

Proposal to NI Executive OVP/Sungolf Case

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Brief Explanation Of The Role A Government May Have In
Respect To A Consumer Fraud Perpetrated Abroad

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Case against Ocean View Properties/Sun Golf Desarrollo Inmobiliario S.L.

As a result of the imminent lodging of a criminal claim against the perpetrators of the Ocean View Properties/Sun Golf Desarrollo Inmobiliario alleged fraud, on behalf of approximately 80 families from Northern Ireland, we have notified the Spanish Prosecution Service ("Fiscalía") of our legal proposal to ensure they adhere to the charges brought, at the Madrid Courts.

In this respect, we consider that the test for filing a criminal complaint is met given the evidence that can be adduced in Court is sufficient to provide a reasonable prospect of conviction. The Spanish Prosecution Service ("Fiscalía") has, in principle, agreed that public prosecution is in the public interest, given the nature of the alleged crimes, the size of the defrauded sums, the social alarm created in several jurisdictions and the repercussions at a social, and personal, level.

Both national and international press have taken an interest on the case and have pledged to publish regular updates as and when noticeable events, connected to the case, occur. So far, British, Irish and Spanish press have published the case, thus ensuring exposure in these jurisdictions.

Private Prosecution in Spain ("Acusación Particular")

Aside from the public prosecution, Spanish judicial system envisages the possibility that anyone, whether they have, or not, been aggrieved by the alleged suspect, joins a criminal action. This entitlement is currently used by different organisations (Consumer Protection Associations, Chambers of Commerce, Regional Governments, and Local Councils etc.) in the defence of their interests, within a criminal action proceedings brought by the Spanish Prosecution Service and the victims of an alleged crime. Recently, the Ecuadorian Government joined a case of racial assault and abuse by a Spanish national against an Ecuadorian teenager.

The list below is not exhaustive but merely enumerates some of the most recent cases of private prosecution being brought by private and public entities:

- Ecuadorian Government, in the case against a Spanish national, for racial assault and abuse.
- Regional Government of Catalonia, on identical terms, as above.

- CEACCU (largest Consumer Association in Spain, with 400.000 members), against the perpetrators of the "Afinsa/Forum Filatélico" fraud, a scam based on investments in tangibles (mostly stamps).
- Madrid Chamber of Commerce, against striking air-traffic controllers that left tens of millions of euros of losses.
- Regional Government of the Balearic Islands, on identical terms, as above.
- "Partido Popular" (currently, the largest political party in Spain), against the suspected orchestrators of a large corruption scandal in the Balearic Islands.

The involvement of the Public Prosecution Service for Northern Ireland (PPS)

Pursuant to the Justice (Northern Ireland) Act 1998, it is my understanding that it would be possible for the Northern Ireland Executive to join ongoing judicial criminal proceedings in Spain, against the perpetrators of the Ocean View Properties/ Sungolf Desarrollo Inmobiliario fraud.

Schedule 2 of the Act, related to excepted matters for public prosecution by the PPS, does not include bringing action abroad against private persons and only mentions, in point 3, that matters relating to *"international relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations..."* (<http://www.legislation.gov.uk/ukpga/1998/47/schedule/2#commentary-c2012997>). This case does not fit in this description of an excepted matter although I am aware that it would entail engaging a different jurisdiction (Spanish), through the appointment of Spanish lawyers and Court agents, in a seemingly pioneer action on behalf of a group of Northern Ireland consumer victims of a large-scale fraud.

The PPS website does seem however to include the possibility of acting internationally by affirming that *"the new Public Prosecution Service is designed to incorporate good practice on a national and international basis"* (<http://www.ppsni.gov.uk/default.aspx?CATID=2>), and to this extent I would like to request that a preliminary discussion is open to the effect of deciding if it would be beneficial, on behalf of the victims I represent (mostly from Northern Ireland), that the Northern Ireland Executive joined the action we will be imminently filing with the Madrid Courts.

What would be required?

As with any other organisation or association, Spanish laws would require that a lawyer ("Abogado") and a Court agent ("Procurador") are appointed, for formal representation in Courts. Depending on the nature of the claim, the Court may request that a caution, or bond, is placed.