

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

Annual Report 2019-20

## Introduction and Acknowledgements

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This is my second annual report as Independent Assessor of Complaints (IAC). My first was published jointly with my predecessor Stephen Shaw, with whom I overlapped as IAC for six months to ensure a smooth handover. I joined Stephen as IAC in November 2018, and I became the sole IAC in May 2019. I am grateful to Stephen for his assistance as I settled into the role.

I would also like to thank Tony Pates, Assistant to the IAC, and Mercy Kettle (Head of the Parliamentary and Complaints Unit) for their considerable assistance in the running of the IAC's office. Although both work for the CPS, they have achieved that difficult balance between loyalty to their employer while at the same time providing exactly the support I need, and never seeking to compromise my independence.

I also value the interest shown in my work by the Director of Public Prosecutions, Max Hill; the former Chief Executive Paul Staff, and the incoming CEO Rebecca Lawrence; Board Member Caroline Wayman, who as an Ombudsman herself, has acted as a valued sounding board; the senior leadership of the CPS Areas; and the CPS Change Unit. Throughout the CPS, I have seen that the independent oversight provided by the IAC is valued rather than feared or resisted. I have found an organisation that genuinely wishes to improve its complaints handling function. That's got to be a good thing – for the CPS, for the public purse, and most important of all, for complainants.

Moi Ali

May 2020

## The IAC's Remit

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The IAC considers 'service' complaints that have been through stages 1 and 2 (the two internal stages) of the CPS's complaints procedure. 'Legal' complaints do not come within my jurisdiction, although the distinction between the two can be confusing for complainants. Most complaints that reach the IAC contain both service and legal elements, although in many cases the service element is tangential to the legal complaint.

You can find the IAC's terms of reference at the end of this report. Last year Stephen Shaw and I reviewed them and recommended to the CPS Board two amendments: to remove the requirement to submit a half-year report to the Board, in addition to this annual report; and to remove the requirement to conduct an annual dip sample of complaints that have not reached the IAC. The Board understood our rationale for the suggested changes and agreed to them.

This year's review of my terms of reference has not resulted in any substantive amendments, although I have made some minor edits to create a more readable document for complainants.

## The Year's Highlights

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This has been a busy year. In addition to reviewing complaints, which is of course the main aspect of the role (and you can read more on this in the next section), I have also reviewed the work of the IAC's office. This has involved a number of improvements. First, I reviewed all of the standard correspondence issued by the office. Letters have now been rewritten to make them clearer. I also produced a plain English leaflet about the IAC, to help complainants to understand how I can help them and how they can get the best out of my service. Previously complainants were referred online to my terms of reference, but now they receive a user-friendly leaflet with their stage 2 letter (and it is also available in Welsh). I have updated the IAC information on the CPS website so that it is in plain English, and as stated earlier, I have refreshed my terms of reference for improved readability.

I produced a blog for CPS staff outlining my top tips for complaints handling, both to share good practice and to raise the profile of the IAC. I devised a training workshop focussing on empathy and I have been rolling this out across CPS Areas. In 2019-20 I visited CPS West Midlands, CPS East Midlands, CPS North West, and CPS Yorkshire and Humberside. Additionally I spoke to CPS Direct staff at an event in Newcastle, and to the South East Deputy Chief Crown Prosecutors' Group in London. I also ran a session at the DCCPs' induction training, and did a presentation on my work to the National Prosecuting Authority of South Africa when they visited the UK to meet the CPS.

I am grateful to the CPS for involving me in its wider complaints work, particularly the work being undertaken by the Change Unit. We are in regular contact, I have had an input into the new Standard Operating Practice for complaints, and my office was involved in user-testing the new complaints app. I have shared some of my own materials on effective communication with the Unit, which is devising guidance on

the subject, and I hope to have an input into the empathy and communication skills training being planned for CPS complaints handling staff. I have met with the CPS Victim & Witness Strategy Group lead, and have compiled a list of common issues that she has agreed to take forward within CPS to help avert future complaints.

