

Department of Justice
Hong Kong

**The
Statement on the
Treatment of
Victims and Witnesses**

2009

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FOREWORD

The Statement on the Treatment of Victims and Witnesses ('*The Statement*') is a practical document which incorporates latest thinking and encourages best practice. It is also aspirational, and reflects the vision of those who prosecute criminal cases. *The Statement* sets benchmarks for prosecutors, and explains to the public how prosecutors consider that victims and witnesses should be treated.

Justice is the expectation of victims and witnesses, and also their right. No system of criminal justice can succeed without their full support and co-operation, and they must have faith in the system. In addition to guiding prosecutors in their dealings with others, *The Statement* makes victims and witnesses aware of their rights and of the standards of service they may expect throughout criminal proceedings.

The Statement promotes transparency in a vital area of criminal justice, and constitutes a pact between prosecutors and those who are victims of crime or witnesses to crime. It places victims and witnesses at the heart of the decision-making process, and at each stage of the trial process. *The Statement* will promote community confidence in the criminal justice system.

I. Grenville Cross, SC
Director of Public Prosecutions
1 September 2009

1. THE VISION OF THE DEPARTMENT OF JUSTICE

Prosecutors committed to a fair deal

- 1.1 The Department of Justice ('the Department') and its prosecutors are committed to providing the highest levels of service and support to victims and witnesses. Justice is their expectation, as well as their right. Those involved in the criminal process require the best possible deal.
- 1.2 Victims and witnesses are essential to the success of the criminal justice system. They must have faith in that which is on offer to them. Those who commit offences can only be prosecuted if victims and witnesses are willing to make reports and to testify. They need to know they will be treated throughout with respect and understanding.
- 1.3 The Department is committed to liaising with others to protect and advance the interests of victims and witnesses.
- 1.4 The proper care and treatment of victims and witnesses is at the forefront of prosecution policy and strategy. Prosecutors are committed to upholding the principles and practices contained in :
 - (a) *The Statement of Prosecution Policy and Practice;*

- (b) *The Victims of Crime Charter;*
- (c) *The Policy for Prosecuting Cases involving Domestic Violence.*

1.5 *The Statement on the Treatment of Victims and Witnesses* ('*The Statement*') indicates how the Department considers victims and witnesses should be treated, and the means by which prosecutors will safeguard their interests.

2. STATEMENT OF POLICY

The role of the Department of Justice

2.1 The Department acts independently on behalf of the community. Decisions on cases are based on the strength of the evidence followed by an assessment of the public interest. This process is governed by *The Statement of Prosecution Policy and Practice*. The Department does not act directly on behalf of individual victims or represent them in criminal proceedings, because it has to take decisions reflecting the overall public interest rather than the particular interests of any one person. Modern prosecution policy nonetheless requires that full weight be given to the position of victims and witnesses in the decision-making process.

The decision to prosecute

- 2.2 The more serious the case, the more likely is it that a prosecution will be required in the public interest. *The Statement of Prosecution Policy and Practice* provides that the gravity of the offence is affected by the extent of the harm or loss suffered by the victim, and the significance of the harm or loss may be relative to the circumstances of the victim in question. The effect of the offence upon the victim must be assessed as it is a vital factor for the prosecutor to consider. The views of the victim will be given such weight as is appropriate in all the circumstances when making a charging decision.
- 2.3 In determining whether to discontinue a prosecution or to accept an adjusted plea to a lesser charge, the prosecutor should, if practicable, ascertain the views of the victim. While the views are not determinative of the issue, they will assist the prosecutor in reaching an informed decision.
- 2.4 Where a decision not to prosecute is taken, a letter, if appropriate, will be sent to the victim by a prosecutor to explain the basis of that decision.
- 2.5 The Department is committed to according priority to concerns arising from criminal cases. Victims or witnesses who raise any concern with the Department about prosecutorial decisions will be given adequate and prompt responses. In appropriate circumstances, a face-

to-face meeting between the prosecutor and the victim will be arranged. If the victim reveals any material evidence not previously known to the prosecutor or the law enforcement agency, a referral to the relevant law enforcement agency for further investigation may be considered.

Information about victims and witnesses

- 2.6 When the police submit a file to the Department, it may contain information about victims and witnesses. Such information is important as it enables the prosecutor to see the offence in its full context. It may, for example, reveal aggravating or mitigating considerations. Prosecutors must examine, assess and act upon the information supplied.

