IAC | Independent Assessor of Complaints

CPS

Independent Assessor of Complaints for the Crown Prosecution Service

Annual Report 2021-22

Independent Assessor of Complaints for the Crown Prosecution Service: Annual Report 2021-22

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Introduction: What is the IAC?

Welcome to my latest annual report, containing a summary of my work during 2021/22.

The Independent Assessor of Complaints (IAC) for the Crown Prosecution Service (CPS) is completely independent of the CPS, providing an impartial service that complainants can have confidence in.

My role is to:

- Investigate *service* complaints about the CPS following conclusion of its internal complaints process (known as Stage 1 and Stage 2).
- Look at whether the CPS properly followed the Victims' Code guidance on the services that must be provided to victims.
- Check that the CPS has followed its complaints procedure.

Anyone who has complained to the CPS and remains dissatisfied with the outcome of their service complaint, having first completed Stages 1 and 2, can request to escalate the matter to the IAC for a Stage 3 review. Service complaints include, for example, the conduct of CPS staff such as rudeness or being given incorrect information, poor communication, and service standards such as breaches under the Victims' Code.

Legal complaints cannot be reviewed by the IAC. Legal complaints include how the CPS applied the Code for Crown Prosecutors in deciding whether to prosecute, and decisions about which witnesses are called at a trial or what evidence is to be relied upon. These matters are rightly reserved for lawyers at the CPS as part of the independent prosecution service.

Although in most cases the distinction between *legal* and *service* is clear, it can be confusing for complainants. Sometimes, the central concern is legal and the service element may be minor. My terms of reference allow me to reject such complaints where I am satisfied that the CPS has dealt appropriately with the service parts of the complaint.

Occasionally there is discussion between the CPS and the IAC as to whether a matter falls within my jurisdiction – more on that later in this report. Most complaints that reach the IAC contain both service and legal elements, although as I have said, in many cases the service element is not the central issue.

The IAC's aim is:

- to right wrongs for complainants where possible and proportionate
- to drive improvements in the CPS to reduce the likelihood of similar service complaints arising in the future

Terms of Reference

You can find the IAC's terms of reference (ToR) at the end of this report. My annual review of my terms of reference has not resulted in any amendments from me this year, although the CPS also reviewed them at the end of March 2022 and suggested various changes. You can read more about that later in this report, but as at the year-end 31 March 2022, my ToR remain unchanged.

Moi Ali

May 2022

The Year's Issues and Challenges

For a variety of reasons set out below, this year has been more challenging than previous ones.

Continuing impact of Covid-19

Last year I reported on the effect of Covid-19 restrictions, including new working from home requirements and their adverse impact on complainants. I had hoped that this year would see working life return to normal, but at the year-end, the CPS had yet to fully return to the office and the IAC's office was still working entirely from home.

As a result, I continue to use electronic case files as there is no printing and collating facility. Most files comprise scores of documents, sometimes hundreds of pages, and it takes significantly longer to review multiple files simultaneously, and to annotate and bookmark such documents in an electronic format. Inevitably cases take longer to complete, especially where they are very complex. I am grateful to the CPS for sending me a larger screen, as it was a struggle with only a laptop, and I hope that a return to the office in the near future will allow the return of paper files.

Unsurprisingly, Covid-19 has again featured in a number cases escalated to my office. In one, a defendant was self-isolating at short notice and this was not conveyed to the family of a man killed in a road accident, who needlessly turned up at court. This must have taken huge emotional effort on their part, mentally preparing to hear harrowing evidence about the events of that day. Unfortunately, the agent prosecutor (whom the CPS had also not informed of the adjournment) was 'attending' remotely and so was unable to meet the family. As a result of the pandemic, the family had already been unable to have a face-to-face meeting with the CPS, as is their right under the bereaved families' policy – and the substitute telephone call they requested was inappropriately passed to the police family liaison office to handle. Understandably, the family was very unhappy with the whole experience, coming on top of their terrible loss.