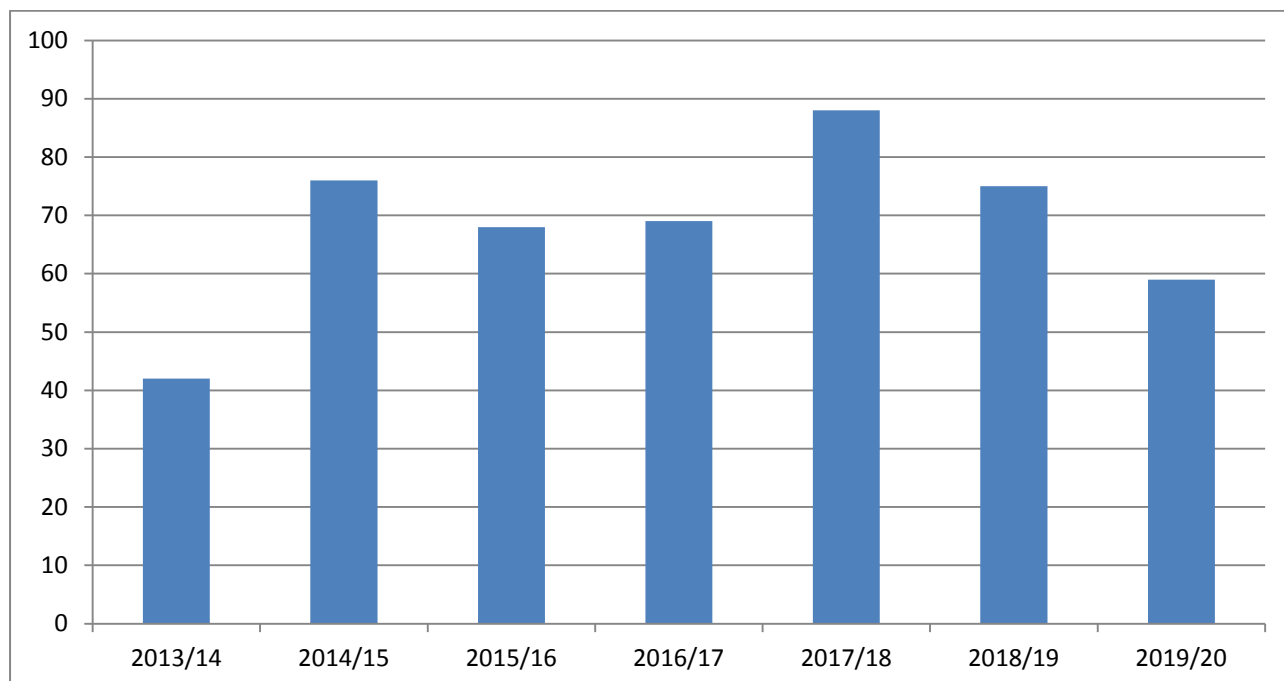
I have held complaints review roles within other organisations, where I have not hesitated to be critical of poor practice when I have found it. The CPS has been by far the most willing to engage proactively and collaboratively. I have seen a genuine commitment to improving the complaints handling process, and to learning from others. At a time when the CPS has been under the spotlight, on the receiving end of often negative headlines, the organisation deserves credit for this.

### **Caseload Comparisons, Performance and Themes**

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The annual number of complaints received by the IAC's office has fallen, from 75 complaints in the year to 31 March 2019 to 59 complaints this year. It is too early to say whether there is a downward trend or whether this year's fall is just part of the normal annual fluctuation. Next year may provide an answer.

## Annual number of complaints received by the IAC



There is significant monthly variation in the number of complaints received, and no monthly pattern year-on-year. For example, the monthly number of referrals in 2019-2020 ranged between 2 and 9. My predecessor has previously described how this can present significant difficulties for the management of workflow. The CPS does, however, allow for flexibility in addressing peaks by enabling further days to be worked.

Last year 75 reviews were completed (the same number as arrived during the year) compared with 65 this year. Fewer cases were completed this year in part because for five months of the previous year there were two IACs. This year there were two IACs for a much shorter period, although the outgoing IAC completed two reviews after he left (under the resilience arrangements put in place to address larger than normal monthly peaks and to prevent the build-up of a backlog).

In 2018-19, seven cases carried over from 2017-18 were completed as part of the 75 completed cases; this year 20 carried-over cases were completed within the 65 completed cases.

