

MAKING A VICTIM STATEMENT



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MAKING A **VICTIM STATEMENT**

IF YOU HAVE RECEIVED THIS BOOKLET FROM THE PROCURATOR FISCAL, YOU ARE ELIGIBLE TO MAKE A VICTIM STATEMENT.

THIS BOOKLET EXPLAINS:

- WHAT A VICTIM STATEMENT IS;
- WHO CAN MAKE ONE;
- WHEN AND HOW VICTIM STATEMENTS CAN BE MADE;
- WHAT YOU CAN INCLUDE IN YOUR VICTIM STATEMENT;
- HOW YOUR VICTIM STATEMENT WILL BE USED.

You can use the information in this leaflet to help you decide whether or not you want to make a victim statement. If you want extra help and advice on making a victim statement, you can contact Victim Support Scotland, a national charity that helps victims of crime. You can contact them on 0345 603 9213 from Monday to Friday between 8 a.m. and 8 p.m. You can also find details of your local office on Victim Support Scotland's website at www.victimsupportsco.org.uk or by looking in the telephone directory under 'Victim Support'.

Key points about victim statements are:

- A victim statement is a **written** statement that gives you the chance to tell the court, in your own words, how the crime has affected you physically, emotionally or financially. A victim statement is different from any statement you may have already given separately to the police, Procurator Fiscal or defence agent.
- You are being given the choice of making a statement because a decision has been made to prosecute the case (that is, to go to trial).
- Your victim statement will normally be given to the court if the accused either pleads guilty or is found guilty of the relevant offence after a trial, but before a sentence is passed.
- A copy will also be given to the defence.
- The Judge or Sheriff must consider all the circumstances of the case and your victim statement and decide what weight should be given to it.
- Your victim statement will not always have an effect on the sentence.
- Your victim statement should be truthful, to the best of your knowledge.

More information on how the Criminal Justice System works in Scotland can be found at www.mygov.scot/crime-justice-and-the-law

If you are thinking about making a victim statement, please read on. The information on the following pages may help to answer some of the questions you may have about making a victim statement.

DO I HAVE TO MAKE A VICTIM STATEMENT?

No, it is entirely your choice. You may find it helpful to talk it over with someone. There are contact details at the end of the booklet for organisations that can help you.

WHAT HAPPENS IF I CHOOSE NOT TO MAKE A VICTIM STATEMENT?

If you decide not to make a victim statement, the case will still go to court and your decision will not affect whether the accused is found guilty or not guilty.

HOW DO I MAKE A VICTIM STATEMENT?

If you decide to make a victim statement, you should complete the statement form which came with the letter from the Procurator Fiscal. The letter will tell you the date you should return the completed form to the Procurator Fiscal by. If you would like more information about completing the form, you can find details of who to contact on page 8.

WHAT SORT OF INFORMATION CAN I INCLUDE IN MY VICTIM STATEMENT?

You can tell the court how the crime has affected **your** everyday life. For example:

- Whether you now feel more fearful;
- Whether you have been left with any physical injuries;
- If you feel depressed, disorientated, or lacking in confidence;
- Whether you have lost any money or property as a direct result of the crime, or because you have been unable to work;
- Whether your social life and personal relationships have suffered.

It is very important that you think carefully about how your life was affected after the crime and are truthful to the best of your knowledge. You may be questioned about the information that you give in your victim statement during or after the trial.

Please note that deliberately giving false information can result in prosecution.

WHAT SORT OF INFORMATION SHOULD NOT BE INCLUDED?

Although you can refer to the crime, you should not describe what happened as the court will hear about this during the trial. Don't refer to any previous incidents. Only describe how the crime has affected you and don't include any information about how the crime may have affected other people, such as your children. Don't include any views on the accused or what sentence you think he or she should receive. The Judge or Sheriff decides the sentence after taking all of the facts into account.

WHO DECIDES WHAT SENTENCE IS GIVEN?

The sentence is decided by the Sheriff in the Sheriff Court or the Judge in the High Court. It is for the Sheriff or Judge alone to decide what the most appropriate sentence is. In reaching their decision they will take into account a number of different factors, reports and other information available to them. Your victim statement will be part of the information available to the Judge or Sheriff.

WHAT HAPPENS TO MY VICTIM STATEMENT?