Visits to CPS area offices, an important part of the IAC's workload, were another casualty of the pandemic for a second year running. As I was unable to go out on the road due to travel restrictions and home-working, I organised an open house for CPS complaints handlers using Microsoft Teams, which was very well attended and resulted in tangible actions. For example, staff said it would be useful to have better guidance on the difference between complaints, feedback and enquiries, and the CPS is currently updating the guidance to include examples. Concerns were raised that there was no guidance on informal resolution, and in particular on how much time can pass before a complainant can come back and escalate the matter. The guidance is being reviewed to include this. Other changes to the guidance to clarify issues raised include: how to deal with persistent communication; lack of consistent terminology such as 'early' and 'informal' resolution being used to describe the same thing; and improved clarity on who is defined as "directly involved" in a case.

We had some useful discussions and information exchanges during the event, and although I will use remote sessions again, they have their limitations, and I am very much looking forward to resuming face-to-face visits in the near future.

Case complexity, follow-up and Ombudsman escalations

Last year I commented on the growing complexity of cases, which has continued this year. There have been fewer straightforward cases and many long, complex and time-consuming ones. I hope that this is because the simpler cases are now being resolved to complainants' satisfaction at a much earlier stage: that would be a good outcome both for complainants and for the CPS. Whatever the reason for this, the fact remains that complaints reaching the IAC are the complex and difficult-to-resolve ones. Complainants are often very dissatisfied, disillusioned, and cynical by the time they escalate their complaint to Stage 3.

The Stage 3 report is meant to be the end of the complaints process, except for cases which qualify for an escalation to the Parliamentary and Health Service Ombudsman (PHSO – see more on that below). Once more this year, case follow-up has featured in a significant number of cases, with some complainants wishing to challenge my findings or present further information for consideration – and in one case, to judicially review my processes. This follow-up correspondence has taken a significant amount of time (mine, and my

assistant's), and in some cases, following prolonged and persistent correspondence, I have had to explain that I am unable to offer any further help and will respond only to pertinent new points not previously raised. This is not something I like doing, but ongoing correspondence about completed reviews adversely affects the service for complainants awaiting review.

Case re-reviews

This year a complainant, Ms X, challenged my findings on multiple occasions. This is not uncommon, but always time-consuming (as I have to reacquaint myself with a closed case and then consider the information provided to assess its relevance and significance). On each occasion, the further information provided did not change my decision. After more correspondence, the complainant supplied further evidence that led to my reopening my investigation.

Ms X was a defendant who had pleaded not guilty to assault and was acquitted. There was initial disclosure a few days before the trial, but by the trial date ongoing disclosure had not been served. The Court directed that it be served by a new date and again the CPS did not comply. The trial was adjourned again. She wrote to the CPS when the matter was still 'live' about late service of disclosure and the resultant adjournment and received no response.

The defence went to court to resolve outstanding disclosure. The Court told the CPS to deal with disclosure by the following day, but this was not complied with. Using information supplied to me by the CPS, I concluded that ongoing disclosure was not served until the day of the trial. In light of the information sent by Ms X after I had concluded my review, I could see that the CPS explanation was potentially misleading, albeit that it was correct insofar as it went.

Originally the complainant told me that the CPS did not provide the unused material and she went through trial without disclosure of documentation. She suggested that I contact her legal representative, but my enquiries had shown that the CPS did serve ongoing disclosure (albeit on the day of the trial). I was critical of the CPS as there was no valid reason for such

late disclosure, documents should have been served in a timely fashion, and the court directions should have been complied with.

When originally investigating the complaint, the CPS explained that: “Ongoing disclosure was dealt with and sent to Counsel on the morning of the trial... Defence was given time to consider the ongoing disclosure and made no application for an adjournment due to late disclosure."

The contemporaneous note that the complainant later sent me from her defence counsel stated that disclosure had not been made when the case was called to open, and even after a delay to allow this to happen, she had still not received it. The defence argued in court that the prosecutor could not proceed to trial without completing initial disclosure, secondary disclosure and providing a response to the defence statement. The court was sympathetic and disinclined to give the CPS any further adjournments. The prosecution was given half an hour to provide an explanation for the delay and an update about when the material would be served on the defence.

My further enquiries revealed that secondary disclosure was served *after* the trial was due to start and possibly only as a result of Ms X’s Counsel’s efforts, rather than in a proactive way by the CPS. Ms X’s Counsel’s note provided a very different perspective.