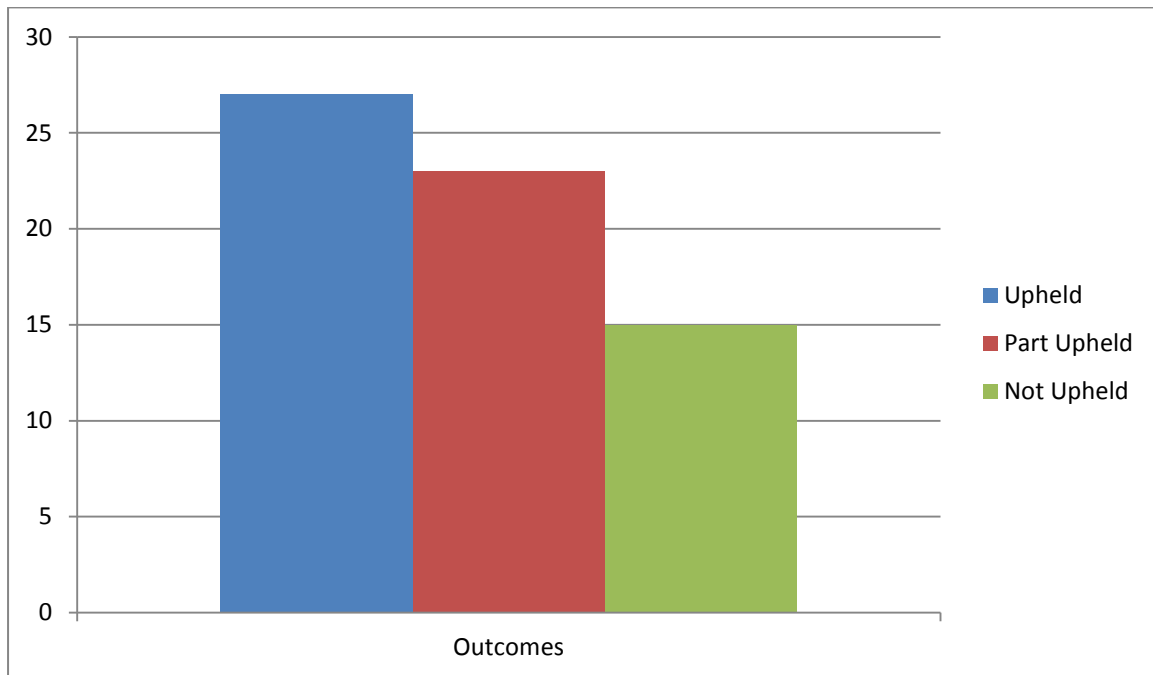
Forty five cases that arrived in-year were completed this year, which together with the 20 cases carried over from last year add up to 65 cases completed in 2019-20. Additionally four cases were progressed during the year and were at the final stages of being either fact-checked or proofread by the year-end. These will appear in next year's figures.

By the end of the year, the number of cases outstanding from the previous year was down to ten (from 20 in 2018-19). I would like to see that reduce further, although there will always be a 'backlog' because at any given point there are cases awaiting eligibility checks, background/case briefings, or ones that have been sent back to the relevant CPS Area for a Stage 2 addendum (an opportunity for the Area to correct an issue and give the complainant a satisfactory resolution that may avert the need for an IAC review). My aim is to maintain an average 'backlog' of no more than seven cases. If the number of incoming review requests stays roughly the same, or the recent fall continues, that should be possible. My intention is to create shorter waits for complainants awaiting a review of their cases.

Of the cases completed in 2019-20, 53 complainants were victims or the relatives or representatives of victims, and just one was a witness. Eleven of the complainants were defendants or those who had been considered for prosecution.

In addition to the cases reviewed, I had to consider a further five case files to determine whether they came within remit. Mostly it is clear-cut as to whether a matter falls within the IAC's jurisdiction. Occasionally, as in these cases, the IAC needs to review the file before determining whether a case can be accepted. This can involve considerable resources – my own and my assistant's – in order to reach a view.

The table below shows the outcomes of my reviews. The majority of cases were either wholly or partly upheld (50 cases) compared with only 15 that were not upheld.



This year I will not set out a breakdown of complaints by CPS Area, as the numbers are too small to provide any meaningful data.

I made recommendations in 26 cases compared with 19 cases in 2018-19, 29 cases in 2017-18 and 30 cases in 2016-17. Last year the IACs reflected on whether the decline in formal recommendations could be an indicator of the CPS's own improved performance in complaint handling in that redress has already been identified and offered, but this year's increase in recommendations suggests that last year's decline may have been a blip. It is not possible to explain it, although it may simply be down to a change in IAC rather than any CPS change.