Compensation and Restitution

- 2.7 Victims often wish to claim compensation and/or restitution for the harm or loss caused to them by the crime. If so, the police should include details of the claim to be made and/or the details of the pecuniary loss suffered by the victim. If this is not done, and the case is accepted by the Department for prosecution, the prosecutor will ask the police to provide details or to explain why they are not required. In cases where there is

a claim for compensation and/or restitution, the prosecutor will tell the court. The court may then impose a compensation order and/or a restitution order in an appropriate case. Whilst a compensation order is essentially concerned with the power of a court to order the offender to pay money to victims for personal injury, loss of or damage to property, or both such injury and loss or damage, a restitution order is an order for the return of property.

Safety of victims and witnesses

2.8 Victims and witnesses have the right to protection where this is required before, during and after criminal proceedings. Such persons may place themselves and their families in jeopardy by agreeing to give evidence. Although prosecutors do not participate in witness protection programmes, they have a responsibility, in an appropriate case, to advise the relevant agency as to the need for and the importance of particular witnesses in the conduct of a prosecution. If appropriate, steps should be taken to ensure that those responsible have done all that is necessary to protect victims and witnesses.

Victims and witnesses at court

- 2.9 Victims of crime have a legitimate interest in the cases in which they are involved. Prosecutors will seek to assist victims and witnesses at court by providing appropriate guidance and useful information. Victims and witnesses are kept abreast of developments and are consulted and advised where necessary.

3. STANDARDS OF SERVICE

- 3.1 Victims and witnesses deserve consideration and understanding throughout criminal proceedings. The taking of practical steps to improve the service to victims and witnesses is just as important as responding sympathetically to their concerns. The Department is committed to liaison with others in the criminal justice system to protect the interests of victims and witnesses.
- 3.2 Victims and witnesses are entitled to have their rights to privacy and confidentiality respected.
- 3.3 Victims and witnesses deserve consistent standards of care and treatment.

Witness protection

3.4 Prior to trial, prosecutors will consider whether witness protection is required and determine, if practicable, whether what is being/is to be provided is adequate. Prosecutors will :

- seek early identification of cases where protection might be necessary;
- consult, if appropriate, with the case officer as to the nature of the protection required and its duration;
- liaise, where necessary, with those responsible for the security and attendance of witnesses;
- monitor, if appropriate, the situation of the witness subject to protection;
- inform the court during the accused's application for bail of any risk of interference with witnesses and any need for witness protection;
- notify the witnesses as soon as possible of any special bail conditions which may affect them or their families should the accused be released on bail by the court;

- take such steps as may be practicable to ensure that the manner in which the protected witness is treated conforms to the procedures contained in the Witness Protection Ordinance;
- apply to the court, if appropriate, for closed court hearings or for an order of non-disclosure of the identities of the victim or certain witnesses.

Before trial

3.5 Before trial, prosecutors will consider whether the attendance of a witness is strictly necessary, and ensure that only the witnesses necessary to prove the charge are called to testify in court. They recognise that the witnesses who are required to attend court often feel worried and concerned at what to expect. To help the witnesses, prosecutors will, to the extent that this is practicable and/or necessary :

- seek to expedite the processing of cases, particularly those involving children and other vulnerable witnesses;
- ask the court to set a date for trial which is as convenient as possible to witnesses;

- ask the police to give witnesses as much notice as possible when the date for trial is fixed;
- ask the police to ensure that the witness is informed of the procedures at court;
- ask the police to arrange a visit to court for children or mentally incapacitated witnesses before trial;
- encourage the provision of proper facilities at court for the reception of witnesses;
- ask the police to arrange assistance for the young, the elderly and the disabled to get to court;
- address the specific needs of witnesses and, where justified, make appropriate applications to the court for special measures, which include :
 - (a) use of screens to shield witnesses from the accused while testifying in court;
 - (b) use of two-way closed circuit television to enable witnesses to give evidence outside the courtroom through a televised link to the courtroom;

- (c) admission of video-recorded interviews as evidence-in-chief of witnesses who are children or mentally incapacitated persons;
 - (d) removal of wigs and gowns by judges and advocates during trial;
 - (e) for sexual offences, an order that the witness' identity remains anonymous;
 - (f) closed court hearings;
- ask the court to arrange an appropriate interpretation service.