In the end, Ms X did not suffer detriment as she was acquitted. My final decision was unchanged: I had already made a finding of unacceptably late disclosure. I was, however, concerned that the picture was worse that it first appeared. It was bad enough that there had been an ongoing failure of disclosure, but it was now clear that disclosure was not only late, but reactive and may not have happened at all had it not been for the defence’s efforts. That is unacceptable and a disservice to defendants, who have a right to this material.

Ombudsman involvement

Where there has been a breach of the Victims’ Code, the complainant can take their Stage 3 complaint to the PHSO. The Ombudsman can consider only the parts of the complaint

relating to the breach. In my first two years as IAC there were no escalations, but this year there have been two.

Mr A's escalation to the PHSO

Mr A was seriously injured in a road rage incident. The defendant was initially charged with grievous bodily harm with intent. After further review, an alternative charge of causing serious injury by dangerous driving was added. The CPS wanted to ensure that Mr A got justice: should the jury not be able to conclude that the incident was intentional, the alternative charge was available to help secure a conviction. Unfortunately, no one explained this to the victim, and the defendant was convicted on the alternative charge.

At Stages 1 and 2 of the complaints process, the CPS admitted service shortcomings, and apologised. Mr A remained dissatisfied and escalated the matter to the IAC. I recognised that the addition of the alternative charge was done with the best of intentions, but concluded that the failure to notify Mr A created avoidable distress and was a breach of the Victims' Code.

Mr A asked to be reimbursed for the cost of the court transcript he had obtained to help understand the outcome of the trial. I agreed that the CPS left him without a proper understanding of what happened, but concluded that this could have been remedied by his writing to the CPS to seek a proper explanation without the need to purchase the transcript.

Mr A also wanted the maximum consolatory payment for distress. I could see that the avoidable service failures had caused distress, but my terms of reference allow me to recommend only a "modest payment". My predecessor and I understood £500 to be the maximum *consolatory* payment available, as the CPS had advised that any payments above this amount would require exceptional circumstances and CPS Director of Finance and Treasury approval (both of us have awarded far larger amounts as *compensatory* payments). The IAC does not have the power to award consolatory payments, only to recommend them. It would be unfair to recommend a larger amount than the CPS would be willing or able to pay, as this would raise false expectations for complainants.

I recommended the maximum payment for Mr A, consistent with similar cases (I had considered a lower payment as the service errors did not result in a lesser sentence for the defendant. Communication about the alternative charge had undoubtedly been poor, but the addition of the charge ensured that Mr A did get justice.)

This Stage 3 review concluded in 2020/21 and was escalated to the PHSO in 2022. The PHSO asked how the £500 figure was reached and why it was considered the maximum amount. These were reasonable enquiries, but this matter has resulted in a significant amount of time being diverted from ongoing cases. Further discussions took place between the CPS and the PHSO and I understand the matter has now been resolved and the CPS will reimburse the full cost of the transcript.

Mr B's escalation to the PHSO

This case closed in 2020/21 and was escalated to the PHSO in 2021/22.

Mr B was subjected to a violent, unprovoked attack. He was kicked repeatedly by a group of men in a racially aggravated assault involving offensive racist language. His serious injuries included many broken bones requiring significant, painful surgery. The offence took place in front of his partner, who sadly passed away during the prolonged court proceedings.

As the CPS believed the attackers intended to cause really serious harm, a charge of grievous bodily harm *with intent* was authorised. For various reasons there were many delays in this case being heard. Mr B travelled some distance to give his evidence on the second day of the trial, but on the first day, the defendant offered to plead guilty to a reduced charge of causing grievous bodily harm (no intent).

A police officer telephoned Mr B, who was already in the town where the hearing was taking place, to discuss the matter. Understandably, Mr B was unhappy and angry. The issue was not resolved during a difficult phone call, although Mr B made very clear that the lesser charge was not acceptable. The hearing went ahead with a guilty plea to the lesser charge and the defendant was sent to prison.

The Victim Liaison Unit (VLU) told Mr B that the lesser charge had been accepted to spare him the ordeal of the trial in view of his recent bereavement. That subsequently proved not to be correct.

