



A PROTOCOL ISSUED BY THE PRESIDENT OF THE QUEEN'S BENCH DIVISION SETTING OUT THE PROCEDURE TO BE FOLLOWED IN THE VICTIMS' ADVOCATE PILOT AREAS

General Principles

This protocol provides a description of a scheme which allows the family of the victim of murder or manslaughter an opportunity to make a statement in open court about the effect of that crime on the family¹. The family is not under any compulsion to make such a statement: the scheme is entirely voluntary.

The scheme is to be run in pilot form at:

- The Central Criminal Court
- Birmingham Crown Court
- Cardiff Crown Court
- Manchester Crown Court
- Winchester Crown Court

The scheme only applies to offences of murder or manslaughter charged on or after the 24 April 2006.

Section III.28 of the Consolidated Criminal Practice Direction remains in force (see paragraph 16 below)².

Families and cases should be treated according to their individual circumstances and in the light of the following principles:

- a) The purpose of the statement is to put before the court, after conviction and before sentence, the effect of the murder or manslaughter on the family of the victim.
- b) The family will be free, within the normal requirements of court procedure, to choose how best to express its views (i.e. whether the statement should be in oral or written form) and to update its statement on the effect of the crime after conviction.

¹ The pilot scheme is confined to cases of murder and manslaughter, including familial homicide and corporate manslaughter (excluding cases of death by dangerous driving), where the death occurs within the pilot catchment areas. The scheme will also apply when a case is transferred into a pilot court before the plea and case management hearing (PCMH) or out of a pilot court after the PCMH. Where a defendant is charged with murder or manslaughter and is acquitted of that charge but is still found criminally liable for the death and is convicted of a directly related offence, any oral family impact statement (FIS) should still be received by the court.

² http://www.dca.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm

- c) The family may choose who assists it to present its statement to the court. Assistance may be provided by a CPS³ prosecutor or an independent advocate (who may be the same lawyer who has already provided social and personal legal advice to the family, see footnote 9 below) with higher court rights of audience. The family may also choose (subject to the leave of the court) a ‘lay friend’ to read its statement to the court.
- d) The defendant will be made aware of the contents of the statement in advance to ensure fairness.
- e) Where there is an issue between family members on the making of a statement about a single death, this will be resolved by the judge.

In all cases, qualifying families⁴ should be informed about the existence of the scheme and what it offers. They should receive the OCJR’s⁵ leaflet⁶ and an explanation face to face by the police family liaison officer (FLO).

All qualifying families should also receive an offer from the CPS prosecutor to meet them at an early stage of the proceedings to explain the criminal process. This meeting should include an explanation of the family impact statement (FIS) which may be made under the pilot scheme.

The four stages outlined below are intended to help guide the conduct of the pilots:

Stage 1: police obtain an indication of the contents of such a statement and the family’s preferences as to the method of its delivery

1. The FLO will assist one or more members of the family⁷ to make an initial FIS, drawing on the guidance issued centrally for that purpose⁸. Where necessary he or she may also seek assistance from the CPS.
2. At this stage the impact of the death on the family will not be fully known. The initial FIS may, therefore, need to be enlarged and updated. The family should be made aware that the content of the statement should be concerned with the effect of the murder or manslaughter on them and will be disclosed and may be subject to cross-examination (see paragraph 15 (b) below).
3. The family member should be invited, for the purposes of the PCMH, to indicate whether the FIS should be presented to the court:
 - a) in written form only
 - b) as oral testimony by the maker
 - c) read to the court, by a CPS prosecutor, an independent advocate with higher court rights of audience, or a lay friend.

³ Crown Prosecution Service.

⁴ A qualifying family is the immediate family of a victim whose death occurred in the pilot area and who are themselves resident in the pilot area. It excludes the defendant but normally includes spouses, civil partners, parents and children. However, if the investigating police force from within the pilot area deploys an FLO to a family, that family need not be resident in the pilot area but will be within the ambit of the scheme.

⁵ Office for Criminal Justice Reform.

⁶ ‘Your choice to have a voice in court’.

⁷ Families should be encouraged to speak through one representative if at all possible, but more than one member may wish to speak or make a differing statement.

⁸ ACPO FLO Guidance.

4. In all cases the family member will be provided with the assistance of the CPS prosecutor, or an independent advocate with higher court rights of audience, to finalise the statement in such a way as to ensure that it relates only to the effect of the murder or manslaughter on the family of the victim.

5. Where the second option (b) is chosen, the advocate should assist in the delivery of the oral testimony to the court, rather as if the family member were a witness and the statement his or her evidence in chief.

Stage2: judge considers presentation and representation at the PCMH

6. The court will need to have an indication of the content of the FIS and the preferences of the family at the PCMH, in advance of the trial. This is because the court will need to decide both who in the family is to make a statement (where there is a disagreement) and also the method of presentation of the FIS, including the appointment of any independent advocate. This will assist the person making the statement to build a rapport with their advocate, enable the advocate to prepare and agree with the relative the best means of presenting their statement to the court, and ensure that the maker of the statement receives support if they wish to amend the statement after conviction. It will also ensure fairness to the defence, who will need to be given notice of the application, avoid any unnecessary delay and enable the court to plan effectively for the oral presentation of the FIS by ensuring that appropriate arrangements are in place to assist the family on the day.

7. The CPS prosecutor will serve the initial FIS and details of the preferred method of presentation on the court and the defendant prior to the PCMH.

