

BERR STATEMENT OF THE PROSECUTORS' PLEDGE

Introduction

1. BERR prosecutes misconduct discovered in corporate or personal insolvencies. Official Receivers and liquidators report this conduct to us, and our lawyers then consider whether a criminal investigation should take place. Following the criminal investigation, our lawyers look at the evidence from the investigation and apply the Code for Crown Prosecutors. We prosecute if we consider that the evidential and public interest tests in the Code are satisfied. .
2. In many of our cases, people will have suffered financial loss because of the defendant's misconduct. Victims may be individuals, small businesses and large corporations. Because our cases are distinct and specialised, not all of the obligations placed on the Crown Prosecution Service in relation to general crime are relevant.
3. Our statement of the Prosecution Pledge covers only those issues relevant to our cases. It does not cover:

- *Speaking to all victims*

In our cases the victims can be numerous. This makes it difficult and sometimes impracticable for us to speak to all the victims when considering whether to accept a proposed plea. Instead, we seek to take account of victims' views on proposed pleas by:

- Speaking to those victims who come to court;
- Looking at any views given in witness statements by those not at court and
- In appropriate cases we will use the Departmental website to keep victims informed as to the progress of cases.

THE PROSECUTORS' PLEDGE

Where there is an identifiable victim the prosecutor will:

- *Take into account the impact on the victim or their family when making a charging decision.*

In doing so the prosecutor will listen to the voice of the victim through their witness and victim personal statement and ensure that the charge adequately reflects the criminality of the offending.

BERR investigation officers will take witness statements detailing the loss suffered by witnesses as a result of the defendant's misconduct and the impact of that loss on them.

BERR prosecution lawyers will identify those witnesses who are victims. Our lawyers will consider the impact on those victims when they apply the public interest test in the Code for Crown Prosecutors.

- *Inform the victim where the charge is withdrawn, discontinued or substantially altered.*

Including the upgrading or downgrading of charge and in defined categories of offence the prosecutor will offer a face to face meeting with the victim to explain the decision.

BERR will communicate with the victim within 5 working days the decision to withdraw or alter charges. BERR will offer face to face meetings to victims in its most serious cases. If victims ask to be kept informed about the progress of the case, BERR will ensure that they are notified of the start of the prosecution, and the result of each court hearing, within 5 days of each of these occurring. In appropriate cases BERR will use its website to keep victims informed as to the progress of cases.

- *Where practical, seek a victim's view or that of the family when considering the acceptability of a plea.*

When a plea of guilty is offered the prosecutor, wherever practical, will speak with the victim or victim's family attending court to ensure that any views expressed are taken into account when considering the acceptability of the plea. In order to do so it may be necessary to seek an adjournment to facilitate such discussion.

BERR will consider the interests and views of victims when considering whether it is in the public interest to accept a plea of guilty.

If there are victims at court when decisions are made on whether to accept a plea, BERR will consult with those victims to assist in making any decision.

BERR will take proper account of the victim's interests in deciding whether to agree the factual basis of the plea (that is, the facts which BERR and defendant's lawyers will put to the court to identify and explain the defendant's conduct).

- *Address the specific needs of a victim and where justified seek to protect their identity by making an appropriate application to the court.*

The prosecutor will be assisted in forming their judgment by the police or other investigative authority and where appropriate will make an application for “special measures” to ensure that victims are able to give “best evidence” before the court. In appropriate circumstances the prosecutor may also make an application to protect the identity of the victim or prevent inappropriate reporting in the media.

BERR will make applications for “special measures” direction where there are eligible witnesses giving evidence in appropriate cases.

BERR will make applications in appropriate cases to protect the identity of victims and inappropriate reporting.

- *Assist victims at court to refresh their memory from their written or video statement and answer their questions on court procedure and processes.*

The prosecutor will introduce themselves to a victim at court and whilst not permitted to discuss their evidence will answer any questions on court procedure and processes. The prosecutor will also provide the victim with an opportunity to read their statement or see their video taped statement before giving evidence.

At court the BERR representative or prosecutor will introduce themselves to the victim, answer questions on court procedure and processes and give the victim a copy of his or her statement so that he or she can read it before giving evidence.

- ***Promote and encourage two way communications between victim and prosecutor at court.***

The prosecutor will ensure that during the course of the court hearing the victim is kept informed of the progress of the case and will promote two way communication to enable a victim or their family to pass to the prosecutor any information that may assist in the conduct of the prosecution or have a bearing on an assertion made by the defence.

At court the BERR representative or prosecutor will keep the victim informed about the progress of the case and the time they are likely to have to wait, explaining the reasons for any delay in giving evidence.

Where Counsel is instructed, BERR will ensure that its Brief to Counsel highlights these obligations.

- ***Protect victims from unwarranted or irrelevant attacks on their character and may seek the courts intervention where cross examination is considered to be inappropriate or oppressive.***

The prosecutor will be alert during the course of the trial to unwarranted or irrelevant attacks on the victim's character and may seek the courts intervention where, for example, the prosecutor considers that cross examination by the defence is inappropriate or oppressive.

BERR will:

- **be mindful of:**
 - **Statements or questions by the defendant or his or her lawyer which are “merely scandalous or intended or calculated only to vilify or annoy”; and/or**
 - **Cross examination that suggests or contains a defamatory aspersion on the conduct of a person that does not go to a matter in issue and is not supported by “reasonable grounds”.**
 - **Derogatory statements made about a person’s character in pleas in mitigation.**
- **remind the court, where appropriate, of the guidance contained in the JSB Equal Treatment Bench Book on:**
 - **Equality before courts and tribunal**
 - **Minority Ethnic Communities**
 - **Belief systems**
 - **Children**
 - **Disability**
 - **Gender inequality**
 - **Sexual orientation**

- *On conviction, robustly challenge defence mitigation which is derogatory to a victims character.*

At the sentencing stage, the prosecutor will challenge any assertion by the defence in mitigation which is derogatory to a victim’s character and which is considered either false or irrelevant to proper sentencing considerations.

BERR will challenge the assertions described above in accordance with the Code for Crown Prosecutors and The Attorney General’s Guidelines on the Acceptance of Pleas and the Prosecution Role in the Sentencing Exercise 2005.

BERR will be mindful of the Conduct of Work By Practising Barristers, Bar Code of Conduct that forbids an assertion in a speech that impugns a witness who has not been cross examined or who has not been given an opportunity to answer the allegation.

- *On conviction, apply for appropriate order for compensation, restitution or future protection of the victim.*

The prosecutor will always consider making any relevant application for ancillary orders such as compensation or restitution and where appropriate and justified on the evidence encourage the court to impose a restraining order for the future protection of the victim.

Where appropriate, the BERR will consider:

- **applying for compensation or restitution;**
- **applying for disqualification orders under the Company Directors Disqualification Act 1986; and**
- **bringing confiscation proceedings.**

Future protection of victims issues rarely arise in BERR

- ***Keep victims informed of the progress of any appeal, and explain the effect of the courts judgement.***

Where a case is the subject of an appeal to the Court of Appeal (Criminal) Division the prosecutor will ensure that the victim or victim's family are advised of the hearing and that the grounds on which the appeal is made and the effect of the courts judgement are properly explained.

BERR will inform victims of any appeal hearing, and the grounds of the appeal, as soon as we become aware of the appeal.

BERR will notify victims of the outcome and effect of the appeal within 5 working days of the decision.