Mr B felt cheated out of his chance to appear before the court; believed that there had been a deal with the defendant; thought the racial element had not been considered; and was concerned that decisions had been taken privately without his knowledge or consent.

The Stage 1 letter did not address all his issues, and it was not very empathetic. The Stage 2 response was much more thorough, honest, kind and understanding. The CPS now agreed that the lesser charge should not have been accepted; that there had been a lack of proper involvement of Mr B in decision-making; that the loss of his partner during the proceedings did evidentially impact on how the case may have been presented; and that potential assumptions made about his demeanour and co-operation with the case were fundamentally flawed. Too much emphasis was placed on his losing his temper in completely understandable circumstances.

Mr B believed racism played a part in how the CPS treated him. I upheld his complaint about *how* he was treated, but found no evidence that racism was a motivating factor (although that is not to say that there was no unconscious bias). I met the CPS to discuss training looking at prosecutions from a victim's standpoint. In this case, the CPS failed to understand how important it was for Mr B to be able to tell the court how it feels to be beaten to a pulp because of the colour of your skin. How it feels to lose a loved one, a witness to events, during the court process, and how it feels to be denied the chance to see one of the perpetrators face the court and his victim.

As well as recommending training, I also asked the CPS to provide Mr B with a copy of the court transcript free of charge, to enable him to see what happened in court that day; to arrange a meeting to answer Mr B's questions; and to pay him the maximum consolatory payment to recognise that CPS mistakes, including two breaches of the Victims' Code, caused him significant distress.

There has been intermittent postal correspondence with Mr B since his complaint was concluded (he does not use email), and at one point he had difficulty in reaching the office by telephone (it later transpired that there were telephony difficulties which have now been fixed). We were unable to resolve matters to Mr B's satisfaction and he then complained to the PHSO.

I explained to the PHSO that I had already upheld Mr B's complaint. The PHSO investigation is ongoing, but in tandem with that, Mr B has been in contact with the IAC's office about the CPS's failure to implement the four recommendations, which has in turn raised issues for me about how the IAC gets assurance that recommendations are fully implemented. Currently my office keeps a list of all open recommendations, closing them when the CPS makes contact to say they are completed. I am not convinced that the system is robust enough and I will be looking into this during the coming year.

Background Notes

When I initiate an investigation, I ask the CPS to provide a background note. When I became the IAC, I noticed that the quality of these varied across different CPS areas, so I produced a template to help ensure greater consistency. This has made a positive difference, although this year the quality of some background notes has declined. I have been feeding back to areas to encourage them to spend more time providing the detail I require, to save time in the long run to-ing and fro-ing to get further information. I recently revised my template to specify more clearly the information I need to conduct my reviews.

This year a minority of background notes have been economical or selective with information, and as a result, a misleading picture is created (such as in the case of Ms X, where I had to reopen a completed investigation). It is frustrating to have to incrementally piece together what happened in response to requests for further information. This creates more work for everyone, and reviews take longer than necessary. It is better when the CPS is open with the IAC about what has happened, and admits mistakes, so that learning can take place for everyone's benefit.

Another new 'home' for the IAC

In August 2020 the IAC's office moved from Communications to Operations. The aim was that a closer link with the operational side of CPS would help to identify wider CPS learning, leading to changes and improvements for the organisation and ultimately for victims. As a result of home-working, we never met in person, and the pressure of work meant that our planned quarterly case discussions were replaced by emails. The lack of traction is disappointing. Feedback was largely one way: I fed through issues from case work but did not know what happened next and whether issues identified from complaints resulted in service improvements. I have discussed this with the CPS Chief Executive, and we have agreed the need to close this loop so that I can report on the positive difference a complaint has made.

In the coming year the IAC will move again, possibly to Private Office. The move to Operations did not reap the hoped-for benefits, and I became concerned that there was inappropriate involvement in the work of my office and staff. The IAC has to 'sit' somewhere, but my office is not a part of the CPS and must retain independence. The potential move to Private Office, currently under discussion, appears a sensible solution. It is there that support is provided to the CPS's independent non-executive directors.

