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CPS

Independent Assessor of Complaints for the Crown Prosecution Service

Complaints Audit 2017-18

Complaints Audit 2017-2018: Report to the CPS Board from the Independent Assessor of Complaints (IAC), Stephen Shaw

Introduction

1. The Board will recall that under paragraph 2.8 of my terms of reference I am required each year to review a sample of complaints that have not proceeded beyond stages 1 and 2 of the CPS complaints procedure. This is in line with the IAC role as "the guardian of the CPS Feedback and Complaints policy, overseeing the process and supporting the CPS to develop best practice and improved service standards for victims and witnesses."

2. The complaints audit offers a far more representative sample of cases than my stage 3 caseload, and thus greater insight into who complains and why, and the way in which those complaints are managed and responded to. I draw upon the findings of the audit when making my presentations to CPS Areas.

3. It is arguable, however, that paragraph 2.8 is unduly prescriptive and that annual audits do not always represent a good use of public money. I am not sure that much was lost by the fact that the 2016-17 audit was not actually conducted until Spring 2018. I also think that a more focused review of the quality of responses in specific Areas could be a better means of exercising a 'guardianship' role.

4. Be that as it may, this paper presents the outcome of my audit of 2017-18 complaints, and will be presented to the Board alongside my 2018-19 half-year report.

Methodology

5. Some 40 stage 1 and 2 complaints were selected on my behalf from the CPS KIM complaints database. Of these, 33 had only gone through stage 1, and seven had gone on to stage 2 but not to stage 3.

6. For this year's audit, the sample was not drawn entirely at random in order to ensure a reasonable spread across all Areas.

7. In conducting the audit, I followed exactly the same methodology as in past years. I read the papers for each case, and completed a standard form with entries for timeliness, use of language, whether the response answered the complainant's questions, and whether the escalation process was explained. In a free text field, I also summarised the complaint and added my general impressions of the way in which it had been managed.

Characteristics of the sample

8. The geographic breakdown of the 40 cases from 2017-18 that I reviewed in this audit is shown in the table below. I have also provided comparative data for the last two audits in 2015-16 and 2016-17.

Sources of complaints for annual audit

	2015-16	2016-17	2017-18
CPS Direct	**0**	**3**	**1**
Cymru-Wales	**4**	**1**	**4**
East Midlands	**3**	**5**	**3**
East of England	**4**	**4**	**3**
London	**8**	**1**	**5**
Mersey-Cheshire	**1**	**2**	**2**
North East	**3**	**1**	**4**
North West	**2**	**4**	**3**
South East	**4**	**3**	**3**
South West	**1**	**2**	**2**
Thames and Chiltern	**3**	**4**	**3**
Wessex	**1**	**1**	**2**
West Midlands	**1**	**5**	**2**
Yorkshire and Humberside	**5**	**4**	**3**

9. As was the case in the past three years, there were no complaints in the sample from the three central casework divisions (the Specialist Fraud Division, the Special Crime and Counter Terrorism Division, and the International Justice and Organised Crime Division).

10. Unsurprisingly, most of the complainants were victims of crime, or those acting on their behalf, as the following table shows:

Complainant characteristics

Victim or representative of victim	**31**
Defendant	**3**
Witness	**4**
Miscellaneous	**2**

11. Of the two miscellaneous complainants, one was a suspect never charged, and one was a solicitor making what I judged to be a professional complaint against an agent prosecutor that should probably not have been progressed through the Feedback and Complaints procedure.

12. A total of 23 of the 40 complainants were women, including a majority of the victims.

13. As in past years, I have no access to other demographic information or how it compares to those who appear in court as victims, witnesses or defendants.

Findings

Timeliness

14. Combining the stage 1 and stage 2 responses, all but one of the complaints were acknowledged in line with the CPS time-target. The single exception concerned a defendant who was appealing against his conviction. Overall performance on this target is extremely high, and reflects very well upon the work carried out by Victim Liaison Units.

15. In contrast, seven of the 47 responses were beyond the CPS time target. A further seven of the responses were technically on time but sent on day 20 which I do not believe is good practice. On the basis of successive audits, I conclude that CPS performance against this target remains unsatisfactory.

