

**Independent Assessors of Complaints
for the Crown Prosecution Service**

Annual Report 2018-19

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1. Introduction

1.1 We are pleased to present our annual report for 2018-19 as the two Independent Assessors of Complaints (IACs) for the Crown Prosecution Service (CPS). For one of us (Moi Ali), this is the first annual report for which we have been responsible. For the other (Stephen Shaw), this is his sixth and final report.

1.2 We have worked together since November 2018, and will continue in tandem until the middle of 2019. At that point, Moi will become the sole IAC, although she will be able to call upon Stephen if there are spikes in workload that would otherwise cause unacceptable delays for complainants. This will provide the contingency arrangements that we both believe are essential to the service we offer. It will also provide assurance to the CPS that the independent tier of its complaints procedure is robust.

1.3 This report is structured as follows. After this brief introduction, in section 2 of the report we provide details of the incoming caseload, and our output and performance against time targets. We also offer some general impressions from the casework we have conducted. The bulk of the report is made up by section 3 where we present anonymised case studies of the complaints we have reviewed.

Terms of reference

1.4 Our role is to consider 'service' complaints that have been through the two internal stages of the CPS's complaints procedure. 'Legal' complaints do not come within our jurisdiction, although the distinction between 'service' and 'legal' matters is not one that all complainants easily recognise. Indeed, most grievances have a hybrid character, including those where the service element may be tangential to the more central, legal aspects.

1.5 When the service element is of marginal concern to the complainant, and bearing in mind that our reviews are funded by the taxpayer, it is important that any IAC involvement is proportionate to the issues at stake. For that reason, we greatly welcome the new clause in our terms of reference (paragraph 3.3) that expressly requires us to consider the extent of any review we conduct and to

bear in mind the public interest. We have attached the latest iteration of those terms of reference as an annex to this report.

1.6 We have proposed to the CPS that they consider further amendments to the terms of reference. First, we are not convinced that the requirement for the IACs to submit a half-year report to the CPS Board in addition to this annual report represents good value for money. We do of course greatly value the support and interest that has been shown in our work by successive Directors of Public Prosecutions, their Chief Executives, and Board members. And we think that the IAC should continue to appear before the Board on a six-monthly basis. However, we do not think that the preparation and publication of a half-year report is required in the interests of public accountability. So far as we are aware, it is not generally the practice of similar post-holders serving other Government Departments to publish a half-year report.

1.7 Likewise, we think that the requirement to conduct an annual dip sample of complaints that have not reached the third, independent tier is unnecessary. We are content that the new internal arrangements requiring senior managers to quality assure complaints responses (see paragraph 2.19 below) represents a more-than-adequate level of oversight. Moreover, a national survey of just 40 complaints of the kind that the IAC has conducted in recent years does not provide sufficient learning for individual CPS Areas and specialist directorates. There may indeed be a case for IAC review of stage 1 and 2 complaint responses, and we will in any case continue to express any concerns in individual reviews and in this annual report. But the current wording of the terms of reference requiring the IAC to conduct an annual, national dip sample should be revised or removed entirely.

Sharing the learning

1.8 In addition to our principal responsibilities as complaints adjudicators, we welcome the opportunity of sharing the learning from our reviews in presentations to CPS staff across the country. It has been the recent practice to try to ensure that a visit is made to each CPS Area and specialist directorate over a two-year cycle, and we suggest that this should continue. One of the many benefits is that this enables us to speak face-to-face with the staff whose work we oversee: whether Victim Liaison Officers, lawyer managers, or Deputy and Chief Crown Prosecutors.

1.9 It may be that there are additional means that we could deploy (webinars, contributions to formal training, greater use of the CPS's internal communications) to assist in this process of 'learning the lessons'.

Acknowledgements

1.10 Since the office of the Independent Assessor of Complaints was first established in 2013, the support offered by successive Directors of Public Prosecutions, their senior colleagues in Headquarters, and the senior leadership of the CPS Areas has also been a great source of strength. This has also been true of the lawyers who are responsible for the stage 1 responses to complaints, and the staff of the Victim Liaison Units (VLUs) who are the CPS's frontline with the public that it serves. The quality of much VLU work is extremely high, often in very testing circumstances. We are not sure it is always as appreciated by other CPS staff as it is by us.

1.11 Independent oversight is rarely comfortable for those whose actions, inactions and decisions are overseen. However, the respect shown to us at all levels of the CPS is characteristic of what we believe to be a very healthy culture in regard to complaints, and the genuine commitment to provide the highest level of service to fellow citizens.

1.12 We must conclude this brief introductory section by expressing our great thanks to those CPS colleagues who provide us with back office support: Mr Tony Pates, Assistant to the IAC, and Ms Mercy Kettle (Head of the Parliamentary and Complaints Unit), and her predecessor, Mr Kieran Boucher. It is no easy task balancing their support for us as independent post-holders with their loyalty to their employer. They have done so with consummate skill and tact.

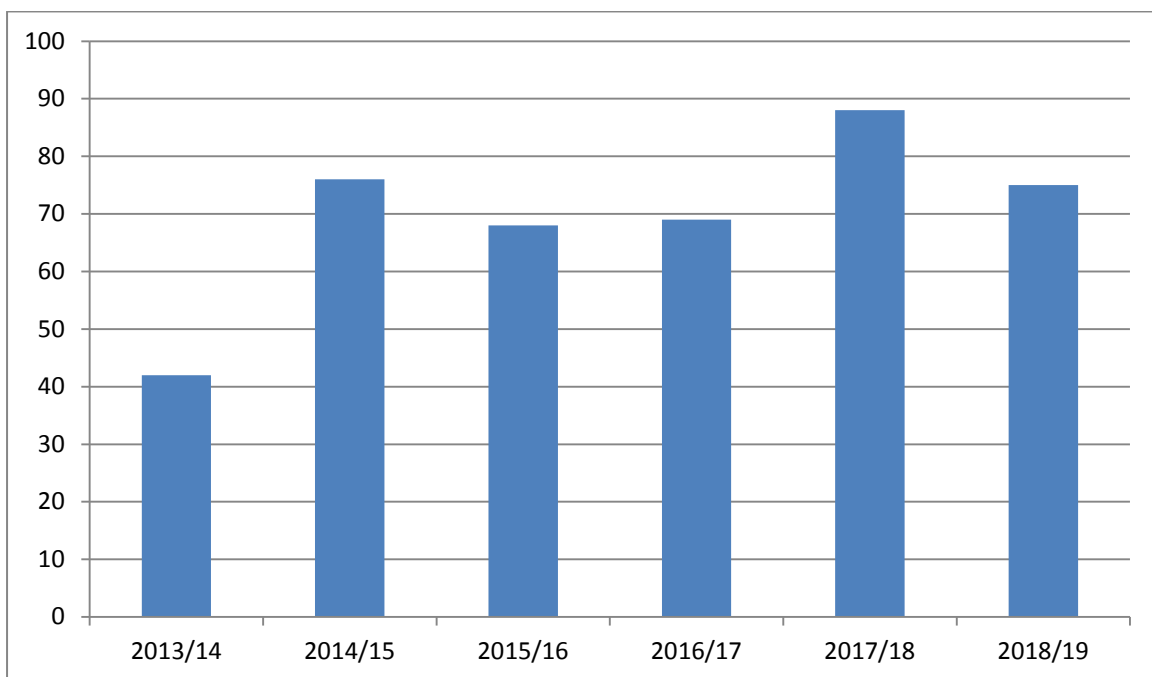
2. Caseload

Input

2.1 We received a total of 75 complaints in the year to 31 March 2019. This compared with 88 complaints in 2017-18; 69 complaints in 2016-17; 68 in 2016-17; 78 in 2014-15; and an annualised rate of 42 in 2013-14.¹

2.2 As this shows, with the exception of the first year, the annual number of referrals has been fairly constant since the IAC process was established six years ago. The annual total referrals are illustrated in the bar chart below.

Annual number of complaints received by the IACs



2.3 The monthly totals are more likely to fluctuate. For example, the monthly number of referrals in 2018-19 has ranged from just four to ten, and this can present significant difficulties for the management of workflow. In the years since 2013, the lowest monthly number of incoming cases was one (experienced on three occasions, most recently in September 2016), while the highest was 12 (August 2017). Although some of these monthly variations even themselves out over a quarter,

¹ There were in fact just 29 referrals in the period from 20 July 2013 (when the IAC scheme first went live) to 31 March 2014.

it is instructive that the three-month moving average for incoming cases for 2018-19 fluctuated from 15 to 23. No seasonal patterns are discernible.

2.4 A breakdown of the 75 complaints received by CPS Area is shown in the table below, along with a comparison with the two previous years.