The most frequent recommendations were for a consolatory or compensatory payment; a meeting or letter to provide further information or explanation; or a change or clarification to a policy or procedure.

## **Performance**

All 65 cases closed in 2019-20 were completed within the 40 working day target included in the IAC's terms of reference. There is inevitably a delay before cases reach the IAC, as my office has to make eligibility checks first, and then organise and print the files and briefing notes for cases that are accepted. The clock starts once a complaint is formally accepted by the IAC, as has been the case since the outset. For the 40-day performance target to be meaningful, the clock should be started as soon as the files are ready for the IAC rather than at the point at which the IAC requests them. I am looking at moving towards this, which may well shorten the wait for some complainants.

Although complainants sometimes face lengthy waits, all have been kept informed about the completion of initial eligibility checks and notified when their cases were referred for the IAC's attention.

## **Themes**

There is no change in the themes this year compared with previous years. Common themes are:

- Compensation: a failure by 'agent prosecutors' – members of the independent bar acting in the magistrates' court on behalf of the CPS – to seek compensation for victims of crime. In several cases a victim has completed the necessary paperwork indicating that they want compensation, but the prosecutor has overlooked it and made no request to the court. In one case the prosecutor indicated that he had asked for compensation, but the transcript of the case showed that he had not.

- Agent prosecutors: they feature disproportionately in complaints cases and some may not be fully up to date with CPS policies and procedures, do not know sufficiently the entitlements under the Victims' Code, and sometimes have difficulty getting in contact with the CPS from the court to take instructions.
- Last minute review/preparation: when cases files are reviewed too close to the court date, it can be too late to secure missing information. This may mean that a trial has to be adjourned, or even dropped altogether. Victims then feel that justice has not been done.
- Case Management: even when files are reviewed in a timely fashion, there can be issues with the timeliness and diligence of the CPS in chasing the police for overdue or missing information, which in turn impacts on victims as in some cases it has resulted in the discontinuance of a trial.
- Victim Personal Statements (VPSs): the failure to offer the victim an opportunity to read out their VPS is not only a breach of the Victims' Code: it causes distress to those wishing to share their experiences with the court and many believe that the outcome would have been different if only the court had understood the full impact of the crime on them.
- Restraining Orders: Although I recorded just two cases during the year, the failure to seek a restraining order is a serious matter because it amounts to a failure to protect victims of domestic violence. Such failures have been seen in previous years too.
- Incomplete bundles: Sometimes the file given to the prosecutor in court is incomplete (typically the 'MG19' claim form for compensation, or the VPS, may be missing, for example, or even vital evidence). This can lead to adjournments; cases proceeding, but in a way that leaves the victim dissatisfied – such as lesser charges being pressed; or even no evidence being offered (which denies the victim justice).
- Incomplete or inadequate Hearing Record Sheets (HRSs): the HRS is the CPS's record of what happened at court, so it is a vital document if there is a

complaint. Sometimes it is insufficiently detailed so it is impossible to establish what happened – such as whether compensation was asked for; what the reasons were for the magistrate refusing an adjournment; or what instructions were given in phone calls to the CPS.

- Defendants not being served papers or late disclosure: there have been cases where in these circumstances defendants have been told that they cannot use the complaints process, which is not correct (failure to serve in a timely way – or at all – is a service complaint)
- KIM database: KIM is the complaints management database. Often it is not completed correctly. In particular, the start dates and outcomes are sometimes recorded incorrectly; the wrong versions of documents are uploaded (such as draft letters rather than final versions); whether the complaint is upheld or not is either not captured or wrongly captured.
- Insensitivity: Sometimes victims complain about poor communication at court or insensitivity
- VRR/Complaints: sometimes a Victim's Right to Review (VRR) and complaint are combined. At other times they follow a parallel process and at such times it is not uncommon to see identical VRR and complaints letters sent from the same lawyer to the same complainant on the same day. This leaves victims feeling that they have simply been issued with a standard letter and that their concerns have not really been considered.
- Standard paragraphs: letters feel like impersonal and auto-generated when irrelevant standard paragraphs are included at Stage 1 and then repeated verbatim at Stage 2.