16. I acknowledge that, in practice, it will never be possible for all complaints to be answered in full within 20 working days. There may be delays in obtaining reports from the independent bar or other parts of the criminal justice system, and staff illness and leave can also be a factor. Indeed, in my presentations to CPS staff I emphasise that I regard a good response on day 21 more highly than a poor one sent on day 19. However, the audit did not show that holding letters are reliably sent in good time when it becomes clear that the 20-day target cannot be met.

Outcomes

17. In terms of the outcomes recorded on KIM, of the solely stage 1 cases, five were fully upheld, five were part upheld, and 23 were not upheld.

18. Of the seven cases that went to stage 2, one was recorded as upheld at both stages 1 and 2, and four were recorded as not upheld at stages 1 and 2. One not upheld outcome at stage 1 was reversed at stage 2, and a further not uphold outcome at stage 1 became part upheld at stage 2.

19. This gives an overall uphold rate (aggregating full and part upholds as is the normal convention) of 30 per cent. This is identical to the figure for 2016-17 and compares with 53 per cent in 2015-16 and 20 per cent in 2014-15.

20. As I commented in my 2016-17 audit, and accepting that the sample size is small, an uphold rate of 30 per cent would be in line with outcomes in many other complaint processes. I repeat, therefore, that it offers some confidence that the CPS is handling complaints in an objective manner and is willing to acknowledge mistakes and poor service where they are identified.

21. That having been said, not all of the outcomes recorded on KIM bear close examination. I encountered a number of cases where I felt the wrong outcome had

been recorded – something that also arises during the course of many of my reviews at stage 3.

The quality of the response

22. As in 2016-17, I judged that virtually all the responses properly engaged with the questions posed by the complainant. The approach taken by many respondents is to list each of the point made and then to answer them. Although this may sound somewhat formulaic, I believe it works well in practice and should be encouraged.

23. Some details of the escalation process were given in all but three responses where such escalation was possible. In one case, escalation details were given that were not appropriate (a legal complaint that had completed stage 2). More significantly, however, I was concerned that the escalation details were rather limited in eight of the responses – that is, they simply referred to the Feedback and Complaints leaflet or gave no information about the time limits or the address to use. This is one area where I think the use of standard paragraphs is justified, and would avoid the complainant being given only partial details and put to the inconvenience of having to carry out further enquiries of their own.

24. I found a number of careless errors that would have been remedied had the CPS response letters been proofread or peer-reviewed before being sent.

25. It may come as no surprise, however, that the area of quality that remains the greatest challenge is the ability of CPS respondents to reply to complainants with empathy and in a manner that is individual to their circumstances.

Detailed commentary

26. As in past years, I have annexed detailed commentaries on each of the 40 complaints in the sample. All accounts have been anonymised.

27. Good complaint handling is shown in cases 8, 27, 29, 31, 36 and 37. Handling that was less adept is illustrated in cases 19, 23 and 40.

28. In cases 1 and 35 there was a failure to identify breaches of the Victims' Code (complaints that could, in theory, escalate all the way to the Parliamentary and Health Service Ombudsman).

29. Questionable outcomes were recorded on KIM in cases 5, 12, 25, 26, and 30. A reliance upon legal jargon is shown in cases 3 and 6.

30. A failure to demonstrate much understanding or empathy with the complainant is most evident in cases 4, 9 and 24. The poorest overall service giving rise to a complaint is perhaps shown in case 16.

Conclusions

31. As would be expected, almost all of the CPS complaint responses are literate and logically constructed. Indeed, while no writer is immune to formatting and typographical errors, in the main these are far less frequent in the CPS complaints correspondence than was the case when I was first appointed IAC in 2013. If time could be built in for quality checking or peer reviewing of letters, the number of such errors (and the use of legal jargon) could be further reduced.

32. I also believe that there has been a concerted effort on the part of the CPS to ensure that respondents do engage with the issues raised by complainants, and I have commended the practice of listing and answering issues point-by-point.

33. However, a failure to show empathy towards complainants remains the most disappointing feature of too many of the letters I have reviewed during this audit.

34. I suggested in my 2016-17 audit that the CPS's performance in handling complaints had perhaps reached a plateau. The results from this audit are consistent with that judgement.