Stage 3 complaints accepted by CPS Area, 2018-19, 2017-18 and 2016-17

| CPS Area | IAC Complaints 2016-17 | IAC Complaints 2017-18 | IAC Complaints 2018-19 |
|-------------------------------------|---------------------------|---------------------------|---------------------------|
| Cymru/Wales | 10 | 6 | 4 |
| East Midlands | 4 | 10 | 10 |
| East of England | 9 | 10 | 8 |
| London (South and North combined) | 13 | 16 | 8 ² |
| Mersey Cheshire | 1 | 4 | 5 |
| North East | 4 | 7 | 5 ³ |
| North West | 3 | 5 | 2 |
| South East | 2 | 2 | 5 |
| South West | 1 | 2 | 6 |
| Special Crime and Counter Terrorism | 1 | 0 | 0 |
| Specialist Fraud Division | 0 | 0 | 1 |
| Thames & Chiltern | 6 | 12 ⁴ | 3 |
| Wessex | 2 | 5 | 4 |
| West Midlands | 7 | 5 | 3 |
| Yorkshire & Humberside | 6 | 6 | 10 ⁵ |
| Total: | 69 | 88 | 75 |

² London South = 5; London North = 3.

³ Including one case involving the North East and Yorkshire & Humberside jointly. This is of course only counted once in the total.

⁴ Includes one complaint also engaging CPS Proceeds of Crime.

⁵ Footnote 3 applies.

2.5 The table shows that just four CPS Areas (East Midlands, East of England, Yorkshire and Humberside, and London⁶) generated nearly half of our caseload, although the figures for London in fact show a halving over 2017-18.

2.6 We are inclined to the view that the variations between Areas in terms of stage 3 complaints are essentially random (when corrected for differences in Area size), as would be statistically expected of relatively small numbers. The same is probably true of the year-to-year variations. However, some Areas (the North West and West Midlands are two examples) do seem to experience very few complaints that proceed beyond the two internal stages of the CPS complaints procedure.

2.7 CPS Direct and the specialist divisions also rarely feature in our workload.

Output

2.8 By chance, the number of completed reviews (75) was equal to the number of incoming cases. We completed 68 of the complaints received in 2018-19 plus seven that carried over from 2017-18.

2.9 Fifty of the complainants were victims or the relatives or representatives of victims, and four were witnesses.

2.10 No fewer than 21 of the complainants were defendants or those who had been considered for prosecution. This is entirely out-of-line with the representation of defendants in the CPS complaints process as a whole. All but two of the defendants whose complaints we considered were male.

2.11 In contrast, more than half of the victim complainants were women, including many victims of harassment or domestic violence at the hands of men.

2.12 As in past years, we upheld (34 cases) or part upheld (22 cases) the majority of complaints referred to us. However, as we have explained both in annual reports and in presentations to CPS staff, our caseload is very unusual compared to other independent complaint handlers in that most of our complaints have already been upheld (and redress offered) by the CPS itself.

⁶ As was the case 12 months ago, we have amalgamated complaints from London South and London North. This ensures comparability with the figures given in past annual reports. We would expect to show disaggregated results for London North and London South from next year.

2.13 Although we understand the organisational and reputational significance often attributed to an ‘uphold rate’, in the context of the independent tier of the CPS complaints procedure we think it is of relatively little value.

2.14 We did not uphold 15 complaints, three we judged had been settled restoratively (by the CPS inviting the complainant to a face-to-face meeting), and one we felt was out of remit.

2.15 We made recommendations in just 19 cases compared with 29 cases in 2017-18 and 30 cases in 2016-17. The decline in formal recommendations is, we believe, an indicator of the CPS’s own improved performance in complaint handling in that redress has already been identified and offered.

2.16 The most frequent recommendations were for an apology, a consolatory payment, or a change to information.

2.17 In line with HM Treasury guidance, consolatory payments from the public purse must be modest in size. In the cases closed during 2018-19, the most frequent payment was £250, and the total we awarded was £2,600 (compared with £3,470 in 2017-18). In addition, in one case we recommended compensation for actual financial loss (which is not subject to the same Treasury restrictions as to quantum) of £3,000.

2.18 We welcome the fact that the CPS is itself making consolatory payments in circumstances where an apology and explanation do not represent sufficient redress. Unless the amount of the payment is so low as to be unreasonable, we would not wish to encourage complainants to think that we are a point of appeal to secure a larger sum of public money, and do not readily substitute a different figure from that offered by the CPS Area.

2.19 We remain of the view, however, that CPS staff are not as alert as they should be in identifying cases where there has been a breach of the Victims’ Code (*Code of Practice for Victims of Crime*). If such cases were to proceed to the Parliamentary and Health Service Ombudsman (PHSO), they could well result in the award of consolatory payments that really should have been identified much earlier in the process.

Performance

2.20 All of the 75 cases closed in 2018-19 were completed within the 40 working day target set by our terms of reference.

2.21 However, our clock only starts when the case is formally referred, and we must acknowledge that there was delay for a number of complainants before their cases were passed to us. We are satisfied that complainants were properly informed when the initial eligibility checks were completed by our office and when their cases were actually referred for our attention.

2.22 We are grateful to the CPS for ensuring that it generally meets its performance targets for commenting on drafts of our reports.

2.23 Most IAC reviews are concluded with a formal report, but some complaints are closed by letter where this seems more appropriate.

Themes

2.24 Past annual reports have included a separate chapter drawing out themes from our casework. We have dispensed with that practice this year for two reasons – one encouraging, one less so.

2.25 The encouraging reason is that we have seen this year a continuation of the culture change on the part of the CPS in its approach to complaints. Complainants' questions are generally answered; time targets are generally adhered to; the spelling and formatting of letters is much improved; if there have been failings on the part of the CPS these are acknowledged and appropriate redress is offered; and efforts are made (with varying degrees of success) to demonstrate empathy and sensitivity.

2.26 These trends are likely to be bolstered by the system of internal auditing that the CPS has introduced following the report by HM CPS Inspectorate, *Victim Liaison Units: Letters sent to the public by the CPS* in November 2018. However, in our view no less effort should be put into getting it right first time – not least, by ensuring there is time for reflection and peer review. Letters should be drafted several days inside the 20-day target to ensure that this is the case.

2.27 Less happily, the themes emerging from our casework reflect those that have been recited in successive IAC annual reports.

2.28 Many of the complaints continue to concern the actions, inactions or decisions of members of the independent bar acting in the magistrates' court on behalf of the CPS. In a number of reviews we have formally recommended that our reports are shared with the barristers concerned, although we hope this is routine practice without our needing to make a recommendation.

2.29 Issues surrounding disclosure or, more accurately, the timeliness and diligence of the CPS in chasing the police for information, are also a regular feature of our casework.

2.30 A failure to achieve justice for victims of domestic violence, or at least to ensure their protection through restraining orders, also continues to cause us concern.

2.31 Illustrations of that change in CPS culture, and the recurrence of familiar failings, will be found in the case studies that follow.

3. Case summaries

3.1 We set out below summaries of selected cases closed in 2018-19. As in previous years, some details have been removed or been subject to minor alteration to ensure anonymity.

3.2 Although it is standard practice on the part of Ombudsmen and other complaint assessors to include anonymised case histories in annual reports and other digests, we suspect that extra care now has to be taken to avoid any possibility of complainants' rights under the General Data Protection Regulations being infringed.

3.3 Some cases summarised here have already been reported upon in the IACs' half-year report to the CPS board.

Flaws in complaint handling

Mr AB complained that a CPS letter had had the wrong first name (the name of his son). He said the postman had re-directed the letter to his son resulting in embarrassment and a breach of information security. This trivial matter had proceeded all the way to the IAC, who concluded that the wrong name was simple human error and coincidence. However, the IAC found significant flaws in the complaint handling (wrong start dates on the CPS's KIM database, wrong outcome on KIM, wrong escalation paragraph used, holding letter not sent). The IAC made no formal recommendations but suggested the review be shared with relevant staff.

Breach of Victims' Code #1

Ms AB complained about the CPS decision to offer no evidence in a case involving breach of a non-molestation order designed to protect her children. This was a legal decision (albeit one the CPS now said was wrong) and therefore not within our remit. However, there had also been a failure to send her a victim letter (on the false basis that she and her daughters were not victims) – and in consequence the Victim's Right to Review (VRR) was not invoked. The IAC suggested this was a breach of Ms AB's rights under the Victims' Code, although (some delay aside because of the longer time limits for a complaint) no detriment had ensued in that both stage 1 and stage 2 complaints responses had judged the legal decision as wrong but explained that there was no possibility in law of reinstating the case. The IAC also found various flaws in the complaint handling. The complaint upheld but with no recommendations.

Breach of Victims' Code #2

Mr AB was the victim of criminal damage to his front door and car. The failure of the police to respond to CPS requests for a compensation schedule and receipts/estimates meant that this information was not before the sentencing court. The IAC was content that the CPS had done all it could have done to chase this information, but the CPS itself was responsible for the failure to present Mr AB's Victim Personal Statement (VPS) to the Court – a breach of his rights under the Victims' Code. The VPS (which included full details of Mr AB's estimated losses) had been received by the police but not uploaded to the prosecutor's digital bundle. In consequence, the IAC upheld the complaint and proposed a consolatory payment of £250.

Failure to secure ABE interview

Mr AB complained on behalf of his elderly mother. Charges of public order offences and exposure had been made against one of her neighbours. However, her ABE (Achieving Best Evidence) interview had been excluded by the District Judge, which meant four of the charges were dropped. In respect of the fifth, the court accepted a defence application after the prosecution case had been heard of no case to answer. The IAC found there had been significant failures by the reviewing lawyer in failing to secure the ABE interview, with the consequence that there was no time available for it to be shared with the defence or to be edited. There had been a number of other failures by the CPS, one of which had resulted in Mr AB, his brother and mother attending a hearing that could not proceed. There had been extensive correspondence, but the complaint handling had been generally sound. The complaint was upheld but with no recommendations.