Terms of Reference

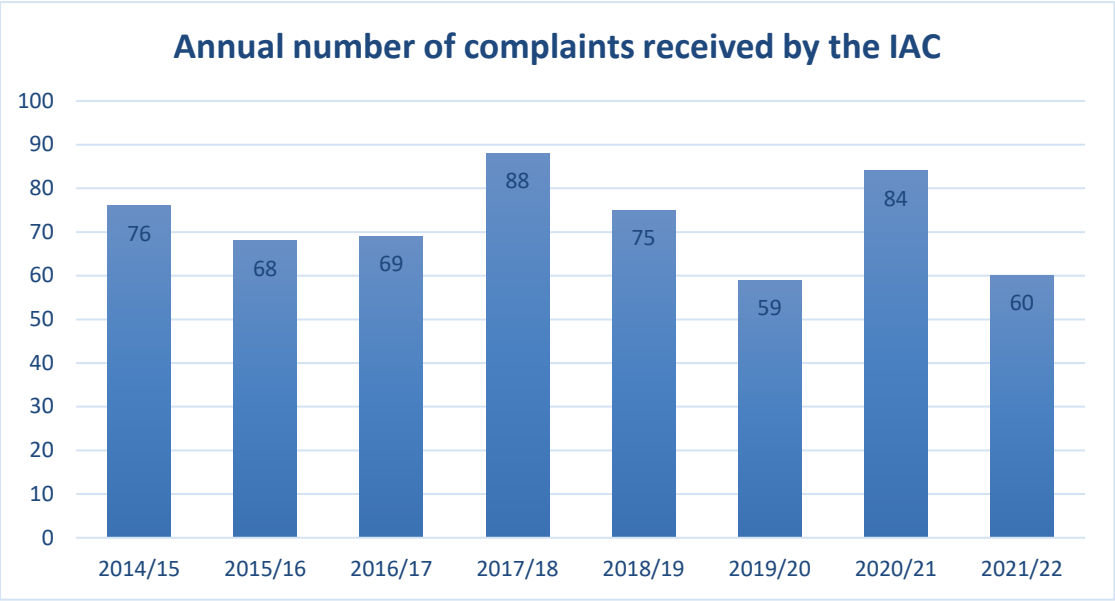
The IAC reviews her terms of reference (ToR) annually, and takes any proposed changes to the CPS Board, where the independent non-executive directors can approve (or not) any suggested changes. This year I reviewed my ToR and did not see any reason to make changes, and was surprised to be sent, out of the blue, suggested changes the CPS wished to make, some of them potentially undermining my ability to undertake some reviews at all. In particular, two of the suggested changes would have the effect of making the CPS the gatekeeper to complainants accessing my service. This is not acceptable. At the year-end, discussions were still ongoing: I will report the outcome in my next report. I am, however, concerned that a review was initiated by the CPS without either my knowledge or participation.

I had always been impressed by how the IAC service was supported and valued. I am keen to recalibrate the relationship when the office moves to its next new home. A tension is healthy, and it would be concerning if the two parties were too cosy, but if the IAC cannot maintain genuine independence then the position is untenable. I am hopeful that we can re-establish previous good working arrangements.

Caseload Comparisons and Performance

Complaints received

The number of complaints received by the IAC's office has fallen significantly since last year, from 84 in 2020/21 to just 60. The big spike last year appears to have simply been the unpredictable rise and fall that has been a feature from the outset, as the table below shows.



The CPS complaints data below shows the number of complaints received.

2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
807	1176	1216	1007	983	954	1012	1152

Complaints rejected

Despite an overall decrease in complaints to the IAC during the year, a larger number have been rejected this year than last. Of the 60 cases received in-year, 19 were rejected (last year it was just 12). The reasons for rejection were:

- 14 were primarily concerned with legal matters so were rejected as not falling within the IAC's remit (it was just 7 cases last year);

- 1 case was wholly legal;
- 3 were returned to the CPS for so-called 'Stage 2 addendums' (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);
- 1 case was rejected for reasons of proportionality, in line with my terms of reference, as it involved an unrecorded conversation and so would have been impossible to adjudicate on.