35. In my presentations to CPS staff, I encourage those responsible for responding at stage 1 to aim to complete a draft reply by day 15 or thereabouts in order to provide time for review and reflection. Were such an approach to take hold, I think it would provide a foundation on which further improvements in complaint handling could be built.

Stephen Shaw

Independent Assessor of Complaints

October 2018

Annex: Specific comments on the 40 complaints sampled

Stage 1 complaints

Case 1: Mr AB was a victim of crime. The CPS offered no evidence on a charge of burglary; the defendant pleaded guilty to theft. Much of Mr AB's complaint concerned the actions of the police, but the stage 1 response acknowledged that Mr AB had not been informed of the decision to offer no evidence and apologised ("I have brought this to the attention of the reviewing lawyer to ensure that an error of this nature does not occur again"). There was no acknowledgement that this was also a breach of the Victims' Code. Despite this failure, the complaint was recorded as not upheld. I found some unnecessary jargon ("trial vacated") and not a lot of empathy.

Case 2: Ms AB was a victim of a sexual offence many years ago as a child. The CPS had lost the video recorded discs of her interviews and had taken longer than it should to have informed her of this loss. The matter had been referred to the Information Commissioner's Office. Unsurprisingly, given these circumstances, the complaint was recorded as upheld. The complainant had written six months previously but had received no reply as a formal complaint had been anticipated. Given the tone of this initial letter, the expectation that it would be followed by a complaint was reasonable, but the letter should still have received an acknowledgement.

Case 3: Mr AB was the victim of an assault. The defendant had been found not guilty on grounds of self-defence. Mr AB wanted the case re-opened. The response was sent on the last day of the time target, and included some lawyerly jargon ("the triable issue") and other details that were likely to be over the head of the complainant whose command of language appeared modest.

Case 4: Mr AB was a licensee who had been assaulted outside his public house. One defendant had pleaded guilty; the case against the other was not pursued. Much of Mr AB's complaint focussed on the emotional and behavioural consequences of the attack upon him and the effects on his family. In this light, the stage 1 response – sent on the

last day of the time target – was rather formal in tone with no expression of sympathy for Mr AB.

Case 5: Mr AB was the victim of a racially motivated public order offence. The defendant was acquitted, and Mr AB said he had not been supported by the prosecutor. The stage 1 response concentrated upon the adversarial nature of criminal proceedings, and did not demonstrate much empathy with Mr AB. The response admitted that the CPS's Speaking to Witnesses at Court policy had not been followed, but despite this the overall outcome was still recorded as not upheld.

Case 6: Mr AB's daughter was the victim of a sexual assault at a church. The defendant had been acquitted. Mr AB questioned the way the prosecution was conducted and described a "feeling of numbness that we experienced following this verdict". The stage 1 response was long and sympathetic – one of the best by a long chalk in the whole sample. Here as in other cases I reviewed, the District Crown Prosecutor's practice was to list each of the points raised by the complainant, thereby ensuring that everything was covered in the response. One use of jargon ("evidence adduced") but otherwise first rate.

Case 7: Mrs AB's estranged husband had been found guilty of assaulting her and given a three-year restraining order. However, the conviction had been quashed on appeal. Mrs AB said that her husband had manipulated the courts and that she was now living in fear. Her complaint was in general terms – covering the outcome and the 'failure' of the prosecutor at the appeal hearing to prevent it. It seems she had sent a previous email five months earlier that did not receive a response; an apology was offered at stage 1. The start date for this complaint was set incorrectly on KIM, but the acknowledgement and response were both well in time notwithstanding.

Case 8: Mr AB was the sister of a vulnerable victim of sexual assault. The defendant was convicted and sentenced, but Ms AB said the prosecutor was very inexperienced. She also criticised the partial use of her own statement, and that there had been a change in prosecutor between hearings. Ms AB received a very good, personalised acknowledgement from the Victim Liaison Officer. Her complaint was upheld on the

grounds that (i) she should have been told in advance of the hearing that the prosecutor had changed; (ii) she was not given the opportunity to read her Victim Personal Statement – although the breach of the Victims' Code that this represents was not identified; (iii) the prosecutor did not have the details of the defendant's previous convictions. The response to Ms AB's complaint was followed up in a telephone call, and all-in-all I felt this was very well handled after the courtroom mistakes.