The benefits of Plain English

Ms AB had been the victim of offences at the hands of a former boyfriend including false imprisonment. Her complaint focussed on what she had been told by the barrister when the defendant offered to plead. Ms AB, supported by her ISVA (Independent Sexual Violence Advisor) who had been present, said that the prosecutor had said that the defendant would plead guilty to all offences. The prosecutor (supported by a police officer and a CPS paralegal), said he had explained that the defendant had pleaded guilty to the false imprisonment on a full facts basis – but would not plead guilty to the sexual assaults. The IAC found the prosecutor's account more persuasive; the idea that he would tell a 'bare faced lie' in front of a police officer and paralegal seemed implausible.

But the lesson of the review was the need for absolute clarity so that the recollections of prosecutor and victim were not so at variance (in this case, as in others). Good practice had been shown in offering face-to-face meetings, but this had led to further complaint as the victim had expected a different outcome than was ever possible. The IAC made no formal recommendations, but felt the case was a reminder of the need for absolute clarity in discussions with members of the public ("if that means some lawyers adopting the precepts of Plain English, then so much the better.")

Firm line with police disadvantages victim

Mr AB had been seriously injured by a learner driver who was unaccompanied (except by three small children) and did not have L plates. Just before the six-month Statutory Time Limit, the police submitted a very incomplete file. The CPS discontinued the case, but subsequently acknowledged that, in light of Mr AB's injuries, it should have made further enquiries of the police. However, the IAC review found that because this was just one of 40 incomplete files received in a month, a 'policy' decision had been taken to take a 'firm line' with the police. The IAC was concerned that this did not prioritise the interests of victims. In light of national significance of issue of poor file preparation by the police and the CPS taking a 'firm line' at potential risk to the interests of victims, the IAC recommended that a copy of the review be shared with the Director of Public Prosecutions. The IAC also awarded Mr AB £250 as a consolatory payment.

An upheld complaint from an acquitted defendant

Mr AB was a defendant, acquitted of assault by beating against his ex-wife. A non-conviction restraining order was successfully applied for by the prosecution, but the CPS accepted that no advance notice had been given to the Court or the defence. Indeed, the prosecutor did not mention her intention to make an application until after Mr AB was acquitted. The CPS had also acknowledged failures in complaint handling. The IAC identified a couple of other minor errors, and upheld the complaint, but felt that no redress could properly be offered beyond the findings of the independent report itself.

Prosecutor says it is her job to win

Mr AB had been acquitted of an assault alleged to have been committed during the course of a neighbour dispute. He said that discussions on plea amounted to an attempt to bribe him to plead guilty, and he also criticised an inaccurate record of the trial outcome in the Court register. He said

that the prosecutor in court had wrongly declined to allow a witness statement to be read to the court, and that she had said it was her job to win. Mr AB also criticised the extent of the CPS investigation of his complaint – he said that no one had spoken to him. The IAC concluded that the discussions surrounding plea were mainstream conversations between prosecution and defence, and neither Mr AB's lawyer nor the District Judge had objected. Likewise, the entry in the Court register was not a responsibility of the CPS. However, the CPS had accepted that the prosecutor's remark that her job was to win had been inappropriate. Regarding the refusal to allow the statement to be read, this was a legal judgement on which the IAC could not comment. However, the IAC questioned whether the decision was in line with the relevant CPS guidance on section 9 statements (witness statements to be used as written evidence). Overall, the IAC did not share Mr AB's view of the complaint handling which the IAC thought had been proportionate and efficient. The tone and content of the stage 1 and 2 letters had also been proper. The IAC did not think there was any need for Mr AB to be spoken to as part of the Area's complaint investigation as the terms of his complaint were perfectly clear. The IAC part upheld the complaint but made no recommendations.

Failure to make further enquiries with the police about a possible witness

Mrs AB had been hit by a car while crossing the road. She had suffered serious and enduring injuries. When the case came to trial, the magistrates accepted a defence submission of no case to answer. Mrs AB criticised CPS case preparation but, so far as the IAC could judge, all the 'legal' decision making was as would have been anticipated. However, at stage 2 it had been identified that the reviewing lawyer had failed to make further enquiries with the police regarding a possible witness and whether a statement could be taken from them. (Whether such a statement, if forthcoming, would have assisted the prosecution obviously could not be known.) The IAC felt the complaint handling had been technically sound, although the service failure had not been identified at stage 1. And the IAC criticised the stage 1 response for failing to acknowledge the extent of Mrs AB's injuries and the impact they had had on her life. On a more minor point, the IAC noted that unsigned drafts of the stage 1 and 2 letters had been uploaded to KIM and suggested that it would be better if signed copies were retained. The IAC part upheld the complaint but made no recommendations.

CPS conducts proper enquiry into defendant's allegation against prosecutor

Ms AB had pleaded guilty to two offences of harassment on a full facts basis. She complained that the prosecutor at the sentencing hearing had accused her of faking a letter she had sent to one of her victims. The IAC found that the CPS had conducted a proper enquiry – seeking the views of the prosecutor, the court, and the defence solicitor – none of whom suggested that there had been any misrepresentation or misconduct by the prosecutor. Ms AB offered the IAC the name of a further witness who she said would corroborate her account – but the IAC felt this would not be proportionate as, even were he to support Ms AB's account, this would still have to be weighed against the other evidence (including the Court's contemporaneous note) and would take the matter no further forward. The IAC did not uphold the complaint.

Minor anomaly in evidence does not give rise to compensation

Mr AB had been prosecuted for harassment, but had successfully appealed against conviction. The crux of his complaint concerned a failure by the CPS to address an anomaly in the evidence (the day and date given by the victim for one of the incidents were mutually incompatible). The IAC agreed with the stage 2 response that, once this anomaly had been brought to the CPS's attention, it should have been acted upon more promptly. (The flaw had not been identified at stage 1.) Indeed, one adjournment of the appeal could have been avoided had action been taken. However, the IAC did not think that Mr AB had any claim for compensation. Amongst other things, it was clear that his own behaviour did him no credit. The IAC noted that the Crown Court had not awarded him costs, and had endorsed a three-year restraining order. The IAC part upheld the complaint but with no recommendations.

Good CPS responses to father's complaint

Mr AB's young son had been the victim of an assault by a group of boys. The one defendant whom the son could identify was acquitted as the District Judge could not be certain of the identification. Mr AB complained about the responses he had received to his complaint (all of which initially concerned the legal decision making and the Court's finding of not guilty). The IAC considered the complaint handling and, some very minor technical issues aside, was entirely happy with the responses given at stage 1 and 2 both in tone and content. Although it was apparent why Mr AB had continued his complaint, believing that justice had not been done, there was in practice nothing that

the IAC could offer him to make matters right. The IAC replied by letter and did not uphold the complaint.

Summary only case not spotted for 15 months

Ms AB had been stalked for a year by a former partner. When the case came to trial the CPS wrongly allowed the defendant to elect trial by jury when the offence was summary only. This flaw was not spotted for 15 months by the CPS, or by any other legal professional involved. When the mistake was finally identified the case went back to the magistrates' court, but there was a further delay of eight months before trial. At trial the defendant was acquitted (the District Judge said he thought the defendant was guilty but not to the required standard of proof). A non-conviction restraining order had been imposed. It emerged at stage 2 that the fact the charge was summary only had indeed been spotted by a reviewing lawyer, but this review was not included in the court papers for the prosecutor – presumably the result of an administrative error. The IAC said that the CPS had to take its fair share of the responsibility for the delay caused by the incorrect referral to the Crown Court, but not for the final eight months. The IAC felt the CPS offer of £300 as a consolatory payment was not so low that that it would be right to substitute a different sum. However, the IAC was concerned that the stage 1 response had been sent prematurely (albeit late) while CPS HQ was still considering whether a consolatory payment was justified. The IAC speculated that it might not have been forthcoming had Ms AB not escalated her complaint to stage 2. The IAC upheld the complaint and recommended that the Chief Crown Prosecutor consider if there were colleagues within HM Courts & Tribunals Service with whom the review should be shared.

Delay on the part of the reviewing lawyer

Mr AB had been assaulted by a number of men including a neighbour. It took 16 months from the assault to the sentencing hearing after the men pleaded guilty to affray. Mr AB's complaint engaged most parts of the criminal justice system, but the CPS acknowledged that there had been a delay in the reviewing lawyer looking at the police file and discovering that requested identification procedures had not been carried out. This had contributed just over two months to the total time taken. Mr AB sought compensation but the IAC did not believe this was justified. Both the stage 1 and stage 2 letters were excellent – the stage 1 being one of the best the IACs saw all year. The IAC part upheld the complaint but made no recommendations.