Advice sought

Occasionally a CPS area will seek advice from the IAC in the hope that a matter can be resolved without the need for a formal IAC review. This year I considered the following matter. Prior to charge, a Senior Crown Prosecutor (SCP) concluded there was no realistic prospect of a conviction. His decision was conveyed to the witness, who requested a review under the Victim's Right to Review (VRR) scheme.

As the witness was initially incorrectly informed that the VRR scheme applied to him, it was agreed that the case would be re-considered by a senior lawyer. This led to further reviews, and action plans were set for the police to provide further material. This was, effectively, an informal VRR.

Another SCP reviewed the case and concluded there was no realistic prospect of conviction (RPOC), and the original decision was correct. This outcome prompted further emails from the witness. The matter was referred to a District Crown Prosecutor (DCP), who identified a point the witness had raised had not been dealt with. Following his own review, he telephoned the witness to explain the rationale for the decisions made and explained that there would be no further review.

The witness continued to send lengthy emails and documentation and to request further reviews. The DCP read the additional material and explained that it did not change his assessment. Having fully and independently reconsidered this matter, the decision was final: no further review would be conducted. In response, the witness sent further information and requested a rereview. A further letter to the witness explained why a charge could not

be authorised and added that as there was nothing the CPS could add or discuss, further correspondence would be filed without response.

The witness then complained to the Chief Crown Prosecutor that both he and the other victims should be allowed to exercise their VRR, that he was dissatisfied with the quality of the work conducted by the DCP, and unhappy with the decision not to allow contact with the CPS as this effectively prevented him from having a VRR and raising a complaint.

The CPS sought my advice and explained that the complaint about the quality of work conducted by the DCP was a legal complaint that appeared to be an attempt to seek further review of the charging decision. The CPS Feedback and Complaints Policy states: "Victims who are dissatisfied with the outcome of their VRR request cannot lodge a legal complaint under the complaints policy".

In relation to the service complaint (the CPS refusal to engage further), the policy states: "We [the CPS] may decline to deal with complaints that are abusive, unreasonably persistent correspondence or complaints where our formal complaints procedure has been exhausted."

My advice was that the VRR and the complaints process are separate. The witness had not been entitled to a VRR, but this had been undertaken informally and concluded. That matter was now closed. In the circumstances, it was appropriate for correspondence relating to the VRR to be filed.

The complainant was, however, entitled to make a service complaint – including a service complaint about how the VRR was handled. Legal issues related to the VRR had already been addressed. Any service complaint would need to go through stages 1 and 2. While not pre-empting the outcome, were the complainant to escalate the matter to Stage 3, on what I had seen of the case, I would most likely consider it disproportionate to investigate given that the central issues had already been addressed.

Accepted and completed

Of the 41 complaints accepted by my office as falling within my remit between 1 April 2021 and 31 March 2022:

- 30 were completed and dispatched
- 1 was completed and ready to be dispatched, but was awaiting Finance approval for a payment
- 2 were at first draft stage
- 7 had completed formal assessment and were accepted as valid for a Stage 3 review, but had not as yet been formally accepted by the IAC. (Those will be carried into 2022/23. This is a significant drop on the 24 carried over last year)
- 1 is on hold due to legal actions

This year just a single case that arrived was still awaiting assessment at year-end and had to be carried over to 2022. It has subsequently been rejected by the IAC and a detailed response provided to the complainant.

This year I also completed 21 complaints received prior to 1 April 2021 (carried over from the previous year). Of these, 1 was not upheld, 14 were part upheld and 6 were fully upheld.

Overall, fewer cases were completed this year than in 2020/21 (51 this year compared with 62 last year). This is because for several months last year, the IAC's time commitment was doubled in order to address the backlog created by the significant increase in cases. This year I have worked around one third fewer days than in 2020/21.

The IAC has always been contracted to work 48 days a year, although almost from the start it was clear that the role requires more than the allocated time. The CPS has always funded additional days to help avert significant backlogs from developing. Each case takes between one and two days to complete, on top of area visits, meetings, and commitments such as an annual report. From the new financial year, the number of contracted days has been increased to 60, to better reflect the actual time needed to fulfil the role. This is a welcome change.