Case 9: Ms AB was a witness in a murder case. She complained that her full name and address had been read out in court in front of the defendant and his family. The stage 1 response – which I felt to be rather curt and lacking in empathy – explained that Ms AB's details had been read in full as the defendant had stayed at her home and those details were therefore relevant to a picture of his movements.

Case 10: Mr AB was a defence lawyer who said he was making a formal complaint about the actions of the agent instructed by the CPS. Mr AB said that initial disclosure had not been carried out in line with the court's directions or the requirements of the Criminal Procedure and Investigations Act, and that a planned expansion of the charges faced by his client (and consequent adjournment of the trial) had been unilaterally abandoned. He added: "the habit of CPS agents to hide behind their principals has become an increasing concern". Although the complaint was recorded on KIM as not upheld, the stage 1 response acknowledges that the CPS was in error in not providing the prosecutor with the reviewing lawyer's reviews which detailed the extension of the dates covered by the charges. As I have noted in paragraph 11 above, I am not certain that a complaint by one legal professional against another comes within the terms of the CPS complaints policy.

Case 11: Mr AB was a defendant in a domestic violence case that resulted in an acquittal. He accused his wife of making false allegations in pursuit of financial advantage through their divorce. His complaint against the CPS was essentially against the case being brought against him in the first place. I felt the correspondence was well handled (in general, responses to defendants tend to be on the shorter side), and like most of the cases in this sample there were no spelling mistakes or grammatical errors.

There was some delay in the initial acknowledgement letter as Mr AB had been convicted of other offences and was appealing against those convictions (an appeal it seems he subsequently withdrew). It was not clear from the papers whether the delay could have been avoided, but it was understandable in the circumstances.

Case 12: Mr AB was a former police officer called as a prosecution witness in an appeal against conviction but released after two-and-a-half hours without giving evidence. Mr AB asked for an apology from the prosecutor, the payment of expenses, and compensation to his current employer. He also said that he had suffered "extreme rudeness and discourtesy". The response explained that the defence had decided that Mr AB was not required to give evidence – but not until the morning of the appeal. An expenses form would be sent. Two aspects of the stage 1 caused me concern. The response said that the prosecutor did not speak to Mr AB at court – an oversight described as "unacceptable" and as a "failure", but despite this the complaint was recorded as not upheld. Second, there was no mention of the escalation process – one of three such failings in the whole sample.

Case 13: Ms AB was a victim of domestic violence who wanted the case dropped. She said she was not a victim, that her partner was no threat to her and, while behaving badly, was going through a difficult period. The response, which I noted as having been a good one in terms of language and tone, albeit sent on day 20, said the decision to prosecute had been correct. However, as things turned out, the case was stopped because of a disclosure failure.

Case 14: Ms AB was the victim of a serious assault committed by two defendants. She had asked for special measures, but had been left sitting opposite the defence witnesses before the trial. She said the prosecution was "unprofessional", "unprepared", and that "the whole thing was an embarrassment". The response said that feedback had been given to the prosecutor, but it was noted that both defendants had been successfully prosecuted. Some other matters that Ms AB had raised (in particular, the arrangements at court) were the responsibility of HM Courts & Tribunals Service (HMCTS) and not the CPS.

Case 15: Ms AB was the victim of a sexual attack. She complained about the transfer of the trial at short notice from one court to another. The stage 1 response – which was very quick – said this decision making was not that of the CPS but helpfully provided a CPS phone number if the complainant wanted to discuss matters further. It was perhaps for these two reasons that no escalation details were offered.

Case 16: Ms AB was the victim of harassment. She had been very badly let down by the CPS. There had been a failure to note on CMS that she was required to attend the trial, and when an application to adjourn was turned down by the District Judge the CPS had withdrawn the charge against the defendant: "Due to administrative errors by the advocates that prosecuted both hearings, you were not formally warned to attend court until … four days before trial." An apology was offered for the failure to warn Ms AB, for the quality of the victim letter, and a failure to phone to explain what had gone wrong, as had been promised. The initial acknowledgement said the matter would be pursued under the Victims' Right to Review scheme (VRR), but so far as I can see it was treated as a complaint. In either event, no escalation details were given.