### **Consolatory Payments**

A consolatory payment is a payment to make amends for stress, distress or hurt caused by service failures or maladministration, often known as a goodwill payment. In line with HM Treasury guidance, consolatory payments from the public purse must

be modest – meaning in practice no more than £500. The IAC can recommend that the CPS makes a consolatory payment in circumstances where an apology and explanation do not represent sufficient redress. In the cases closed during 2019-20, I made 13 payments. The lowest payment I recommended was £200, the highest was £500 and the total came to £4,550 (compared with £2,600 in 2019-20, and £3,470 in 2017-18).

The CPS can make consolatory payments without the intervention of the IAC and it is not uncommon for a payment to have been offered before a case reaches the IAC. Unless the amount of that payment is so low as to be unreasonable, the IAC will not substitute a larger amount at Stage 3.

### **Compensatory Payments**

The distinction between consolatory and compensatory payments has caused some confusion during the year. Under paragraph 4.4 of my terms of reference, I can recommend that the CPS considers “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”. This clause is intended to distinguish between ‘compensation’ (where a complainant has suffered actual financial loss as a direct result of the CPS’s service failures), and a consolatory payment (where the organisation admits that there has been maladministration or poor service resulting in significant distress for the complainant).

In four cases this year, the IACs recommended compensation for actual financial loss (which is not subject to the same Treasury restrictions as consolatory payments) totalling £3,090. These cases – summarised below – illustrate how CPS failures can lead to actual financial loss for victims.

I will begin, however, with a case where the complainant (a defendant) was awarded a *consolatory* payment having claimed for a *compensatory* one. Her case led me to

recommend to the CPS reconsideration of its consolatory payments policy and guidance.

### **Ms A: Consolation but *not* compensation**

Ms A is alleged to have slapped someone at a party. Witnesses told police there had been no assault and that the victim had been covertly recording people on her laptop. The victim denied this, her laptop was checked and the officer was satisfied that it had not been in use at the time of the offence. Police closed the crime report about the covert recording. The CPS was unaware of the formal counter-allegation against the victim, which should have been revealed when the police submitted the case against Ms A.

The CPS reviewed the case file at various points and the police were asked to (and failed to) provide outstanding evidence. A proposed discontinuance gave the police until the day of trial to provide the missing information. On the morning of the trial, this had still not been received and the case was discontinued.

Ms A complained about the decision to prosecute (legal) and the timing of the discontinuance (service). She requested an apology for the stress of the prosecution, and compensation for lost wages (she had to delay starting a new job while proceedings were ongoing).

The CPS upheld Ms A's complaint about the timing of the discontinuance, saying that bringing this case to an end on the day of the trial "was unsatisfactory and the decision should have been made to bring the case to an end sooner..." It also concluded that the police charging decision appeared to have been "premature" given Ms A's counter-allegation against the victim.

Her *compensation* request was declined at stage 1 as it did not meet the criteria for "*compensatory payments*" – but the CPS used the terms "compensation" and

“consolatory payment” as if they were one and the same thing. She asked for a copy of the *compensation* policy and at stage 2 was told that the CPS does not give out the *consolatory* payments guidance. A short extract was referenced explaining that payment due to poor service can only be made where there is clear evidence of severe distress or uninsured material loss and that no such evidence was provided.

Ms A told the IAC that she was unhappy that she was not entitled to compensation and offered to provide evidence of both significant stress and financial loss. I concluded that had there been timely, efficient and effective case management, the requested information would have been obtained from the police in good time; or the case would have been discontinued earlier, sparing Ms A considerable stress. I therefore recommended a £250 consolatory payment.

Ms A’s loss of income resulted from the decision to prosecute, albeit that the late discontinuance inflated the figure. I did not recommend compensation as the IAC cannot comment on legal decisions to prosecute. I considered a compensatory payment for the lost wages incurred from the point at which the case should have been discontinued, but decided that the consolatory payment remedied matters sufficiently.

This case highlighted the lack of transparency in the consolatory payments policy. The IAC can recommend both consolatory and compensatory payments, but the CPS cannot make “compensatory” payments – although it can reimburse financial loss as a result of a service failure, which is effectively compensation by another name.

The CPS consolatory payment policy, and the IAC’s terms of reference, use identical wording to describe the circumstances in which a payment can be made: “where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.” The first part of that wording describes compensation, not a consolatory payment. It is misleading, therefore, to

have a policy that states that the CPS cannot pay compensation when in reality it does make compensatory payments under its consolatory payments policy, and awards compensation when it accepts my recommendations to pay it.