Performance and waiting times

Waiting times are inevitable because Stage 3 requests cannot go straight to review. First, eligibility checks must take place, then background briefings and case files need to be prepared for those proceeding to a full review. I have always aimed to achieve shorter waits for complainants awaiting a review, and to be more transparent about actual wait times.

With one exception, every case closed in 2021-22 was completed within the 40 working day target, when calculated in the way this figure has been measured since the outset. The clock has always started only when a complaint is formally accepted by the IAC, but this is a disingenuous measurement. For the 40-day performance target to be meaningful, the clock should start as soon as the files are ready for the IAC rather than at the point at which the IAC requests them. In a bid to be more transparent, from April 1, 2022 I will report on *actual* waiting times – in other words, how long complainants have to wait from the date at which their case is ready for review, even if I have yet to officially accept it. This will be the first time that this data will have been published since the IAC office was established in 2013.

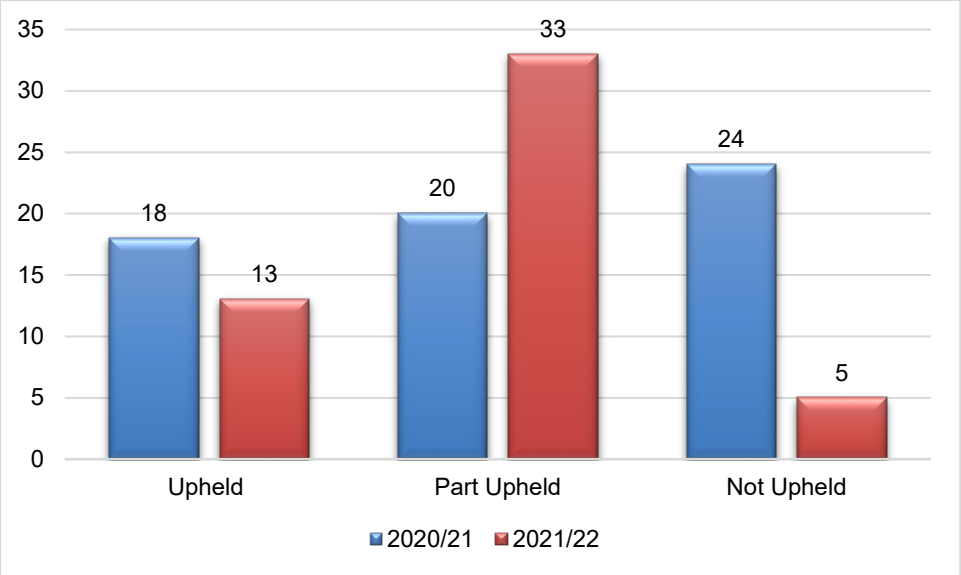
Even this, however, will not be a true reflection of the life of a Stage 3 complaint. There can be a significant wait for cases to be assessed, and this adds to the real time that complainants must wait. There is no solution other than to add even more resource – but upping the resource at the front end will not reduce overall wait times if the IAC has finite resource. It may be more honest to set a longer but more accurate overall timescale that gives complainants a more realistic expectation of how long they are likely to have to wait.

Who complained?

Of the cases completed in 2021/22, 30 complainants were victims or the relatives or representatives of victims, and just 1 was a witness. Nineteen of the complainants were defendants or those who had been considered for prosecution. One further complainant considered himself a victim and had pursued a private prosecution which the CPS had closed down.

Outcomes

The table below shows the outcome of my reviews: the majority were either wholly or partly upheld (46 cases, up from 38 last year). The number of cases not upheld was just 5 (down from 24 last year). This is a significant change.



Recommendations

I made recommendations in 17 cases (although some cases contained multiple recommendations), compared with 24 cases in 2020/21. Most recommendations were standard remedies: ten involved some sort of payment; in three cases I asked the CPS to write an apology; and in one case a further CPS letter was sent containing further information and explanation.

Not all cases involved standard recommendations. Take the case of Ms Y. Her bicycle was struck by the defendant's vehicle and her pelvis was fractured. The defendant entered a not guilty plea to careless driving. The Reviewing Lawyer reviewed the evidence, concluded that there was not a realistic prospect of conviction, and the case was discontinued.