Failure to advise bereaved parent of unduly lenient sentence procedure

Mr AB's son had been murdered. Mr AB was dissatisfied with the minimum term of the life sentence imposed, but was not advised of his right to ask the Attorney General to consider referring the matter to the Court of Appeal as an unduly lenient sentence. Mr AB only found out about this right after the absolute 28-day time limit had already passed. The IAC said this was a very disturbing failure on the part of the CPS. Whether the Attorney General would have made a referral (and whether the Court of Appeal would have deemed the sentence unduly lenient) were matters of speculation. The important thing was that Mr AB was denied the right to have the sentence tested. However, the IAC did not share Mr AB's view that the CPS had failed to acknowledge its responsibility. On the contrary, it was clear that action was being taken at the highest level to ensure prosecutors were aware of the unduly lenient sentence procedure. The IAC upheld the complaint but made no formal recommendations. However, the IAC suggested that the DPP might wish to consider if advice about the unduly lenient sentence procedure should be offered nationally.

CPS not responsible for police delays

Mrs AB complained about a CPS decision not to prosecute in the case of a neighbour dispute. She said that there had been delays in the CPS making prosecution decisions, that she had initially been rejected for VRR, and that the local resolution VRR had been sent by post leaving little time for the Appeals and Review Unit (ARU) to complete its review before the statutory time limit for summary offences was reached. She also said that the email address she had been given for the ARU was wrong. At stage 2, it was also acknowledged that there had been two errors with the dates given in the stage 1 letter. The IAC reported these mistakes (and other minor flaws in the complaint handling), but said that any delays were the result of failures by the police to provide the full evidence. Each of the three requests for charging advice had been completed well within the CPS's 28-day target. Mrs AB had said that apologies were insufficient, but the IAC did not feel that the flaws identified reached the threshold for a consolatory payment. The IAC part upheld the complaint and recommended that the Chief Crown Prosecutor share with relevant staff the advice on only uploading final versions of documents onto KIM. (This is an issue that has arisen in a number of reviews. The IACs' current practice is that our office corresponds separately with the Area, and the matter is not mentioned in our reports as it is unlikely to be of any interest to the complainant.)

Prosecutor wrongly accepts plea to lesser offence

Mr AB had been assaulted. The police had initially charged the defendant with a public order offence, but it was not in doubt that the reviewing lawyer intended to replace that charge with one

of assault given the additional evidence. However, when the matter went to court that same lawyer accepted a plea to a lesser public order offence instead. The Area said she could not explain her decision which it put down to 'human error'. Although the Area felt this brought the matter within the IAC remit, the IAC felt that this was a legal misjudgement and therefore not a service failure. However, given that the complaint had been flagged by the Area as coming within our jurisdiction, the IAC felt it only right to continue the review. The IAC found some relatively minor complaint handling failures including the wrong sentence details being given at stage 1 and it remaining uncorrected at stage 2. The IAC upheld the complaint but made no recommendations.

No improper delay by CPS

Mrs AB and her husband had been considered for prosecution on charges of child cruelty. The charges against Mrs AB had been discontinued, and at trial the prosecution accepted a plea from her husband to assault causing actual bodily harm (ABH). Mrs AB criticised the CPS's legal decision making – she said that the prosecutor had acted maliciously, and drew attention to the time the whole matter had hung over her family. The IAC concluded that most of Mrs AB's complaint concerned legal judgements outside our terms of reference. Nor could the IAC identify any improper delay (indeed, it was clear that the CPS reviews had been conducted diligently). There were some technical flaws in the complaint handling but the IAC did not uphold the complaint overall, and replied by letter.

Kind and detailed CPS responses to vulnerable victim

Mrs AB was the elderly victim of violence at the hands of her husband. She complained that video-recorded evidence that she had provided had only been shown in shortened form to the court, and that earlier assaults on her had not been charged. The CPS had explained that the older matters were time-barred, and that evidence of bad character could not be introduced. It also said it was the responsibility of the police to ensure that Mrs AB was informed in advance of the charges her husband was to face. The IAC found that the CPS replies were kind and detailed, but there could have been a fuller explanation of why the video-recorded statement could not be shown except in truncated form. The IAC also noted that the stage 2 response had corrected the stage 1: there was no obligation on the CPS to ensure that victims knew in advance of the trial whether evidence of bad character was to be used. The IAC did not uphold the complaint and replied by letter.

Serious failing by agent prosecutor

Ms AB was the victim of fraud. When the matter came to sentencing, the agent prosecutor failed to inform the court that compensation was sought despite this being in his bundle. No VPS was read to the court either (a breach of Ms AB's rights under the Victims' Code). The CPS had accepted serious failings and the agent prosecutor was not to be engaged again. In addition, a consolatory payment of £500 had been offered. The IAC took the view that the part of our terms of reference dealing with compensatory payments for material loss was also engaged. It was not certain what compensation order the court would have made, but the IAC was concerned that Ms AB should be protected from the inconvenience and delay of a further referral of her complaint to the Parliamentary and Health Service Ombudsman. The IAC upheld her complaint and recommended the CPS pay the full extent of her losses – some £3,000.

Poor practice by agent prosecutor

Ms AB complained on behalf of her mother, the victim of a burglary. Although not identified at stage 1, the CPS had subsequently agreed that the wrong charging decisions had been made, and that charges against one of two defendants had been mistakenly dropped. The stage 2 review was extremely thorough but had been delayed by many months – and there had been a failure to update the complainant. It was also clear that there had been a breach of the Victims' Code. The victim's request to have her VPS read aloud (a matter of particular importance as she wanted the offender to know the sentimental value of the items he had stolen) had not been shared with the court by the agent prosecutor. Indeed, it appeared that he routinely asked sentencers if they had read the VPS without reference to the victims' wishes. The Area had offered a consolatory payment of £500 and had taken actions designed to prevent any recurrence of what had taken place. The IAC concluded that the sum was appropriate and in line with Treasury guidance. The IAC upheld the complaint but could make no additional recommendations.

Disproportionate correspondence with defendant

Mr AB had pleaded guilty to a serious motoring offence. Seven months later he wrote to the CPS to complain about aspects of the prosecution. In particular, he said that his request for the Initial Disclosure of the Prosecution Case (IDPC) had not received a response, and that the prosecutor had 'lied' when denying details of an agreement between the prosecution and defence that a hearing would be adjourned. As a consequence, Mr AB had been arrested. This matter was treated as feedback, but the IAC felt it would have been better had it been acknowledged as a complaint at the outset. In practice, Mr AB had received five detailed replies from the Deputy Chief Crown Prosecutor, but no escalation (other than to the IAC, a curious feature of a matter treated as feedback). The IAC felt that there had been a lack of proportionality. It had been explained to Mr AB that his request for the IDPC had been sent to a police station and never received by the CPS. Nor had the prosecutor lied (it seemed the mistake was on the part of the defence). But the IAC did find failures in CPS case management – hence the complaint was part upheld. The IAC made no recommendation but observed that the CPS should now consider all correspondence on this matter to be closed.

Insufficient candour in stage 1 and 2 responses

Ms AB was the victim of road rage. When it became clear before the final hearing that Ms AB could not attend, the CPS applied unsuccessfully for a further adjournment. When this was refused, the CPS decided to discontinue as the remaining CCTV evidence would be insufficient in the absence of the victim. Ms AB criticised both the CPS handling of the prosecution and the terms of the replies to her complaint. The IAC found that what was acknowledged in the CPS background note prepared for the third tier review had not been shared with Ms AB at stages 1 and 2. It was arguable therefore that her complaint should have been part upheld. However, the IAC did not think the case for a consolatory payment had been made out. Ms AB had ample reason to believe that justice had not been done, but this was the result of decisions (whether justified or otherwise) across the criminal justice system. The IAC part upheld the complaint, and recommended that the Chief Crown Prosecutor write to Ms AB in acceptance of the findings and to apologise for the failure to provide full explanations at stages 1 and 2.

Lack of candour regarding delay in progressing European Arrest Warrant

Ms AB's son had been the victim of a very serious, unprovoked, attack with a knife. The suspect had fled the country, and Ms AB complained about the delay in issuing a European Arrest Warrant (EAW). The stage 1 response was not as candid as it could have been. Although the police had not asked for CPS assistance until nine months after the attack, there was then a period of delay (caused by work overload and poor time management) in progressing the EAW. This was acknowledged at stage 2 and a full apology offered. The IAC also found some flaws in the complaint handling. The IAC upheld the complaint, making no formal recommendations. However, the review would be seen by the DPP who would consider if further guidance should be issued across the CPS in respect of the priority to be attached to the issuing of EAWs.

CPS failure to apply for a compensation order

Mr AB had unknowingly purchased a stolen car that had been cloned. His principal grievance was against the police (who had disposed of the vehicle without his knowledge). But he also criticised the CPS for failing to apply for a compensation order. The CPS said that it was likely this was a legal decision reflecting the fact that custodial sentences had been imposed (and perhaps the fact there were eight other victims). However, no record could be found to explain the decision making. The IAC felt that, notwithstanding the absence of any formal guidance, it would be good practice to alert victims in advance in such circumstances. The IAC part upheld the complaint but made no recommendations.

The benefits of face-to-face meetings

Mr AB was a witness in a case of aggravated burglary of which his father was the victim. On the day of the trial the CPS offered no evidence. Mr AB questioned why the decision had been made at the last moment, given the stress and anxiety he had suffered in anticipation of the trial. He also said that he had only learned on the trial date itself that his request for special measures (screens) had been granted. For its part, the CPS agreed that the decision to discontinue could have been made earlier (a legal decision but one with clear service implications), and that more could have been done to chase the court for a response to the request for special measures. As well as endorsing these outcomes, the IAC said that it was disappointing that Mr AB's request at stage 2 to speak with someone from the CPS had not been taken up. The IAC said that the growing practice on the part of the CPS of speaking with a complainant either face-to-face or by telephone was to be both commended and encouraged. Had it been done on this occasion, the stage 3 independent review might have been avoided. The IAC upheld the complaint in full but made no recommendation as Mr AB had said that he did not want an apology from the CPS.