Case 17: Ms AB was the victim of domestic violence at the hands of an elderly man. The prosecution had been discontinued on public interest grounds as the defendant was in his 70s and unwell. The acknowledgement letter said that her correspondence was being treated under VRR but the response said it had been treated as a complaint because of the six-month rule for summary offences: "As the offence complained about is one that must be prosecuted within six months of the day upon which it is said to have taken place, your request is being dealt with under our Complaints Procedure" I am not sure if this is a correct interpretation of the VRR guidance which refers to a maximum of three months after the qualifying decision rather than anything specifically about summary offences. The stage 1 response also included a careless error in respect of the date of the offence.

Case 18: Mr AB was the witness to a road traffic accident. His complaint concerned not being able to get into the court building before 9.00am, and the dates of the proceedings being changed resulting in stress and his having to turn down offers of overtime. The stage 1 response was very prompt, although it contained a couple of typographical

errors and its sentences were rather long. The response said that consideration would be given to advising witnesses that they cannot enter the court building before 9.00am. It was explained that the earlier adjournments were at the request of the defence (a late guilty plea no doubt adding to the irritation felt by Mr AB).

Case 19: Ms AB was the victim of common assault; the CPS had offered no evidence. She asked for VRR but was not eligible as the matter had been dealt with by out of court disposal (restraining order). Ms AB complained and asked for the basis of the decision. She complained too of rudeness on the part of CPS staff during a telephone call, although the CPS's own contemporaneous record says that Ms AB was "very rude and aggressive …. Quite belittling". The stage 1 response rebutted the allegation of rudeness, but both grammatically and in structure it was one of the weakest letters in the sample. Only limited details were given of escalation, and the stage 1 itself was late (albeit a holding letter had been sent). It appears that there had been parallel correspondence in regard to Ms AB's request for VRR, but this was not on the complaints file I reviewed.

Case 20: Mr AB had been considered for prosecution but not charged. (The circumstances of the allegations against him mean that he is potentially identifiable, so I will add no further details.) He complained that his laptop had been confiscated making his work impossible. The stage 1 response was very prompt, but a little on the short side. It acknowledged that Mr AB would feel frustration not knowing if a prosecution would go ahead. It was reported that a decision had now been made and that the police would provide an update.

Case 21: Ms AB was the witness to a road traffic accident. At the second hearing the defendant had pleaded guilty but Ms AB had not been told for some hours and had spent time pointlessly waiting at court. She asked for an apology. The stage 1 response said that feedback had been offered to the prosecutor at the second hearing as he should not have relied on the Witness Service to release her as a witness. The complaint was upheld. Only limited details of escalation were given.

Case 22: Mr AB was the legal representative of a victim of common assault in a case in which the CPS had offered no evidence. He asked for another witness (a relative of the victim) to be compensated for a fruitless 800-mile round trip. The response concentrated upon the legal decision to offer no evidence which it said was correct evidentially. There was some delay in sending the reply – although I think this was pardonable given that there was a separate live case involving the same individuals. I felt it was questionable whether the standard paragraphs in the stage 1 letter relating to the respective roles of the police and CPS, and the tests in the Code for Crown Prosecutors, were necessary in a letter sent to a fellow lawyer. There was also no mention of the expenses matter that Mr AB had raised. Escalation details were limited. As I have commented above, I think this is one place where a standard paragraph setting out the address and time limit for a stage 2 complaint is preferable to a generalised reference to the complaints leaflet or details available online.

Case 23: Mr AB was a lawyer working for a local authority. He sought the prosecution of two parents for perjury during a trial relating to their children's non-attendance at school. It seems that the parents may have lied under oath in respect of a family holiday in term time. The acknowledgement letter was poor – referring to the lawyer as the victim and seeking to use VRR. In fact, of course, the local authority was not a victim of perjury, and the CPS decided there was not a sufficiently good reason to use VRR exceptionally, and the matter went down the complaints route. The stage 1 letter – which was late, albeit after a holding letter – said the decision not to charge perjury had been correct on evidential grounds, pointing to the difficulty of proving that the parents had deliberately lied rather than having made a mistake.

