

CROWN LAW

VICTIMS OF CRIME –
GUIDANCE FOR PROSECUTORS

As at 1 January 2010

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PURPOSE

1. The purpose of this protocol is to provide guidance to prosecutors dealing with victims of crime.
2. It is intended for the use of Crown Law and Crown Solicitors. The term “prosecutor” is used throughout.

VICTIMS OF CRIME

3. In this protocol the term “victim” has the meaning given to it by s 4 of the Victims’ Rights Act 2002. It includes a person against whom an offence is committed and:
 - 3.1 The immediate family members of victims who are deceased or who are incapable of looking after their own affairs;
 - 3.2 The parents or legal guardians of victims who are children or young persons.

PRINCIPLES

4. The overarching principles for prosecutors to consider when dealing with victims of crime in the criminal justice system are:
 - 4.1 To treat victims of crime with courtesy and compassion; and
 - 4.2 To respect their dignity and privacy.
5. The key means of observing these principles is through the provision of information to ensure that victims understand the process and know what is happening at each stage. The prosecutor should, so far as possible, explain to the victim, or have Police or a Victim Adviser explain, the Court processes and procedures, and should keep the victim informed of what is happening during the course of the trial.
6. Prosecutors should seek to protect the victim’s interests as best they can whilst fulfilling their duty to the Court and in the conduct of the prosecution on behalf of the Crown.

THE VICTIMS RIGHTS’ ACT 2002

7. The Victims’ Rights Act (“the Act”) sets out certain requirements for those who deal with victims of crime. The Act imposes obligations on prosecutors as well as investigating authorities.
8. Section 49 of the Act confirms victims’ rights to complain if they have not been afforded their rights under the Act. Prosecutors receiving such complaints must deal with them speedily and with due attention.

ROLE OF PROSECUTOR

9. The prosecutor acts in the public interest when conducting a criminal prosecution and does not act for victims or the families of victims in the same way as other lawyers act for their clients. Prosecutors should always be mindful of the consequences for the

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victim, and take appropriate cognisance of views expressed by the victim or the victim's family in relation to any significant decision relating to the proceedings.

10. Prosecutors should ensure that the victim has a clear understanding of the proper role of the prosecutor and of the Court process.

ASSISTANCE FOR VICTIMS

11. Prosecutors should ensure that victims have been referred to Court Services for Victims. Victim Advisers can assist by explaining the Court process, showing the victim the courtroom and ascertaining and communicating the views of victims. They can also ensure that victims with special needs have an appropriate support person organised to be in the courtroom if required and ensure that any other special arrangements for the trial are made.
12. Certain victims of crime have special requirements. Examples include children, those with disabilities which hamper their ability to participate and those who do not speak English. Prosecutors must be particularly mindful of the needs of these groups. Those who have been the victims of particularly serious crime such as homicide or sexual offending also have special requirements.

VICTIMS OF SEXUAL OFFENDING

13. In cases involving sexual offending the prosecutor should ensure that arrangements have been made for the victim to meet with a Victim Adviser or a specialist support worker where available, before the hearing or trial, to explain the Court process and show the victim the Courtroom. Any alternative means of giving evidence (e.g. behind a screen) should be shown to the victim and explained.
14. The prosecutor should meet with the victim before trial to discuss the giving of evidence and any issues which are likely to arise.
15. In conjunction with the Victim Adviser special arrangements for the trial may be appropriate, including the setting aside of an allocated room to wait in before giving evidence.

CASES INVOLVING A DEATH

16. Prosecutors will on request meet the family of someone killed as a result of a crime and explain a decision on prosecution. In any case involving a death the prosecutor has a role to play in minimising the additional distress criminal proceedings are likely to cause to a victim's family and friends. The bereaved family are likely to be acutely concerned about any major decision taken in the case, e.g. to change the charge or accept a plea to an alternative or lesser charge, or to terminate the proceedings.

BAIL

17. Where s 29 of the Act applies (sexual violation or other serious assault and offences causing injury, death or incapacity or raising safety concerns), prosecutors appearing at a bail hearing must obtain, and convey to the Court, the victim's views on the

application. The prosecutor may also wish to explain to the victim that the Judge will consider a number of factors when determining whether to grant bail.