Clarity in explaining purpose of a face-to-face meeting

Mr AB's mother had been killed by a lorry while out walking. The Judge had accepted a defence submission of no case to answer after the prosecution case had been heard. The CPS had decided not to appeal against the Judge's decision, and the IAC considered that this was a legal matter outside our jurisdiction. However, Mr AB also complained about the meeting to which he had been invited by the CPS. He had anticipated being able to influence the decision but in fact was presented with a *fait accompli*. For its part, the CPS had acknowledged a need for "greater clarity", although it did not think that asking a police officer to explain the outcome in advance was sensible or desirable. The IAC said it was important not to be too prescriptive, but suggested that the CPS could have made a phone call in advance. This was a matter on which further advice to staff might be considered.

Face-to-face meeting resolves tragic affair

Mr AB's son had been charged with offences but released on bail. Tragically, he then took his own life. Mr AB had asked for a meeting with the CPS but instead he had received formal responses at stages 1 and 2 of the complaints process. When the matter was escalated to the third (independent

tier), the IAC was not persuaded that a further formal letter would assist, and went back to the CPS Area to suggest they held a face-to-face meeting. This was agreed (much to Mr AB's satisfaction), and the IAC regarded the matter as having been closed restoratively.

Ensuring the court is aware that a victim wishes to read their VPS aloud

Mr AB had been the victim of assault causing actual bodily harm. He complained that the sentence imposed on the perpetrator was inadequate and accused the prosecutor of being party to a deal. In fact there had been no contact between the CPS and the defence before the defendant decided to enter a guilty plea. There had been extensive correspondence, with the complainant accusing the prosecutor of being corrupt and telling lies. But while sympathising with Mr AB in feeling that justice had not been done, the IAC could not condone the personal attacks on the prosecutor which went far beyond the bounds of reasonable discourse. There had been two service failures – a failure to ensure that CCTV footage was before the court, and a failure to ensure the court was aware that Mr AB wished to read his VPS aloud. The IAC took the view that neither was of the greatest significance – the CCTV was not of much evidential value and the Court was fully aware of the injuries Mr AB had suffered; and the contents of his VPS had been shared with the Court (which might in any case not have allowed his request to read it himself). The IAC was also content that the CPS had considered a consolatory payment but decided against it in the circumstances. The complaint was part upheld, the IAC recommending that the Chief Crown Prosecutor should consider if staff needed further advice to ensure that victims' wishes to read their VPS aloud are met – especially in circumstances where, following a guilty plea, the victim is no longer required to give evidence.

Clear service failures in road traffic case

Mr AB's parents had been involved in a road traffic collision. The driver of the car involved had been charged with driving without due care and attention, but this had been discontinued four days before the trial. Mr AB's principal objection was to the decision to discontinue. But he also made three service complaints. First, Mr AB had been told that his grievance would be pursued through VRR but VRR does not apply to careless driving (or other non-imprisonable, non-recordable offences). Second when the reviewing lawyer did not receive an expert report on the incident from the police, he did not escalate this to a manager. Third, when deciding to discontinue, he did not send a notice of proposed discontinuance to the police. While the outcomes may not have been any different had he escalated and notified (since there were only four days until the trial) these were

clear service failures. However, apologies and explanations had been provided and, while the IAC upheld the complaint, there was no additional redress that could be offered.

Disclosure delay

Mr AB had been prosecuted for possession of an offensive weapon and assault. The Judge had dismissed the first charge and Mr AB was acquitted of the second. Much of his complaint concerned the CPS's legal judgments (in particular, why the victims had not also been charged and the application of the public interest test). However, he also criticised the responses from the CPS as lacking detail and being sarcastic and contemptuous. The IAC did not uphold those aspects of his complaint, but was critical that correspondence from Mr AB's Member of Parliament had been replied to by the Deputy Chief Crown Prosecutor who had been the subject of personal criticism by Mr AB. The IAC also discovered that the trial had been delayed for over a year because of a failure by the CPS to disclose a 999 recording in good time. Given that Mr AB was elderly and had health problems, a delay of over a year must have added considerably to the strain he was under. The IAC part upheld but could offer no redress beyond the findings of the independent review.

Grievance against Witness Care Unit wrongly channelled through CPS complaints process

Ms AB, an Independent Sexual Violence Advisor, complained on behalf of Ms CD, the victim of historic sex offences at the hands of a member of her family. The jury had acquitted the defendant on four of the eight counts, but could not agree on the remaining four. Although the CPS had applied for a re-trial, the defence successfully argued that the defendant would not be able to receive a fair trial and the proceedings were stayed. Ms AB said that Ms CD had found out from a member of her family, and the defendant had known before her. The IAC took the view that this should have been dealt with outside the formal complaints procedure, as it is not the function of the CPS to inform victims in such circumstances, but a responsibility of the police and the Witness Care Unit. However, as the matter had gone through both stages of the CPS complaints process, and the IAC role had been specifically mentioned, it seemed right to continue a limited review.

Poor casework in domestic violence case

Mrs AB was the victim of domestic violence. A discussion with the prosecutor before her husband's trial had resulted in a 'misunderstanding' and the prosecutor had accepted a defence basis of plea

previously rejected (this was a legal judgement on which the IAC could not directly comment). In addition, the prosecutor had failed to draw to the attention of the court a reported history of domestic abuse (albeit there had been no court proceedings). The CPS had apologised, offered a consolatory payment of £250 and required the prosecutor to undergo further training on both domestic violence and Speaking to Witnesses at Court. The IAC felt Mrs AB had been let down by the CPS, but was content that no further redress was required. The IAC also endorsed the CPS view that it could not correspond with Mrs AB's solicitor in the divorce proceedings nor alter the Hearing Record Sheet. However, all the correspondence (including the IAC report) could be shared by Mrs AB with her solicitor, and the overall file would show that the prosecutor had been in error.

Poor casework leads to compensation claim

Mr AB was a co-defendant in a case of alleged fraud and forgery committed against an elderly person for whom Mr AB acted in a professional capacity. When the matter came to trial, and after the prosecution evidence had been heard, the Judge directed the jury to return not guilty verdicts on the basis that there was no case to answer. The CPS had apologised for its failure to prepare the case fully for a Plea and Trial Preparation Hearing (PTPH). The CPS had also apologised for its failure to respond to a letter sent by Mr AB in March 2018, describing this as “a clear oversight on our behalf”. Mr AB sought compensation for his legal fees, loss of earnings and reputational damage. Given that the compensation claim was now in the hands of the Government Legal Department and the subject of litigation, there were no views the IAC could express on the merits of that claim or other recommendations that could be made.

Weak handling of witness's complaint

Mr AB was a prosecution witness in a trial. A serious error on the part of the WCU meant that witnesses were only warned two days before the trial date. One significant witness could not be traced in time. There had also been a failure to ensure that the prosecutor's file contained photographs provided by Mr AB – a failure shared by the police and CPS and apparently related to technical issues concerning the digital transfer of material. The IAC also criticised the complaint handling. The CPS had accepted that the stage 1 responder had not answered all Mr AB's questions. However, the IAC also felt that Mr AB's further correspondence could have been dealt with as extensions of stage 1 and stage 2 without the need for escalation. The complaint was upheld but no recommendations were made.

Restorative outcome to complaint about assault on son with special needs

Mrs AB's son, who has special needs, had been assaulted. At trial the defendant had been acquitted. Mrs AB was dissatisfied and had asked for a meeting with the CPS that had been rejected. However, the offer had been reinstated at stage 2 – when Mrs AB rejected it. The IAC decided that neither Mrs AB (nor the public interest) would be best served by issuing a lengthy formal report. The best way of trying to resolve matters was by inviting Mrs AB to reconsider the offer of a meeting with the CPS. This offered the greatest opportunity for her to have her questions answered. The IAC also noted that the CPS Area had separately written to ask if Mrs AB would consent to her Victim Support worker discussing the situation with the Legal Manager to see if a way of addressing her concerns could be found. The IAC asked Mrs AB to let our office know if either or both the proposal for a meeting and the discussion between her Victim Support worker and the Legal Manager were acceptable, and we would then arrange for matters to be taken forward. The case was recorded as having a restorative outcome.