Case 24: Mrs AB was the mother of a victim who alleged she had received a threatening phone call from a man she had accused of raping her when she was 14 but who had not been charged. One other man had been charged with making threats so VRR did not apply. The stage 1 response was lacking in empathy and gave only limited escalation details. It said the decision not to charge was correct as the victim's account relied upon her correctly recognising the defendant's voice after three years since the alleged rape.

Case 25: Ms AB was a victim of domestic violence. Her ex-partner had left prison and was arrested after he made contact with her. He had learned Ms AB's exact address as a consequence of the terms of a restraining order being read out in court. Ms AB said she no longer felt safe and asked for compensation. The stage 1 response could have demonstrated more empathy, and the escalation details were simply by reference to the complaints leaflet previously sent. The response rejected the idea of compensation, and said that the police had only sent a partial copy of the existing restraining order and did not say that Ms AB did not want her address to be included – as a result, the application for a restraining order had been made in standard terms. The response did not include details of the Lesson Learnt included on KIM: "Requested restraining order conditions should be checked by the advocate in court in all domestic abuse cases (particularly in [name of court] where there is often an IDVA present)." The complaint was recorded as not having been upheld – presumably on the basis that the problem had been caused by police inaction, although the entry on KIM suggests that CPS practice was also insufficiently robust.

Case 26: Mrs AB, a victim of crime, was asked to attend court at short notice. She and her husband had to forego earnings in consequence. However, when she arrived at court she was not expected as the defendant had pleaded guilty a few weeks earlier. The stage 1 response said that the police had not provided the paperwork until the day before the trial (it does not say if the CPS had chased). It would appear that the Witness Care Unit (WCU) had failed to keep Mrs AB in the loop – although whether the CPS had any responsibility for this failure was unclear. A note from the victim liaison manager reads: "I think if we had provided this information to the WCU in September … there probably would not have been a complaint." Be that as it may the complaint was recorded as not upheld. The stage 1 response said no compensation would be paid for Mrs AB's husband's lost earnings as he was not a witness. It offered a meeting or a phone call, which was good practice. It appeared from the correspondence that Mrs AB had first raised her concerns three months earlier but had received no reply.

Case 27: Mr AB was a police officer and the victim of an assault. The CPS was told that a caution for the youth offender was to be considered, and a request was made to the Officer in the Case to solicit the victim's views. However, when the case came to trial

neither additional information nor the victim's views had been received from the police and the CPS formally offered no evidence. The matter was resolved by a phone call from the District Crown Prosecutor to the police officer victim, so there was no formal stage 1 response. I think this was entirely sensible in the circumstances.

Case 28: Mrs AB was the victim of an assault by her husband. At trial, however, the husband was acquitted. Mrs AB said she gave her evidence remotely but her statement had not been available for her to refresh her memory. She criticised the prosecutor for failing to deploy the available evidence and not being familiar with her Victim Personal Statement. The stage 1 reply was perfectly literate but perhaps lacking in empathy. On the key issue it read: "The provision of witness statements for witnesses who are appearing by remote video link is an ongoing source of difficulty … The CPS and the Police are working on a fixed, permanent resolution but the present provision is unsatisfactory." The complaint was part upheld.

Case 29: Ms AB was a support worker for victims of domestic abuse. She complained on behalf of a client who she said was dissatisfied with the court process. She had suffered a series of adjournments of the case following long waits in court waiting rooms. The stage 1 response was both candid and sympathetic. It acknowledged: (i) a failure at the first hearing in that the prosecutor did not speak to the victim for nearly four hours; (ii) the court had vacated the second hearing but there was no evidence that the CPS was aware of this; (iii) the court had told the CPS that the case would be adjourned on a third occasion but this had not been brought to the attention of the lawyer and the victim attended unnecessarily on a third occasion. The complaint was recorded as part upheld.

Case 30: Ms AB complained about a change of charge and the amount of compensation ordered in a case concerning the taking of her son's bicycle by another youth. The stage 1 response was very prompt. It explained that the CPS could not prove theft and the defendant had pleaded guilty to taking the bike without consent. The prosecutor had asked for the full value of the property (£399) but the court had only imposed a compensation order for £100. The complaint was part upheld (although it was not

entirely clear to me why). As in all too many cases in the sample, the response was not inappropriate in tone or content, but did not demonstrate much empathy.