The Procurator Fiscal will keep your victim statement with the case papers and will arrange for copies to be given to the Sheriff/Judge and to the defence (i.e. the accused's lawyer or the accused if he or she has no lawyer). The defence will not usually see the victim statement until after the accused has pled guilty or been found guilty. However, the Procurator Fiscal does have a duty to make all or part of the victim statement available to the defence at an earlier stage to help ensure a fair trial if, for instance, your victim statement contains information that could have an effect on the outcome of the trial or contradicts witness or victim statements you have already given. That is why you should not include details of the crime in your victim statement.

After the trial a copy of your victim statement will be kept by both the Procurator Fiscal and the defence agent as part of their case records. After a number of years your original victim statement (which was passed to the Judge) and the copy held by the Procurator Fiscal will be destroyed or sent as part of the case record to the Keeper of the Records of Scotland¹. It will not be passed to other Criminal Justice agencies.

¹ Victim Support Scotland can provide more information on what will happen to your statement after the trial.

WILL THE ACCUSED BE ABLE TO SEE MY VICTIM STATEMENT?

Yes. The accused will be allowed to read your victim statement. Normally, this will only happen after he/she has pled or been found guilty. However, the accused will be allowed to read all or part of the victim statement at an earlier stage where the Procurator Fiscal has passed this information to the accused's lawyer or to the accused, if he or she has no lawyer, to help ensure a fair trial.

CAN I BE ASKED ABOUT MY VICTIM STATEMENT DURING THE TRIAL?

During the trial, if all or part of the victim statement has been passed to the defence at an earlier stage to help ensure a fair trial, you may be asked questions about your victim statement. If, for instance, your victim statement contains information that could have an effect on the outcome of the trial or contradicts witness or victim statements you have already given, you may be questioned by either the accused (if he or she is conducting their own defence) or the defence lawyer. Please note that if you are the victim of a sexual crime, you will not be questioned by the accused because the accused is not allowed to conduct his/her own defence in these cases, but you may be questioned by the accused's lawyer.

CAN I BE ASKED ABOUT MY VICTIM STATEMENT AFTER THE TRIAL?

Even if all or part of the victim statement has not been passed to the defence during the trial, you can be asked questions about your victim statement by the defence after a finding/plea of guilty but before sentencing if the defence does not agree with something you have included in your victim statement which might affect the sentence which is given. This is known as a 'proof in mitigation'.

The defence can also use the victim statement in any appeal against conviction and/or sentence but you would not be questioned about your victim statement if that happened.

CAN I CHANGE MY MIND OR UPDATE MY VICTIM STATEMENT?

Once you have made a victim statement, you cannot withdraw it. However, if you remember something important, or feel your situation has changed, you can submit another victim statement that updates information provided in the first one. This can be done up to the point that the accused is sentenced.

If you choose not to make a victim statement at first and then change your mind or you want to revise an existing victim statement, you should contact the Procurator Fiscal's office. Contact details for the local Procurator Fiscal's office can be found on the letter you received from them. The Procurator Fiscal's staff will be able to tell you if this is still possible when you contact them.

However, in some circumstances, the accused may plead guilty to the offence before the trial. If this happens, there may not be enough time for you to make a victim statement before the sentence is passed. In cases where there is a reasonable prospect of a guilty plea, the Procurator Fiscal's office will try to contact you as soon as possible to invite you to make a victim statement.

When you submit a victim statement you should receive an acknowledgment and supplementary form from the Procurator Fiscal's office. You can also contact the Procurator Fiscal's office for further guidance on how to update your statement.

WHAT HAPPENS IF THE VICTIM IS PHYSICALLY UNABLE TO COMPLETE A VICTIM STATEMENT?

Where the victim is unable to complete the victim statement form personally, but can do so by an alternative method of communication, e.g. where the victim is unable to write but can tell someone else what he or she wants to say or by using voice recognition software, the right to make a victim statement stays with the victim.

WHAT HAPPENS IF THE VICTIM IS UNABLE OR TOO YOUNG TO COMPLETE A VICTIM STATEMENT THEMSELVES?

A relative or carer may be entitled to complete a victim statement on a victim's behalf if the victim is incapable of making a victim statement because of a mental disorder or inability to communicate. The person listed highest on page 9 may make a victim statement on their behalf.

For cases reported to the Procurator Fiscal before 13th August 2014:

If the victim of the crime is under the age of 14, they cannot complete a victim statement themselves; however, a parent or carer can complete a victim statement on their behalf.