Serial mismanagement of harassment case

Ms AB was the victim in a case of harassment involving her former partner. The CPS initially decided not to prosecute, but this was reversed following a review under the Victim's Right to Review. Nonetheless, when the case came to trial, the CPS offered no evidence – the result of an error by the prosecutor (an agent prosecutor) rather than as a legal decision. The prosecutor made an application for a restraining order against the defendant, but its terms offered no specific protection for Ms AB's daughter. The IAC found there had been a catalogue of errors. The initial legal decision taken by the CPS not to authorise a prosecution was wrong. Once that decision was reversed, there was a failure to keep Ms AB informed about the progress of the case and the dates of hearings. The agent prosecutor's decision to offer no evidence was based on the false belief that Ms AB had been called to give evidence. The agent prosecutor's failure to ensure that the terms of the restraining order on the defendant included Ms AB's daughter was based on a misreading (or failure to read) the instructions in his file. The letter sent to Ms AB to say that the CPS had offered no evidence was poorly drafted and failed to include an apology; the letter was also three weeks late. Despite this, the CPS had hitherto failed to acknowledge to Ms AB that this was an explicit breach of her rights under the Victims' Code. Ms AB had also had to wait months for the apology letter from the Court Liaison Supervisor, but ended up being sent three copies of the initial police letter. The errors continued into the complaints handling. The stage 1 complaint response was a month late as a result of what the CPS told the IAC was a "communication issue". The stage 2 letter was in time but

undated. The CPS had made an offer of a consolatory payment of £250. The IAC upheld the complaint in the strongest terms. In recognition of the Victims' Code breach, the IAC recommended increasing the consolatory payment to £500.

Limit to amount of consolatory payment

Mr AB's firm had been the victims of an alleged fraud by an employee. However, despite having known that Mr AB and another witness could not attend the proposed trial date, the CPS did nothing. When eventually the CPS sought an adjournment, the Court declined to grant it. In consequence, the prosecutor offered no evidence. Mr AB had asked for compensation, but had declined an offer of £500 as a consolatory payment. The IAC sympathised strongly, but said that £500 was the maximum that could be awarded in line with HM Treasury guidance, and that there was no case for compensation under the IAC terms of reference. The complaint was upheld but no recommendations were made.

Poor correspondence with victim of non-recent sexual offences

Mrs AB was the victim of non-recent sexual offences. Before the matter came to trial the CPS discontinued. This had led both to a VRR and to a multi-faceted complaint – some of which involved other parts of the criminal justice system and some of which concerned legal decision making. The key issues for the IAC were the poor quality of the letter sent at the local resolution stage of the VRR – it was lacking in sensitivity and empathy – and poor handling generally. The victim letter after the decision to discontinue was also sent outside the targets in the Victims' Code – although the CPS Area appeared not to have recognised that the Code had been breached. Mrs AB had been offered two face-to-face meetings, and it was apparent that her complaints had been treated seriously and comprehensively. The complaint was upheld, but no recommendations were necessary.

Breach of Code for Crown Prosecutors when discontinuing a prosecution

Ms AB's partner had been seriously injured while cycling. The police had charged a driver with careless driving but the case had been dropped by the CPS. Much of the complaint centred on the legal decision making but the IAC found a significant number of service failures. Ms AB had been allowed to access VRR (a kind decision as careless driving is excluded from VRR, but in line with a footnote to the guidance and in recognition of the serious injuries her partner had suffered). Unfortunately, Ms AB had been given incorrect information about the procedure. The IAC also

found that the prosecutor's failure to consult the police before discontinuing was a breach of a paragraph in the Code for Crown Prosecutors, and that Ms AB had not been told about the discontinuance within the time limits set by the Victims' Code (although this was perhaps pardonable given that the police had not shared with the CPS the victim's address or next of kin details). There were other failures – including that all the CPS's letters had been posted after the date given on the letters themselves. The IAC made two recommendations. First, the Chief Crown Prosecutor should write to Ms AB in acknowledgement of the findings of the review; second, the CPS should revise a list of Helpful Organisations that had been provided to Ms AB but which was in fact very out of date.

Delay as a result of conscious legal decision making is not in IAC remit

Mr AB was a solicitor representing Mr CD who was being considered for prosecution on historic sex charges. He said there had been unacceptable delay bearing in mind the age of his client. The IAC advised that, whilst appreciating the impact the prolonged decision making in this matter must be having on Mr CD, the time taken thus far reflected conscious legal decision making rather than any untoward service delay and as such could not be considered further. In particular, the allegations against Mr CD could only be properly and fully considered by the CPS once all of the evidence from the complainants had been considered along with the responses from the other suspects. While there had been a failure to reply to earlier correspondence – a clear service failure – an apology and explanation had been given. A further review at stage 3 would therefore be disproportionate as no additional redress could be offered.

Poor case management leads to system improvements

Mr AB had been assaulted. A man had been charged but pleaded not guilty. The CPS prosecutor misread the witness availability sheet and agreed a trial date when the victim and key witness were on holiday. The CPS sent the witness list to the Witness Care Unit, who delayed contacting witnesses until close to the trial date. Mr AB and the witness immediately indicated their unavailability. The CPS application to re-schedule the trial was refused, as no explanation had been provided to the Court why it had taken almost three months for this to be raised. The defendant was then formally acquitted. At stage 1, Mr AB had received an apology. At stage 2, it was again acknowledged that he had been let down and Mr AB accepted a goodwill payment of £100. The IAC too upheld the complaint. The CPS should have put forward a persuasive case to the Court for changing the trial date – including an explanation for the delay. While it might have made no

difference to the Court's view, every attempt should have been made to allow the victim and witness to give their evidence. The IAC awarded an additional £50 consolatory payment for this service failure. In addition, the CPS discussed with Her Majesty's Courts and Tribunals Service (HMCTS) some of the decisions not to grant adjournments. The CPS and the WCU also agreed a new system of escalation.

Poor case preparation leads to formal acquittal

Miss AB, a child, was friends on social media with a man in his early 20s. He engaged in sexual chat and sent a video of himself masturbating. In a police interview he accepted sending the video but not that it was offensive. He claimed Miss AB had said she was 17 but she denied this. The man was charged with sending to a person he believed to be 17, by a public communication network, an unsolicited offensive, indecent, obscene or menacing video. The case went to a 'GAP' court as there was a guilty plea anticipated, but in fact the defendant entered a not guilty plea. For over 11 weeks the file was not reviewed or initial disclosure served. When finally reviewed, the CPS did not recognise that Miss AB's evidence might not be required. At trial the CPS agent had difficulty accessing an electronic file of Miss AB's video evidence, and the defence argued that the evidence had been shared too late to be allowed. The court agreed. When the CPS decided to proceed by calling Miss AB to give evidence in person, it was then realised that calling her would not offer the safeguards the Victims' Code requires for a child. As the defendant's police interview had not been agreed by the defence, this had the effect of ruling out all of the evidence and the trial ended with a formal acquittal. The CPS had upheld the subsequent complaint about its case preparation and an apology was offered. The IAC likewise upheld the complaint but asked the CPS to make a goodwill payment of £250 in recognition of the distress caused.

Junior staff not required to give their names

Mr AB complained about the way he was treated when phoning the CPS. He said that staff would not give their names, were unhelpful, and put the phone down on him. He said that police officers and members of the armed forces on the battlefield had to display their names and asked why the CPS did not do likewise. For its part the CPS had apologised that service standards had not been met during the phone calls. It said its policy was that junior staff did not need to provide their names. The IAC could not judge exactly what happened during the phone calls as there were no recordings. But in light of what the CPS had said, the IAC concluded that this part of Mr AB's complaint was

justified. However, the IAC was also content that the various actions taken by the CPS were sufficient and appropriate. The policy that senior staff give their names but junior staff do not need to do so was in line with practice in other Government departments and was not unreasonable or maladministrative. The complaint was part upheld, but no recommendations were made.

No increase to consolatory payment #1

Ms AB was the victim of domestic violence. Her former partner had been convicted of two charges of assault against her, but nine months later – after he had been charged with controlling or coercive behaviour against her – that latter charge had been dropped by the CPS. Ms AB had received an explanation based on the concept of *autrefois acquit* (that he had been previously acquitted on the same facts) – but the CPS had subsequently acknowledged that this was something of a distraction from the true reasons. In fact, the Judge had indicated that no additional penalty was likely to be imposed, and therefore the decision not to proceed simply followed from the second test in the Code for Crown Prosecutors. The CPS had acknowledged that Ms AB had not been consulted prior to the decision (a breach of the spirit but not the letter of the Victims' Code in the IAC's judgement), and had offered a consolatory payment of £250 in respect of its service failures. This had been rejected by Ms AB, but the IAC felt that the sum was appropriate. Although there had been failures in correspondence handling, and the IAC upheld the complaint, there were no other recommendations that could usefully be made.

No increase in consolatory payment #2

Mrs AB had been assaulted during the course of her official duties. The defendant had pleaded guilty. Mrs AB was unhappy that the mitigation put forward by the defence had not been sufficiently challenged and that her VPS had not been read in full. The IAC could reach no view on the first matter, and the second seemed to have resulted from some confusion regarding medical details rather than an oversight by the CPS. However, the complaint handling at stage 1 had been poor – sufficiently so that it breached Mrs AB's Victims' Code rights – and the CPS had offered a consolatory payment of £250. It was apparent that the assault and its aftermath had had a huge impact upon Mrs AB. But there was little the IAC could offer in practical terms except to tell her story. The IAC upheld the complaint but felt that the consolatory payment (which Mrs AB had declined) plus the apologies and explanations she had received represented sufficient redress.