Case 31: Mrs AB was the victim of a road traffic accident. She said she was dissatisfied with the prosecutor and the sentence imposed following the defendant's guilty plea to driving without due care and attention. The response was a good one in the circumstances. It said that the legal decision regarding the choice of charge had been correct, but part upheld in relation to a service issue as the CPS should have made enquiries regarding the level of injury Mrs AB had sustained. It also acknowledged that, if this had been done, the sentence (a fine and penalty points) could have been increased by 50 per cent. Feedback had been offered to the reviewing lawyer and advocate, and Mrs AB was offered an apology. The respondent had also spoken to Mrs AB by phone which was good practice.

Case 32: Mrs AB was the mother of 14-year-old boy with special educational needs who had been accused of the rape of his girlfriend who was the same age. Mrs AB criticised the delay in disclosing phone evidence. Once disclosed, the case against her son had been dropped, and she asked for a full review of what had occurred. Her complaint was upheld. The stage 1 response said the charging decision had been taken too early, and read in part: "We did not ensure that the police provided us with full messaging details before the decision to charge was finalised and for that I apologise."

Case 33: Ms AB was a victim of crime (the details of which I assume were domestic in nature). She complained that she had sought a restraining order for three years, but the court had made an order for 12 months. This matter seems to have been dealt with informally. The District Crown Prosecutor rang the complainant to explain that the restraining order could be varied at any point, and this seems to have satisfied Ms AB. It was not clear from the paperwork why the restraining order was for 12 months or if the CPS had asked for three years. The outcome recorded on KIM was not upheld.

Stage 1 and 2 Complaints

Case 34: Ms AB had offered refuge for a neighbour who was a victim of domestic violence. The neighbour's husband had then smashed his way into the house. After being held overnight in custody, the man had then pleaded guilty to two common assaults and one offence of criminal damage. Ms AB criticised the charges and the rushed way in which the matter had been dealt with. The stage 1 response demonstrated good empathy, but had been sent on the last day of the time target. It said that the offences that had been charged had provided the magistrates' court with adequate sentencing powers and did not uphold the complaint.

This outcome was reversed at stage 2 which upheld the escalated complaint. It said that the charge should have been affray. Feedback was to be given to the reviewing lawyer and advocate "ensuring this does not occur again". It is not known if feedback was also offered to the stage 1 respondent. As at stage 1, the stage 2 response was sent on the last day of the time target.

Case 35: Mr AB was the victim of car theft to which the defendant had pleaded guilty. He said he did not have an opportunity to make a Victim Impact Statement (VIS) (a term and acronym also used in the stage 1 and 2 replies). The stage 1 response upheld Mr AB's complaint on the grounds that a VIS had not been provided to the CPS, but the CPS had not chased the police to obtain one. Mr AB also said that he had not been invited into the court to hear the sentence, to which the stage 1 response was that this was because special measures were in place and it was not to be expected that the prosecutor would invite Mr AB to sit in full view in the public gallery. The stage 1 was a few days late.

At stage 2, the complainant repeated his grievance in respect of the VIS. He also said he had never requested special measures. The stage 2 response repeated the explanation and apology in respect of the VIS, but said a new review of file quality had been introduced so that each file was checked against the National File Standard. The response went on to say that it was now clear that Mr AB had not requested special measures (although other victims of the defendant had done so): "It is unclear from the record of the agent prosecutor … whether they considered if you wanted to come into court to hear the sentence being passed". It was suggested that the CPS policy on

Speaking to Witnesses at Court had not been followed, although it was not certain whether this was the fault of the agent or because the court had not given him sufficient time to consult the witnesses as to their preferences. The complaint was again upheld. The failure to ensure Mr AB's Victim Personal Statement was before the court was a breach of his rights under the Victims' Code, but there was no mention of this at either stage 1 or 2.

Case 36: Ms AB made a wide-ranging complaint but at its core was the fact that she was a victim of domestic violence who did not support the prosecution. The stage 1 response said the correct decision had been taken given the circumstances (the defendant had made threats to kill, was holding a knife, and there had been previous incidents meaning that the behaviour was likely to continue). The tone throughout was quite tough, but I felt appropriately so. There was a further reply from the complainant, but it was sensibly decided not to respond further at stage 1 and to escalate.