For cases reported to the Procurator Fiscal on or after 13th August 2014:

If the victim of the crime is under the age of 12, they cannot complete a victim statement themselves; however, a parent or carer can complete a victim statement on their behalf.

Please contact the Crown Office and Procurator Fiscal Service on 0300 020 3000 if you are unsure of the reporting date of your case.

If you are completing the victim statement as a relative or carer, it is important that you respect the views of the victim at all times, and ensure that the statement reflects the impact the crime has had on the victim and not how it has affected you.

The Procurator Fiscal's office will advise whether a carer or relative can complete a victim statement on behalf of the direct victim and, if so, who the eligible carer or relative is.

WHAT IF THE VICTIM HAS DIED?

If the victim has died, up to 4 near relatives can make a victim statement. A full list of the relatives who can do this can be found on page 9.

WHO SHOULD I CONTACT IF I WANT ANY MORE INFORMATION?

If you need any more information or advice about making a victim statement, you can contact Victim Support Scotland. Victim Support Scotland can speak to you about your decision to make a victim statement, offer advice on how the victim statement will be used in the criminal justice process and help you to complete and submit the form.

You can contact Victim Support Scotland on **0345 603 9213** from Monday to Friday between 8 a.m. and 8 p.m. or online at **www.victimsupportscotland.org.uk**.

If you need advice about making your victim statement, or want to send an update to your victim statement, you can contact the Crown Office and Procurator Fiscal Service on 0300 020 3000 who can give you details of your local Procurator Fiscal's office or online at **www.crownoffice.gov.uk**.

A copy of this guidance booklet can be supplied in different formats and languages. Should you require the booklet in another format (e.g. Braille) or language please contact the Procurator Fiscal's office.

You can also watch a short video online which explains what sort of information to give in your victim statement. The video can be found at **www.mygov.scot/victim-statement/**

Details for other support organisations and sources of information can be found on page 10.

LIST OF NEAREST RELATIVES WHO ARE ELIGIBLE TO MAKE A VICTIM STATEMENT

If a victim has died, the 4 relatives listed highest can make a victim statement.

The eligible nearest relatives are:

- (a) spouse;
- (b) cohabitee²;
- (c) son or daughter or any person that the victim had parental rights or responsibilities for;
- (d) father or mother or any person who had parental rights or responsibilities towards the victim;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece,

and the elder of any two persons described in any one of paragraphs (a) to (i) is to be taken to be the higher listed person, regardless of sex.

For example, in a case where a victim has died leaving a wife, two (living) parents and two brothers, the wife, both parents and the elder of the brothers would be invited to make a victim statement. If one parent decided not to make a victim statement, no others would be invited to make one in their place from further down the list.

² A person, whether or not of the same sex as the victim, who has lived with the victim, as if in a married relationship, for at least six months and was living with them immediately before the offence was committed.

For cases reported to the Procurator Fiscal before 13th August 2014: Please note that children under the age of 14, e.g. the son or daughter or brother or sister of a victim who has died, are not entitled to make a statement or have a statement made on their behalf.

For cases reported to the Procurator Fiscal on or after 13th August 2014: Please note that children under the age of 12, e.g. the son or daughter or brother or sister of a victim who has died, are not entitled to make a statement in their own right but are entitled to have a statement made on their behalf by a parent or carer.

Please contact the Crown Office and Procurator Fiscal Service on 0300 020 3000 if you are unsure of the reporting date of your case.

CONTACT DETAILS FOR OTHER SUPPORT ORGANISATIONS

People Experiencing Trauma and Loss (PETAL) provide practical and emotional support to those affected by murder or suicide. They can be contacted on 01698 324502 or www.petalsupport.com

If you are a woman who has experienced rape or any kind of sexual abuse, you can contact Rape Crisis Scotland for support on 08088 01 03 02 or online at www.rapecrisisscotland.org.uk

Scottish Women's Aid provides advice, support and safe accommodation for women (and their children) who have been abused, mentally, physically and/or sexually by their partner/ex-partner. They can be contacted on 0800 027 1234 or www.scottishwomensaid.org.uk

The Scottish Women's Rights Centre help women aged 16 and over affected by violence and abuse by providing free legal information and advice. They can be contacted on 08088 010 789 or online at www.scottishwomensrightscentre.org.uk/

More information on your rights as a victim of crime, and details of other support organisations that are available can be found in the Victims' Code for Scotland

www.mygov.scot/victims-code-for-scotland/



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