The CPS has long been wary of admitting that it pays compensation in certain circumstances, perhaps for fear that being pursued for compensation arising from decisions to prosecute could potentially have an inhibiting effect on prosecutors in the discharge of their central function of prosecuting crime. It has been argued that it could make prosecutors adopt a defensive position to protect themselves from negligence claims.

I suggested that the CPS considers adopting the wording used by the Parliamentary and Health Service Ombudsman: rather than distinguishing between compensation and consolation, it simply makes payments to put things right when someone is left out of pocket, or suffers distress or damage. In response to my recommendation the CPS has confirmed that it is reviewing the current guidance.

The following case clearly shows the difference between a consolatory payment and a compensatory payment.

**Mr B: Consolation *and* Compensation**

This case was reviewed by my predecessor during the year.

Using duplicated keys, Mr B's former partner entered his home and amongst other things spread liquid horse manure over his mattress. His financial loss (replacing the mattress, bedding and door locks) amounted to £750. She was charged with criminal damage.

At the Magistrates' Court the Prosecutor felt that a police caution would be more appropriate and sought authority to proceed on that basis. In consequence, there was no opportunity for Mr B to obtain compensation for the damage. The CPS subsequently acknowledged that this legal decision (agreeing to the caution) was wrong, and accepted that it failed to inform Mr B that it had decided to refer the matter back to the police for a caution – a breach of his rights under the Victims' Code.

In response to his request for compensation, the CPS said that had the application for compensation been placed before the court, there is no certainty that it would have been granted in full or at all.

After Mr B contacted the IAC to say that the CPS had not recognised the emotional and financial impact on him of the decision to caution, the CPS offered a consolatory payment of £250 in recognition of its breach of the Victims' Code. Mr B remained unhappy. The IAC agreed with the CPS that it cannot be known what the court would have ordered had the defendant pleaded guilty or been convicted. The court may have decided to make no award or just a nominal one, as it would have had regard to the defendant's financial means and their ability to pay compensation. For this reason, it was not possible to make an unambiguous link between the CPS's legal mistake and the amount of the financial loss incurred. Nevertheless, as it was likely that Mr B did lose at least some compensation, the IAC awarded him compensation of £200 in addition to the CPS consolatory payment of £250.

### **Ms C: Compensation**

Ms C's brother became angry during a visit. When she left, he began a dangerous car chase, clipping her vehicle and later smashing one of her car windows and causing injury. He was convicted for dangerous driving, criminal damage and



assault. When she later discovered that he was not the subject of a restraining order that she believed was in place, she was afraid to live in her own home.

The CPS accepted that the prosecutor was to blame for the failure to seek a restraining order. As the police recommended that a restraining order was still required, the CPS looked at whether it might be possible even at this late stage to get one. Unfortunately this was not legally possible. The CPS therefore advised Ms C to consider taking independent legal advice about a non-molestation order (which is similar to a restraining order).

I concluded that Ms C should not be expected to incur expense in correcting a CPS error. The only remedy was for the CPS to compensate her for the cost of applying for a non-molestation order. This would leave Ms C in the position that she would have been in had the error not occurred. I recommended that reasonable legal fees of up to £1,800 should be met by the CPS.

### **Mr D: Compensation**

Mr D was in a pub, where it is alleged that he was annoying another drinker. That drinker (the defendant) ended up punching Mr D. Both were asked to leave, but outside, the two shouted and gesticulated. Matters calmed, they walked away and later exchanged friendly text messages.

When interviewed by police, the defendant described Mr D as having been very drunk and said he had acted in self-defence, fearing that he were going to be assaulted with a bottle. The defendant was found guilty.

Mr D's jaw was fractured during the incident, and he required ongoing hospital treatment. He complained that the CPS had not asked the court for compensation for lost earnings following the attack and he sought such payment from the CPS.

Although the court may not have agreed to award compensation, in this case there was no opportunity for Mr D's application even to be considered. Clear evidence of uninsured material loss was presented, and for that reason I recommended that the CPS pay him £250 compensation.

### **Mr E: Compensation and Consolation**

Mr E was a foreign student. He noticed that currency was going missing, installed a covert camera, and captured his landlady searching his room. After initially denying the thefts, she made a full admission.