8. At the PCMH, having regard to the principles of the scheme outlined above, the judge will consider and will normally allow the family to adopt its choice of:

- a) presentation (written, personal oral testimony or by an advocate alone)
- b) representation (CPS prosecutor or independent advocate with higher courts rights of audience)
- c) 'lay friend' (where relevant)

The judge will also hear and determine claims from more than one family member to make a statement to the court in respect of a single death.

9. Decisions regarding presentation and representation will be made at this stage but in the interests of sensible flexibility alterations may be made with the leave of the court. Applications should be made in writing and may be agreed by the trial judge without the necessity of a formal court hearing.

10. Where the family member has chosen to be assisted by an independent advocate paid for out of public funds this person should be chosen immediately after the PCMH from a panel of advocates with higher court rights of audience⁹. The CPS will serve appropriate case material on

⁹ Section 27 of the Courts and Legal Services Act 1990.

Nothing in this protocol precludes a lawyer selected by the family to give social and personal legal advice from instructing counsel for the purposes of the in-court victims' advocate scheme or (if he has higher court rights of audience) from appearing himself. A solicitor without higher court rights of audience can be permitted by the judge to read the statement on the family's behalf for the purposes of Stage 4 (c) outlined below.

the advocate. The selected independent advocate¹⁰ will be expected to meet with the family member as soon as is practicable after the appointment has been confirmed (prior to this meeting the independent advocate will have been provided with a copy of the initial FIS). The family member can, if necessary, meet with the independent advocate at an appropriate point during the trial for further advice and guidance.

11. Where the family of the victim wishes to instruct at its own expense an advocate who meets the panel criteria in terms of qualification and experience but is not a member of the approved panel, then it may do so, but will require the leave of the court.

12. Where a 'lay friend' is chosen to read the statement the family will be offered legal advice from the CPS prosecutor or independent advocate both to assist with the review of the initial FIS and to advise on any amendments that the family may wish to make.

Stage 3: judge adjourns if a guilty plea is in prospect, otherwise after conviction, so as to allow the advocate to receive instructions

13. An adjournment post-conviction may be necessary to allow the CPS prosecutor or independent advocate to advise the family of the victim privately. Such an adjournment is likely to be for a short period only.

14. Where an adjournment is required, the CPS prosecutor or the independent advocate will:

- a) Meet with the family member.
- b) Conduct a final review of the pre-prepared written FIS.
- c) Confirm with the family member the contents of the final FIS, updated as may be necessary and ensure that any amended version is served on the court, defence and, if appropriate, the CPS prosecutor. Where a CPS prosecutor has been chosen by the family to assist them to present their statement to the court, a police officer involved in the investigation will draft any necessary amendments to the FIS¹¹.

Stage 4 – the court receives the statement before mitigation

15.

a) **Written presentation**

In such cases the judge will need only to confirm to the court that he has received and read the written family impact statement.

b) **Oral presentation by the family member**

- If the family member has chosen to speak directly to the court the process would be as if he or she were giving evidence in chief.
- Questions by the CPS prosecutor or the independent advocate to the family member would relate directly to the impact of the death on the family as indicted in the written

¹⁰ An independent advocate instructed for the purposes of involvement in the victims' advocate scheme will have a normal client lawyer relationship within the ambit of the scheme.

¹¹ If the family wish to make an amendment to their initial written FIS at Stage 10 and has chosen the CPS prosecutor to assist it in court or to provide legal advice in relation to oral presentation by a 'lay friend' (see Stage 12 and Stage 14), the family should approach a police officer involved in the investigation to draft the amended FIS, with appropriate advice from the CPS prosecutor.

FIS. If the questions posed by the CPS prosecutor or the independent advocate, or the answers given by the family of the victim go beyond the effect or impact of the murder or manslaughter the judge will intervene.

- Any application for special measures would have to be considered in the normal way.
- The family member needs to be aware that in certain circumstances the defence will have the right to cross examine.

c) Oral presentation by the CPS prosecutor or independent advocate or ‘lay friend’ alone

The CPS prosecutor or independent advocate or ‘lay friend’ will, having taken instructions from the family post-conviction, read the family’s statement on its behalf.

16. The judge when considering the FIS will be guided by section III.28 of the Consolidated Criminal Practice Direction. For the purposes of the protocol the FIS is analogous to the existing written victim personal statement as set out in section III.28 of the Consolidated Criminal Practice Direction.

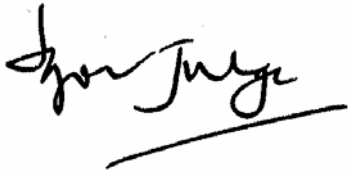
III.28 PERSONAL STATEMENTS OF VICTIMS

(III.28.1) This section draws attention to a scheme, which started on 1 October 2001, to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. It will also enable the court to take the statement into account when determining sentence.

(III.28.2) When a police officer takes a statement from a victim the victim will be told about the scheme and given the chance to make a victim personal statement. A victim personal statement may be made or updated at any time prior to the disposal of the case. The decision about whether or not to make a victim personal statement is entirely for the victim. If the court is presented with a victim personal statement the following approach should be adopted:

- (a) The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.*
- (b) Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report, and served upon the defendant's solicitor or the defendant, if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.*
- (c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.*
- (d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim.*

17. Where there is an appeal the written FIS or the transcript of the oral FIS will be made available to the Court of Appeal and the family of the victim.

A handwritten signature in black ink, which appears to read "Igor Judge". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Sir Igor Judge, President of the Queen's Bench Division, 3 May 2006