No increase in consolatory payment #3

Mr AB, a witness to a serious offence, complained that his address had been shared by the CPS with the defence. He said this was a breach of his data protection rights and asked for compensation. The CPS had acknowledged that it had failed to identify that Mr AB's address had not been redacted from police statements shared with the defence. It had apologised, taken action to mitigate the impact, self-referred to the Information Commissioner's Office, and offered £500 as a consolatory payment. While the IAC sympathised hugely with Mr AB and his wife, who were understandably distressed and anxious about what occurred, the sum of £500 was in line with sums offered in similar cases, was the maximum payable from public funds without reference to HM Treasury, and was the maximum in practice that the IAC could award. In the circumstances, the IAC did not think it was so low as to be maladministrative or that the IAC could reasonably intervene. The IAC made no recommendations but corresponded separately with the CPS Area regarding a couple of handling flaws.

Avoidable errors in complaint responses

Ms AB and her mother had been assaulted by a neighbour. The defendant pleaded guilty. Ms AB challenged the CPS decision to charge common assault rather than assault causing actual bodily harm. She also said that CCTV coverage should have been used. For its part the CPS said that the police had not provided hard copies of the disks, but the court had heard full details. The stage 1 response had said (wrongly) that the defendant was a youth, and gave the wrong name of the court. The stage 2 response acknowledged that the defendant was not a youth (but did not explain how the mistake came about) but again got the court details wrong. The IAC said the legal aspects of the complaint could not be considered, but part upheld the complaint about the CCTV on the grounds that the CPS had not chased for hard copies. The IAC also upheld the complaint in respect of the mistakes made at stages 1 and 2, and recommended that the Chief Crown Prosecutor apologise for the poor quality of the complaint responses.

Failure to identify breach of Victims' Code rights

Ms AB was a victim of alleged harassment. The CPS discontinued following advice from Counsel. Ms AB said she had been denied a meeting to discuss the evidence, and also criticised the failure to obtain a restraining order. The IAC said the CPS were right to say that the sort of meeting Ms AB envisaged could not be held, and that Ms AB was wrong to say that this breached the Victims' Code, and that a restraining order was not available following a discontinuance. However, a letter telling

Ms AB about the decision to discontinue had not been sent in good time. The CPS had acknowledged this, but not expressly identified that this did indeed breach Ms AB's Victims' Code rights. (The IAC also noted in passing that, while it may be good practice, the Code does not imply a right to be consulted before a decision to discontinue is taken.) The IAC made one recommendation: that the Chief Crown Prosecutor should apologise for the failure to identify that not informing Ms AB in good time of the decision to discontinue was a breach of her rights under the Victims' Code.

Defendants' entitlement to use the CPS complaints procedure

Mr AB had been acquitted of historic sexual offences. He wrote to the DPP to share his experiences, including the personal impact of the prosecution, and concerns about disclosure and the police. It was unclear whether he was simply providing feedback, but because he had written to the DPP, there were initial significant delays in processing his correspondence at Area level. At both stages 1 and 2, the legal reasons for the prosecution were explained in detail and the complaint was not upheld. However, the IAC recorded a finding of part upheld. Although Mr AB was complaining largely about the decision to prosecute, he also raised concerns about a lack of empathy for acquitted defendants. The IAC found the tone of correspondence to be professional, informative and neutral. Mr AB also complained that the complaints process did not address acquitted defendants. Overall this complaint was handled thoroughly and professionally, although there were occasions at the outset when there were administrative errors and breaches of the CPS's complaints process – for example, there was no record of Mr AB's first emails and telephone calls. Early on, no one put themselves in Mr AB's shoes and recognised that allowing more than a month to pass without acknowledgement was unacceptable. The IAC asked for changes to be made to the complaints leaflet, to reiterate that defendants have access to the complaints system and will not be treated any less favourably than victims/witnesses.

Late change of agent prosecutor of which CPS was unaware

Mr AB complained in relation to a sentencing hearing following a former partner pleading guilty to two charges of criminal damage. He said the prosecutor had been referred to estimates he had provided. He also said she did not refer to his VPS (a breach of the Victims' Code unacknowledged in the CPS replies). The CPS had said that the estimates had not been uploaded to the prosecutor's bundle and had made an offer in line with the CPS policy on compensation and consolatory payments to meet Mr AB's uninsured losses or his insurance premium. However, the stage 1 response had been undermined by the mistaken belief that the prosecutor was a man. In fact, a last minute change in arrangements had been made by the prosecutor's Chambers (the intended male prosecutor being replaced by a female colleague) – a change of which the CPS was unaware. The IAC also found some failings in the complaint handling. The background note was particularly candid, and by reproducing extracts the IAC was able to afford Mr AB for the first time with a full explanation of what had occurred. In these circumstances, and given the CPS's offer to meet with Mr AB, the IAC upheld the complaint but did not feel there were any formal recommendations that needed to be made.

Regrettable delay in case involving children

Mr AB's young son had been considered for prosecution but the CPS decided to take no further action. This decision was taken two and a half months beyond the 28 day target. The CPS had apologised but Mr AB sought 'damages'. The IAC discovered that the reviewing lawyer's manager had been told seven times by the Rape and Serious Sexual Offences (RASSO) team case progression officer that the charging decision was overdue (this information was not in the stage 3 background note). The IAC said the delay was especially serious as the case involved an alleged child victim and an alleged child perpetrator, and followed other delay by the police in carrying out actions proposed by the CPS in pre-charging advice. The IAC upheld the complaint and said that the Chief Crown Prosecutor should provide a fuller explanation of the actions taken to prevent a recurrence. The IAC also proposed that the CPS should make a £250 consolatory payment, and suggested that CPS HQ should consider if it should offer further advice regarding the need for a signed authorisation from a child whose parent is complaining on their behalf.

Weaknesses in correspondence handling

Mr AB had been a defendant in a case where the CPS had offered no evidence. A ten year non-conviction restraining order had been imposed by the court. Most of Mr AB's complaint concerned his contention that he should not have been prosecuted – both because he felt he was the innocent party, and on account of his mental wellbeing (he was receiving counselling for male abuse). These legal issues were not ones the IAC could address. However, there had been serious weaknesses in the handling of Mr AB's correspondence, which the CPS had acknowledged and apologised for. In these circumstances, while the complaint was upheld there were no recommendations the IAC could usefully make.

Proportionality in complaint responses

Mr AB had faced serious charges. Shortly before the trial, new evidence emerged in respect of a prosecution witness. When the court refused an adjournment to allow the CPS to meet its disclosure responsibilities, the CPS offered no evidence. Mr AB said the prosecution had been malicious. He also criticised the CPS responses as not answering his questions specifically. The IAC argued that the responses were proportionate. In particular, it was not necessary for the CPS to reply to each and every breach of the Code for Crown Prosecutors alleged by Mr AB. It was sufficient that the CPS had said it was content with the reviewing lawyer's decisions (i.e. that they were Code-compliant). The IAC was also satisfied that the CPS had met its disclosure responsibilities fully. The complaint was not upheld.

Restraining order cannot impose positive obligations

Mrs AB had suffered criminal damage at the hands of her estranged husband. Her complaint focussed on the terms of the restraining order imposed upon him. She said there had been a discussion involving the prosecutor concerning her wish for her husband's possessions to be removed from the marital home within four weeks. For its part, the CPS had explained that a restraining order could not impose positive obligations, it could only prevent certain actions. In other words, the four weeks deadline could not have formed part of the terms of the order. It had apologised for any confusion and distress. The IAC could add very little to this. It was clear that there had been miscommunication and misunderstanding, but the IAC was content that the CPS had provided appropriate explanations and apologies. In point of fact, the restraining order did not prevent the removal of the husband's possessions and, in such circumstances, he need never have

visited Mrs AB's house (as permission would be required from her solicitors). The order therefore provided all the protections she required. The complaint was not upheld on the basis that CPS had provided explanations and apologies.

Reasonable adjustments made for disability

Mr AB has mental and physical disabilities. In 2016, he asked another government agency to inform third parties, such as the police or courts, that he should be corresponded with by email or telephone but not post. The agency did not agree to do this, and Mr AB was subsequently convicted of an offence in his absence. He was later arrested in relation to the conviction, and the CPS said that his arrangement with the other agency did not amount to a defence in law. However, following various hearings, Mr AB was acquitted. Mr AB complained that he should not have been prosecuted, and that the CPS failed to make a reasonable adjustment for his disability. He sought assurances that he would not be in this position again following a third party failure; and asked for compensation for pain and suffering. His complaints were not upheld at stages 1 or 2. The IAC agreed. Mr AB, who represented himself, requested the reasonable adjustment of being served papers by email. After his request was referred to the CPS's Departmental Security Unit, the case material was served electronically. The IAC found no evidence of disability discrimination.

Handling errors not identified in complaints responses

Ms AB's ex-husband had been convicted for assaulting her but then acquitted on appeal to the Crown Court. The prosecutor had asked for a restraining order but the court declined. Ms AB complained about various aspects of how the case was dealt with, including what happened at the appeal. Her complaints were not upheld at stages 1 or 2. In contrast, the IAC part upheld, having found administrative and handling errors. For example, on two occasions Ms AB was addressed simply by her surname, with no title. She was also addressed as both Ms and Mrs in the same correspondence. One letter was unsigned. At the outset the CPS used the jargon 'accurate URN reference', with no explanation of what this is or where it could be found. In response to a further letter Ms AB was told her query had been passed to the relevant department for a response, but the department was not specified and she received no reply. Ms AB sought an update but again received no reply. Ms AB had chased and was advised to contact the IAC, although previously she had been told by the CPS that it was too late for an IAC review. The IAC recommended she receive an apology.

