

Baroness Newlove
Office of the Victims' Commissioner
For England and Wales
9.51D, 102 Petty France
London
SW1H 9AJ

16 June 2017

Dear Baroness Newlove,

Re: Summary on how the ICO works with Victims

Further to our earlier correspondence, I write to set out the ways in which the ICO works with Victims. The ICO prosecutes a relatively small number of cases per year, relating to offences under the Data Protection Act 1998. Some of these offences are of a purely regulatory nature, in which it cannot be said there is a victim, for example an offence of a data controller failing to register with the ICO. The main offence which involves victims is section 55 of the Data Protection Act 1998, which concerns the obtaining, disclosure or sale of personal data, without the data controller's consent. In the Annual Reporting year 2016/2017, the ICO prosecuted 22 cases, of which half were concerned prosecutions for s55 offences.

The offences which the ICO prosecutes are punishable by fine or discharge only. In appropriate cases the ICO will make applications for ancillary orders, such as compensation, where a victim has suffered damage or distress from the offence.

The ICO has been working to review and improve services to victims particularly since early 2015, in preparation of the Victims' Directive and the inclusion of the ICO within the revised Victims' Code in November 2015. The ICO has liaised with other agencies in reviewing what was required to implement the Directive and Code, including the Ministry of Justice and the Whitehall Prosecutors Group.

The ICO implemented a Victims Right to Review (VRR) scheme¹, which was published on the ICO's website, together with a webpage regarding the Victims' Code, with links to it². The ICO when drafting this scheme took a broad view of victim to include, as well as individuals, all data controllers, which are the organisations who often make complaints of data protection offences to the ICO.

The initial contact victims have with the ICO is likely to be with an ICO Investigating Officer. All witnesses including victims are provided with a Witness Information Sheet, which contains information regarding the process of giving evidence as a witness and the support that they can receive. Any specific needs of the victims are flagged up in a report to the prosecutor when a prosecution file is referred for the prosecutor to consider making an application for special measures if appropriate, such as giving evidence by video link. The requirement for special measures is rare in the type of cases that the ICO deals with; therefore this is on a case by case basis.

ICO Investigators have been provided with a briefing on the Victims' Code and the ICO VRR scheme. Victims are asked whether they wish to make a victim impact statement in appropriate cases, which is included in the ICO's Prosecution Policy statement³.

The ICO has various policies and procedures regarding accessibility, including translation services, which apply to all individuals contacting the ICO, including victims.

If a case is to proceed to prosecution, the victim will be contacted by the ICO legal team regarding their requirements and any support they require in giving evidence. The ICO has witness procedures within the Prosecution Manual, which require that witnesses and the victim are updated of key developments in the prosecution case, including the outcome.

If the victim is a witness who is required to attend court they are provided with details of Victim Support and asked whether they would like the ICO to arrange a pre-trial court visit or whether they would prefer to self-refer to Victim Support

¹ <https://ico.org.uk/media/about-the-ico/policies-and-procedures/1560152/ico-right-to-review-scheme-for-victims-of-crime.pdf>

² <https://ico.org.uk/about-the-ico/who-we-are/victims-code/>

³ <https://ico.org.uk/media/about-the-ico/policies-and-procedures/1882/ico-prosecution-policy-statement.pdf>

and arrange one directly. The ICO has recently been liaising with Victim Support regarding the referral process.

Victims are also reimbursed by the ICO for any expenses incurred in attending court, or alternatively travel arrangements are made by the ICO on their behalf.

I hope the above information assists; however please do not hesitate to contact me if I provide any further information.

Yours sincerely,

Stephen Eckersley
Head of Enforcement
Information Commissioners Office