The victim expected counsel to submit his claim for over £8,500 compensation, an amount equal to his loss. When he heard that compensation had not been awarded, he made enquiries with various parts of the criminal justice system. Eventually his complaint was accepted by the CPS.

Counsel was asked what happened, and Mr E was informed that an application had been made but the court had not awarded compensation. When he queried this, the CPS checked the court record and found that counsel had in fact told the court that the victim was *not* seeking compensation. (Counsel's lack of integrity led to the CPS making a complaint to his Chambers).

Mr E's complaint was upheld. The CPS considered a consolatory payment and decided against one on the basis of the following section in the guidance: "Do you consider that there was a "realistic" prospect that the Court would have made a compensation order had it not been for the service failure? You should consider whether the defendant would have had sufficient means, or ability to pay within a reasonable time had the order been made". It appeared to the CPS that even if the

court had been asked to make an order, the defendant was heavily in debt and likely to be unable to pay. The CPS stated that even if the maximum payment was made under the policy, it would be a small fraction of the amount lost. While this is true, most complainants prefer the recovery of some of their losses to none at all.

I recommended a payment of £500 comprising: compensation for his financial losses (recognising that most likely the court would at best have made only a modest compensation order); and a consolatory payment for the distress caused by the handling of the matter at court and during the complaints process.

### **Ms F: Compensation**

During a taxi ride to his former partner's home, the defendant told the driver that he had a weapon and was going to kill someone. He entered Ms F's home using keys, produced a knife, told her he was going to kill her and then attacked her. The cab driver called the police. Officers found two knives and a brick. He entered a guilty plea and received a suspended prison sentence.

Shortly after the trial the defendant was seen near Ms F's home. It transpired that counsel had failed to seek a restraining order or compensation. The police informed the CPS of counsel's error, and over the following days the CPS, police, court and defence representatives discussed a restraining order. No one informed Ms F of these discussions. The CPS was granted a restraining order, but by then Ms F had borrowed money and obtained a non-molestation order to protect herself.

Ms F asked the CPS for compensation, stating that she was "a very vulnerable woman who is unable to walk" who was "in danger from a violent and unstable man". She was dismayed to be told that it was her choice to get the injunction, as she felt that in the circumstances she had no choice if she were to ensure her safety.

When Ms F's escalation to Stage 2 was ignored, she contacted the IAC. My assistant made enquiries with the CPS, who accepted service failures and offered an apology and a consolatory payment of £500. The CPS maintained, however, that it was not liable for her legal costs as it was not made aware that the restraining order had not been sought; action was taken swiftly to rectify the position and a restraining order was obtained at the next court hearing; and that Ms F should have been advised by her lawyer to contact the police or the CPS to remedy the issue rather than incurring the cost of obtaining a non-molestation order. The CPS argued that liability for the expenditure lay with Ms F's legal advisers.

Ms F told the IAC that the CPS should reimburse her for the money she had had to borrow in order to protect herself following a CPS error. Although I was sympathetic to the CPS position, and agreed that her advisers should have referred her to the CPS, Ms F should not suffer financially because they didn't. There was no requirement for her lawyers to do anything other than comply with her instructions, but there was a duty on the CPS to protect a severely disabled woman who had been subjected to domestic violence.

Having agreed with the police that a restraining order was necessary, the CPS failed to seek one. Notwithstanding that the error was put right once it came to light, the initial mistake lay with the CPS. It was reasonable that Ms F should be restored to the position she would have been in had the CPS not made this mistake. I therefore recommended that the CPS pay £2,140 compensation to cover her legal bill.

## The Voices of Complainants

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Those who complain to the IAC have already gone through two stages of the process and have been left feeling dissatisfied. Some remain dissatisfied after an IAC review, but for others there is real value in this third independent tier. A review can help bring comfort and closure, as these quotes from complainants during the year demonstrate:

*“Understanding what actually happened to my file has helped in my processing of the awful experience I have been through.”*

A victim, whose file was lost so no charges were looked at until it was too late.