Work not reallocated after lawyer moves on

Mr AB was assaulted by a neighbour in the course of a long-running dispute. The defendant's solicitors asked the CPS to disclose relevant police reports and details of the dispute. The reviewing lawyer asked the police for these but full details were not provided. The trial was adjourned, and afterwards the police sent a memo briefly describing 48 relevant previous incidents, without attaching incident logs. The CPS lawyer moved to another team. The procedure for reallocating work when lawyers move on was not followed, and the material was not reviewed. At court, the prosecutor identified the failure to review the new material and to share it with the defence. As the case had previously been adjourned, the prosecutor decided there was no likelihood that a further adjournment would be allowed. The decision was taken to stop the case. Mr AB's complaint was upheld at stages 1 and 2, and apologies issued for the errors. The CPS identified the complaint as legal: a failure in the legal decision-making in the case to review the new information and prepare the case for trial, and Mr AB was not given the IAC's details. However, he wrote to the IAC in any case, and the IAC identified the failure to reallocate work as a service issue which was upheld. Mr AB had asked for compensation, but the IAC was content that the explanations received from the CPS, the apologies given, and the action taken to prevent a repeat of the circumstances that led to these errors represented appropriate and sufficient redress.

Complaint about historic prosecution decision later re-visited

Ms AB complained in relation to an original 2000 decision to take no further action in relation to an allegation of non-recent sexual abuse. That decision had been re-reviewed and the perpetrator found guilty of this and other offences. The CPS had treated the matter as feedback as it was way outside the six month limit for complaints. It had also been referred to the senior member of staff who had made the original decision in 2000 when serving in a more junior capacity. Ms AB regarded this referral of the grievance to the person complained about to be unreasonable, but the IAC felt it was sensible in the circumstances. It was equally sensible that, when Ms AB indicated she was unhappy with this procedure, the issue was escalated to an even more senior figure out of Area. The IAC found there had been some delays in the correspondence, but felt that the handling had been appropriate. Ms AB had been offered a face-to-face meeting that the IAC hoped she would feel able to accept.

Annex: Terms of Reference

1. Introduction

1.1 The Independent Assessor of Complaints for the CPS (IAC) reviews complaints in respect of the quality of service provided by the CPS and its adherence to its published complaints procedure and the complaints aspects of the Victims' Code.

2. Role and Remit

2.1 The remit of the IAC is to consider service complaints at Stage 3 of the CPS Feedback and Complaints procedure. Service complaints can be defined as 'any complaint relating to the service standards and conduct of CPS staff'. Examples of service complaints include being treated rudely or unfairly by staff members, failure to provide the correct information, or unnecessary delays in either the service provided or in responding to complaints.

2.2 The IAC cannot review complaints that are solely about prosecution decisions. Legal complaints are only considered at Stages 1 and 2 of the procedure. Victims who wish to exercise their right to request a review of decisions not to bring charges, discontinue proceedings, or offer no evidence in cases, should use the Victim's Right to Review scheme (VRR).

2.3 The IAC will not consider service complaints relating to live or ongoing proceedings (whether criminal or civil) until those proceedings are completed. This includes cases that qualify under VRR but have not yet exhausted all stages of the scheme.

2.4 The IAC can consider the service elements of 'hybrid' complaints: for example, those that embrace both legal and service aspects.

2.5 Complaints must be referred to the IAC for review following the completion of Stages 1 and 2 of the complaints procedure, if the complainant remains dissatisfied. Complaints that are linked to ongoing civil proceedings must be deferred until the conclusion of all civil proceedings.

2.6 Complainants can also refer complaints to the IAC directly where the CPS has not adhered to its complaints procedure although Stages 1 and 2 may not have been completed. This could include circumstances where complaints handling at Stages 1 and 2 gives rise to further complaint.

2.7 Complaints must be submitted within one calendar month of the Stage 2 response. However, the IAC has discretion in relation to this time limit where there are exceptional factors.

2.8 The IAC also acts 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. In that capacity, the IAC will review samples of cases that have not reached Stage 3 to assess the quality and timeliness of Stage 1 and 2 responses. The audit will involve a dip sample of all complaints to provide an annual update to the CPS Board, and to further develop internal guidance, protocols and training materials.

2.9 The Victims' Code outlines victims' entitlements to ensure that services recognise and treat victims in a respectful, sensitive and professional manner without discrimination of any kind. Victims are entitled to make a complaint if their entitlements under the Code have not been met.

2.10 The Attorney General may commission the IAC to undertake bespoke investigations on behalf of the Attorney General's Office or the CPS. The nature of these investigations may fall outside the usual IAC remit; in such cases specific terms of reference for the review will be drawn up.

3. Review Process and Time Standards

3.1 As an independent post holder with quasi-judicial functions, the IAC sets their own procedure. However, in general an IAC review will consist of an examination of the papers at Stages 1 and 2 of the complaints procedure. The CPS Area/Central Casework Division will submit and prepare the relevant paperwork and a background note for consideration by the IAC.

3.2 The IAC will consider the information provided and where appropriate request further reports and statements.

3.3 The IAC will decide the extent to which any part of a complaint within the IAC jurisdiction should be reviewed after taking into consideration the information and documents supplied by the CPS Area/Central Casework Division and any other information judged relevant. In so doing the IAC will keep in mind the public interest. Factors against a detailed review include:

- The CPS Area/Central Casework Division has conducted a proportionate and reasonable investigation of the complaint and has found no administrative failure or mistake;
- The essence of the complaint is the complainant's objection to the content and/or the outcome of CPS policy or legislation;
- It would be disproportionate for the IAC to review a complaint in detail, given its nature, seriousness and the potential outcome of a review.

3.4 Where a detailed review is required, the IAC will develop a draft response within 30 working days of the matter being referred to them, which will be sent to the relevant CPS Area/Central Casework Division to allow for fact-checking in advance of the final response and recommendations being concluded. The timescales will begin once the complaint has been submitted to the IAC by the CPS Parliamentary & Complaints Unit.

- 3.5 The CPS will have a maximum of 10 working days to respond to the draft report.
- 3.6 A full response will be provided to the complainant within 40 working days. If it is not possible to complete the review and reply within that timeframe, the IAC will contact the complainant to explain why there is a delay and provide a date by which a response can be expected.
- 3.7 The IAC will acknowledge receipt of complaints within five working days.
- 3.8 The IAC will normally conclude the review with a formal report. However, the IAC will be at liberty to complete a review in whatever means they judge most appropriate.
- 3.9 The review process will be supported by CPS staff who will provide a back office function and advise the IAC on the eligibility of complaints under these terms of reference.
- 3.10 Final reports will be sent on behalf of the IAC to the complainant and the Director of Public Prosecutions. They may also be sent to the relevant Chief Crown Prosecutor / Head of Division.

4. Remedies and Compensation

- 4.1 The normal form of redress recommended by the IAC will be a formal apology on behalf of the CPS.
- 4.2 The IAC may also recommend changes to CPS policies and practices that could help prevent a recurrence of the circumstances giving rise to the complaint.
- 4.3 The IAC may not recommend disciplinary action against CPS staff but may recommend that the case for disciplinary action is considered under the CPS's HR procedures.
- 4.4 The IAC can recommend that the CPS consider making a compensatory or modest consolatory payment where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.
- 4.5 Recommendations will be made to the Director of Public Prosecutions. The IAC's recommendations are not binding, but if the CPS decides not to accept a recommendation it will explain its decision in writing to both the complainant and the IAC.
- 4.6 Victims have the opportunity to refer their complaint to the Parliamentary and Health Service Ombudsman (PHSO), via an MP, following the IAC review where they remain of the view that the Service has failed to meet its obligations under the Victims' Code. The IAC will notify complainants of their right to consideration by the PHSO when appropriate.
- 4.7 Complainants who are not victims of crime do not have a right of access to the PHSO; the IAC review is the final stage of the complaints process in these cases.

5. CPS Responsibilities

5.1 The CPS will provide:

- In-year data to the IAC to inform the complaints reporting process
- Open access to complaints and feedback systems and records
- Unrestricted access to such information as the IAC requests for the purpose of conducting a review
- Executive support for the office of the IAC.

5.2 The CPS will ensure that the referral process for the IAC is clear and accessible for complainants and that the executive support arrangements are robust. Fact-checking of draft IAC reports will be undertaken in a timely manner no longer than the timetable in paragraph 3.5 above. Where the CPS is unable to meet that timetable it will inform the IAC immediately.

5.3 The CPS will formally acknowledge IAC reports and recommendations and provide confirmation by letter whether the recommendations have been accepted and implemented.

6. Reporting Arrangements

6.1 The IAC will report biannually to the Director of Public Prosecutions and the CPS Board. The CPS will publish the IAC's annual report on its website.

7. Contact Details

Independent Assessor of Complaints for the CPS c/o CPS, 102 Petty France, London SW1H 9EA

Email: IAComplaints@cps.gov.uk

8. Review Period

8.1 The IAC terms of reference will be reviewed annually.

8.2 Supporting FAQ will be updated on a biannual basis.