At stage 2, the decision to proceed with the prosecution was again endorsed. It added that, although not strictly required, it would be good practice to inform a complainant that a case will go ahead without their support – and this would be considered as a service improvement in the future. I felt this was good learning from a complaint that was not upheld at either stage 1 or 2.

Case 37: Mr AB was the victim of threatening behaviour; the case against the defendant was dismissed after a full trial. Mr AB demanded a re-trial and said all victims and witnesses were treated appallingly. The stage 1 response, sent on the last day, explained the legal decision making (which was complicated by the fact there was a linked case involving Mr AB's wife where the defendant was the alleged victim). In subsequent phone calls, Mr AB said he was not making a complaint, he simply wanted a re-trial.

This uncertainty as to Mr AB's intentions has resulted in the KIM record showing the stage 2 response as five weeks late, but Mr AB himself said that he had not escalated the matter until a month after the date shown on KIM. Whereas at stage 1 the complaint had been recorded as not upheld, an outcome of part upheld was recorded at stage 2.

This seems to have resulted from an issue raised by Mr AB about not being able to observe the trial as the courtroom was not equipped for a wheelchair – although this was not of course the responsibility of the CPS. However, both at stage 1 and stage 2 I felt the responses were of good quality and were proportionate to a 'complaint' that was clearly strongly held but which had little intrinsic merit.

Case 38: Ms AB was a victim of domestic violence. The case was discontinued as she was not present to give evidence. Ms AB asked for a meeting to discuss why she had been warned to attend court at the wrong time. The request for a meeting was declined, and the stage 1 response said that the failure had been on the part of the WCU. This was a case where Ms AB's interests had not been well served by the criminal justice system as a whole. In her absence from court, the prosecutor had asked for an adjournment, but this had been refused notwithstanding that Ms AB had attended two previous hearings that had gone ahead as (i) the court and (ii) the defence could not proceed. In these circumstances, I felt the stage 1 response could have shown more empathy. The correspondence on the file also showed a depressing cycle of the WCU blaming the courts system, HMCTS blaming the prosecution team, etc.

At stage 2 it was acknowledged that the criminal justice system had let down Ms AB. But it was again emphasised that the CPS was not at fault and had given the correct time of the hearing to the WCU. A fuller explanation of when and how a restraining order can be applied for was given (a matter afforded more cursory attention at stage 1). The stage 2 response was a few days late, a holding letter having been sent on day 20 (which is not best practice).

Case 39: Ms AB had been prosecuted for theft of jewellery from a relative. At Crown Court she had been found not guilty. Ms AB had a sophisticated understanding of the prosecution process, and complained that the Code for Crown Prosecutors had not been followed given the evidential weaknesses of the case against her. The stage 1 response acknowledged that a statement undermining the prosecution had been wrongly served as notice of additional information, and that the defence should have been told that the witness was not to be called by the prosecution. Despite this, the outcome of the complaint was recorded as not upheld – presumably on the grounds that overall it was

judged there was sufficient evidence for a realistic prospect of a conviction. The stage 1 was of good quality, although it contained one factual error in that the witness whose evidence the prosecution did not intend to use was in fact called at the request of the Judge.

Little was added at stage 2 which endorsed the decision to prosecute – pointing out, amongst other things, that the Judge did not dismiss the case at the close of the prosecution evidence.

Case 40: Mr AB was a patient in a special hospital (and actually known to me from a previous life). He had been attacked by a fellow patient; the CPS had accepted a plea to assault causing actual bodily harm after initially charging attempt to cause grievous bodily harm. It seems that a Direct Communication with Victims letter was not sent (a breach of paragraph 2.8 of the Victims' Code, although not identified as such at either stage 1 or 2). The stage 1 response apologised for not informing Mr AB of the decision to accept a plea, but nonetheless the complaint was recorded as not upheld. Unfortunately, the stage 1 response was addressed to a Mr CD, and it appears it went missing. It was sent again some months later after Mr AB wrote to me.

At stage 2, the legal decision was endorsed – the response saying that the eventual sentence (a hospital order with restriction) would have been the same.

Stephen Shaw CBE
Independent Assessor of Complaints
c/o Crown Prosecution Service
102 Petty France
London
SW1H 9EA

IAComplaints@cps.gov.uk