003 Act (which is really the only part of section 14 which is challenged) can be read in a manner which renders it within the legislative competence of the Scottish Parliament. I do not even think it requires a particularly narrow construction. The subsection simply requires the sentencing court to make a judgement (1) as to the relevance of the statement to the offence to which the accused has pleaded guilty; and (2) in the event that statement is in any way relevant, to have regard to whatever matter(s) in it that the court deems relevant. Such judgments are a commonplace. In the event that such a judgement, once made, is deemed to be flawed, it can be corrected on appeal. Further, the subsection points up the need for the sentencer to be vigilant; it directs that person to have regard only to relevant matters. That person is enjoined directly by law not to make a decision based on extraneous or irrelevant matter in a victim statement. While it is true that the final phrase of subsection (5) is expresses subjectively, it cannot be supposed (and especially not ab ante) that any sentencer would disregard its terms. Quite apart from anything else the judicial oath is a powerful guarantee sufficient to exclude any legitimate doubt as to impartiality, especially when taken by a permanent member of an independent judiciary.

Accordingly, in my view no devolution issue arises in respect of section 14(5), since that provision can be read as being within legislative competence. I shall therefore dismiss the
Minute now. I propose thereafter to hear submissions on the victim statement (which I have still to read), hear Mr Ronnie on all other matters relevant to the disposal of this case and sentence the accused accordingly. In determining sentence in a case such as this in which a victim statement is lodged, I think it is part of the judicial function to hear submissions on the relevance or otherwise of the statement and then, when passing sentence, to indicate at the very least the “regard” which the sentencer is paying to the relevant parts (see section 14(5)). I propose to do that in this case.