At trial

3.6 Once the trial has started, prosecutors will :

- try to ensure that witnesses are made aware of arrangements at court, and the availability of facilities, such as witness waiting rooms, and canteens;
- seek to keep waiting times for witnesses to a minimum;

- inform the court of any difficulty a witness might face so that the situation of the witness may be accommodated;
- introduce themselves to witnesses, if practicable, and explain their role;
- take steps to ensure that personal particulars of victims and witnesses, such as the addresses and telephone numbers, are not unnecessarily disclosed in open court;
- seek to ensure that witnesses do not come into contact with those accused of crime while in the court precincts;
- keep witnesses informed of the progress of cases, and of developments, such as delays or adjournments, or changes of plea;
- inform the court of any available information about the likely effect on victims or witnesses of a delay where the defence seeks to postpone the trial;
- object to defence questioning which is abusive or unjustifiably intrusive or aggressive;
- ask the court, when appropriate, to release a witness who has testified, or is no longer required;

- explain the results of cases, whenever possible, to victims.

At sentencing

3.7 When the victim has been harmed or has lost property, prosecutors will :

- ensure that the court is aware of the consequences of the offence;
- inform the court of any known financial loss which has resulted from the crime;
- remind the court of its power to award compensation and/or to order restitution in appropriate cases;
- make an application, in an appropriate case, for a compensation order and/or a restitution order;
- do all they can to ensure that the court is supplied with sufficient information to enable it to make a compensation order and/or a restitution order.

3.8 Upon conviction of sexual offenders, prosecutors will :

- bring to the attention of the court the victim's background where appropriate;

- furnish the court with updated factual information as to the impact of the harm caused to the victim.

3.9 In cases involving violence or sexual offences, where the victim suffered physical or psychological injuries as a result of the crime, prosecutors will furnish the court with the latest medical or other relevant reports.

Defence mitigation

3.10 When defence mitigation contains misstatements of fact or unjust criticism of the victim or witness, prosecutors will :

- tell the court that the mitigation is not accepted by the prosecution;
- explain why the mitigation is challenged;
- invite the court to receive evidence on the issues raised by the defence.

Witness expenses

3.11 To ensure that witnesses are reimbursed properly and quickly, prosecutors will :

- ascertain whether the witness wishes to claim expenses;
- if appropriate, apply to the court for an order for witness expenses after the witness has testified;
- if appropriate, apply to the court for an order for witness expenses for witnesses who have attended the court but were not called to testify.

Appeals to the High Court

3.12 Victims are not usually required to attend court when the defendant appeals against conviction or sentence. To ensure that victims are kept in touch with the progress of appeals, prosecutors will :

- advise the police of the progress of the appeal so that victims and their relatives are kept updated;
- introduce themselves, if victims or their relatives choose to attend the hearing, and explain the nature of the proceedings and the issues involved;
- take steps to ensure that police advise victims and relatives as soon as practicable of the outcome of appeals in which they have an interest.

Reviews of sentence to the Court of Appeal

3.13 Victims and their relatives may have a close interest in reviews of sentence initiated by the Department. Prosecutors will :

- ensure, if appropriate, that the police advise victims and relatives if there is to be a review, and when it will be heard;
- introduce themselves, whenever possible, to victims and relatives who attend the hearing and explain the nature of the proceedings and the issues involved;
- take steps to ensure that the police advise victims and relatives as soon as practicable of the outcome of reviews in which they have an interest.

Cases involving fatalities and serious harm

3.14 The Department recognises that cases which involve the death of the victim or which cause serious harm or trauma to the victim will invariably cause great anguish to relatives and friends. Prosecutors will :

- ensure that such cases are advised on and conducted by a person of appropriate experience;

- be prepared to meet relatives of the victim, if appropriate, to discuss in general terms the basis on which a decision has been taken;
- ask the court to pay special attention to the listing of these cases when this is necessary.

After cases are over

3.15 Once criminal proceedings have concluded, prosecutors will :

- take steps to ensure that property belonging to the witness which was held for court purposes is returned as soon as practicable to its owner;
- liaise with the police if victims or witnesses continue to require the services of the Witness Protection Programme;
- if appropriate, consider the interests of victims who remain in need of medical or after-care services;
- respect the right the victim may have to be notified of an offender's pending release, or escape, from lawful custody.

4. CONCLUSION

Transparency and assistance creating confidence

- 4.1 The publication of *The Statement* is designed to demonstrate the commitment of the Department to the proper care and treatment of victims and witnesses. *The Statement* provides a practical guide for prosecutors. The operation of *The Statement* is subject to periodic review by the Department.
- 4.2 The criminal justice system depends on victims and witnesses to achieve its ends. Reporting offences to the police and giving evidence at court can be a difficult experience. *The Statement* puts the interests of victims and witnesses at the centre of the approach to prosecuting, and recognises their importance in making justice work. The Department is committed to doing all it can to assist victims and witnesses and to enhance their confidence in the legal system.