*“Thank you ever so much for your response and please pass on my appreciation to Ms Ali for her kind and informative reply, it is much appreciated.”*

*“I really appreciate your findings. My son has been home almost a year now, we still do not discuss these events, it is too much for him. I have never wanted pity for [my son], just justice and acknowledgement that my son did not deserve to go through what he did. You have given us faith back there. I thank you so much for that. I am eternally grateful for your kind words and acknowledgement of how hard we tried to get justice, and we appreciate how thorough you have been examining this case... I also know money does not fix [my son], but is acknowledgement just the same. Thank you for taking this so seriously, it had taken over my life for a long time, but as a parent, that was my job to fight for him when he was in the right, in a way, it has proved that we are heard when we are honest (lectures I have always given my children).”*

During the year I received a complaint about the IAC's service. The complainant was unhappy with the way her complaint review had been handled, and also with the way the case study relating to it was written up in last year's report. As this case had been handled by my predecessor, I felt able to look independently at her concerns. I did not agree with everything she had to say, but she made some very useful points and I did understand the thrust of her concerns and I took action where I could to address them.

*"Please pass on my thanks to Moi Ali for her letter to me addressing my concerns over the IAC case study and previous complaint. I very much appreciate her comprehensive and empathic response whilst understanding and appreciating that there are aspects that we do disagree on."*

The complainant subsequently provided feedback about a word I had used when I replied to her – I had written "hurt" when she was actually feeling upset. I reflected on her feedback, accepted that she was right and apologised. She replied:

*"...the response was a pleasant surprise and very much appreciated. Being heard and validated has been for me the most important aspect of this journey and I feel that has now happened."*

I think this demonstrates that listening to victims and other complainants, trying to understand from their perspective, and admitting when one has got something wrong, can help turn a bad experience of the criminal justice system into a better one.

**Moi Ali**  
**Independent Assessors of Complaints**

**May 2020**

## **Annex: Terms of Reference**

### **1. Introduction**

1.1 The Independent Assessor of Complaints for the CPS (IAC): reviews complaints about the quality of service provided by the CPS; checks that the CPS has followed its published complaints procedure; and can review complaints aspects of the Victims' Code.

### **2. Role and Remit**

2.1 The IAC considers service complaints at Stage 3 of the CPS Feedback and Complaints procedure. Service complaints are those relating to the service standards and conduct of CPS staff. Examples 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 legal complaints, for example those that are solely about prosecution decisions. Legal complaints are only considered at Stages 1 and 2 of the procedure. Victims who wish to request a review of decisions not to bring charges, discontinue proceedings, or offer no evidence in cases, should use the Victims' Right to Review scheme (VRR).

2.3 The IAC will not consider service complaints relating to live or ongoing criminal or civil proceedings. Such complaints may be considered once 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 The CPS must refer complainants to the IAC following the completion of Stage 2 of the complaints procedure, if the complainant remains dissatisfied. (Complaints linked to ongoing civil proceedings must be deferred until the conclusion of all civil proceedings.)

2.6 Complainants can contact the IAC directly where the CPS has not followed its complaints procedure, even if Stages 1 and 2 have not been completed. This could include circumstances where poor complaints handling at Stages 1 and 2 give rise to further complaint.

2.7 Complaints must be submitted within one calendar month of the Stage 2 response. Where there are exceptional factors, the IAC may accept a complaint outside of this time limit.

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.

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 and any other relevant information. The CPS Area/Central Casework Division will prepare and submit the relevant paperwork and a background note for consideration by the IAC.

3.2 The IAC will consider the information provided and where necessary request further information.

3.3 The IAC will decide the extent to which any part of a complaint should be reviewed after taking into consideration the information supplied by the CPS



Area/Central Casework Division and any other relevant information. 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.

3.4 Where a detailed review is required, the IAC will send to the relevant CPS Area/Central Casework Division a draft response within 30 working days of the matter being referred to the IAC. This is 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 5 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 3 working days.

3.8 The IAC's review will be in the form of a report, a letter or whatever other form 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, although ultimately it is for the IAC to decide whether or not to accept complaints.

3.10 Reviews 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 and the Chief Executive of the CPS.

#### **4. Remedies and Compensation**

4.1 The IAC can recommend redress including: an apology by the CPS; changes to CPS policies and practices that could help prevent a recurrence of the circumstances giving rise to the complaint; a modest payment where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.

4.2 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.

4.3 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.

4.4 Victims may 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.

4.5 Complainants who are not victims of crime cannot access 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:

- 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 within agreed timescales. 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 annually 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.gsi.gov.uk](mailto:IAComplaints@cps.gsi.gov.uk)

## **8. Review Period**

8.1 The IAC terms of reference will be reviewed annually.

**Crown Prosecution Service**

**May 2020**