RESTORATIVE JUSTICE CONFERENCES

18. Where a victim is agreeable to the holding of a restorative justice conference and the conditions of s 9 of the Act are satisfied, the prosecutor should encourage the holding of a meeting of that kind.

MATTERS ARISING IN RELATION TO THE HEARING OR TRIAL

NAME SUPPRESSION

19. The Act requires that in any case where name suppression of the offender is sought the prosecutor should ensure that the views of the victim are put before the Court and taken into account.
20. There is a statutory prohibition against publication of the victim's name in cases involving sexual offending. However, victims have the right to apply for an order allowing the publication of details that could identify person(s) convicted of certain sexual offences. This applies to cases where these details would otherwise be suppressed (in order to prevent identification of the victim).
21. On application to the Court by the victim, where the victim is aged 16 years or older, if the Court is satisfied that he or she understands the implications of the making of such an order, the Court must make an order allowing publication of the offender's name.
22. In other cases where the statutory prohibition does not apply, prosecutors may need to consider whether name suppression for the victim is appropriate and seek the necessary orders.

ALTERNATIVE WAYS OF GIVING EVIDENCE

23. The Evidence Act 2006 allows a Judge to give directions for witnesses to give evidence in an alternative way, such as by video or using screens. It may be appropriate for prosecutors to seek such directions from time to time. Prosecutors will have to consider whether a particular mode of evidence is appropriate and would improve the quality of the evidence given. The grounds for such a direction and the matters to which the Judge must have regard are set out in section 103 of the Evidence Act. The latter includes the requirement for a fair trial and the need to promote the recovery of the complainant from the alleged offending.
24. When considering whether to seek such directions prosecutors should confirm the views of the victim; inform the victim of the directions made (if any); or explain why it is not considered appropriate to apply for a direction.
25. Under s 107 of the Evidence Act 2006 prosecutors must apply to the Court for directions about the way in which a child complainant is to give their evidence-in-chief and be cross-examined in a criminal proceeding.

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SECURITY OF SENSITIVE EVIDENCE

26. Prosecutors should have processes in place and provide facilities to protect sensitive evidence such as video evidence given by victims of sexual offending. The internet and other technology means it is impossible to prevent distribution of such evidence if it falls into the wrong hands.
27. Each Crown Solicitor's office should have a register of such evidence to track who has received the tape, and the ability to secure evidence within the office.

SENTENCING

28. Section 17 of the Act requires the prosecutor to make all reasonable efforts to ensure that information is ascertained from the victim about the impact of the offending for submission to the Judge sentencing the offender. A full, detailed and up to date victim impact statement should be obtained from the victim and where appropriate, the victim's immediate family members, by the Officer in Charge (at the prosecutor's direction).
29. The prosecutor may consider that there are others disadvantaged such that it is appropriate to seek the leave of the Court to accept a victim impact statement from that person.
30. The prosecutor must ensure that the victim is properly informed of the purpose of the victim impact statement. It is the prosecutor's duty under the Act to ensure that the statement is a true reflection of the effects of the offending on the victim. It should not contain any irrelevant material. Prosecutors may have to exercise their judgment in reviewing victim impact statements which contain such material. Prosecutors should liaise with the Officer in Charge to explain to the victim why such passages may need to be removed.
31. The prosecutor should ensure that the Officer in Charge advises victims of the outcome of sentencing and fully explains the reasons for the Judge's decision.

APPEALS

32. Prosecutors should ensure that victims of crime receive notification of an appeal including the hearing date and, in due course, the outcome of the appeal.

OTHER RESOURCES

33. There are a number of agencies and resources available to assist victims of crime. These include Victim Advisers (Court Services for Victims) and community agencies such as Victims Support, Women's Refuge and various pamphlets and information services. Prosecutors should ensure that they are aware of local services and resources so victims can be referred to these where necessary.
34. In practice, the Police will make the referral to Court Services for victims and other services but in appropriate cases prosecutors could recommend a referral.