Ms Y was told that under Victim's Right to Review (VRR), she could ask for a review of the decision: "Requests can be made within three months of the date of my letter but an early request allows for a prompt review and, where appropriate, the case to be (re)started as soon as possible." The CPS letter did not explain that once the six months' time limit within

which allegations of careless driving must be charged has expired, the offence is not able to be charged or reinstated under any circumstances. As the statutory time limit had expired the day before the proceedings were stopped in Ms Y's case, there was an absolute bar on a prosecution being restarted.

Ms Y requested a review, with the understandable expectation that proceedings would be restarted if the wrong decision had been made. The VRR concluded that the decision to discontinue had been wrong and that the Code for Crown Prosecutors had been incorrectly applied. Because of the statutory time limit, however, the prosecution could not be reinstated and that was the end of the matter.

She complained that seeking a review had been pointless. The CPS responded that having the decision reviewed was still valuable even where it was too late to reinstate the prosecution, as it could identify errors, and take steps to ensure no repetition. The CPS area acknowledged that the letter ought to have been clearer, and agreed to look at how it words letters to victims in cases where it is too late for a VRR to reverse the decision.

Ms Y wrote to me that a dangerous driver was still on the road and she was angry because she should have been afforded the opportunity to comment on the discontinuation *before* it took place. I found that although her concerns should never have gone down the VRR route in the first place (the scheme does not cover careless driving), I was pleased that the CPS area had amended the wording in its VRR letters in time-barred cases. I wrote to the operations team to ask if this sensible practice could be rolled out across all CPS Areas.

I was concerned that victims were being given the false impression that their *feelings* about a matter may change the result. It would better manage victims' expectations if the letter inviting a VRR stated that however strongly a victim wants a prosecution to continue, that strength of feeling will make no difference to the outcome if the requirements of the Code have not been met.

The CPS is required to stop cases as soon as it is clear that the evidential test is no longer met. This is set out in its Termination of Proceedings Policy, in the Code for Crown Prosecutors, and in recent case law (the case of Hayes in the Court of Appeal, 2018). This is

important to ensure fairness to defendants. If there is insufficient evidence, it is right that proceedings are stopped at as early a stage as possible. I often receive complaints from defendants aggrieved that their cases were not stopped quickly enough.

The problem arises where stopping a case at the earliest opportunity results in unfairness to victims, as in Ms Y's case. For matters within the statutory time limit, (or where there is no time limit), there is no problem. A case can be discontinued due to no longer meeting the evidential test (in fairness to the defendant); then restarted when an erroneous decision is reviewed (in fairness to the victim). When making a decision in time-limited cases, before allowing the victim a meaningful opportunity to challenge it before it is too late, the interests of the defendant are placed above those of the victim. Ms Y could never get justice, however big a mistake the CPS had made. That cannot be right.

I asked the CPS to consider whether there is a lawful way of allowing time-limited cases nearing their deadlines to be paused briefly pending the outcome of the VRR review. I met with the CPS to discuss the feasibility of this recommendation, which would be a big change to how the CPS handles these matters, and it may have wider implications. It could open the CPS to legal challenge from defendants, to claims of abuse of process, and to judicial review, so there is much to consider. My recommendation, that the CPS considers the desirability in principle, the feasibility, and the legality of changing policy and process to enable this, if possible, was agreed. I asked the CPS, when it has completed its deliberations, to write to Ms Y and to me again, either setting out what it has done, or explaining why it has been unable (or unwilling) to do anything to address this injustice to victims in time-barred cases.

Other unusual recommendations include asking a victim to work with me on training for CPS lawyers on being better at understanding a victim's perspective, and a request to help a victim obtain a restraining order against his neighbours following poor handling of his case. There was also an IT recommendation, and an informal recommendation about creating a checklist to help avert future errors.

Reasons for Complaint and Resolution

There has been no particular theme to this year's complaints, other than the usual (and seemingly irresolvable) sources of complaint below, consistent over a number of years. It is disappointing that these issues have remained stubbornly resistant to improvement (although arguably the overall decrease in escalation to stage 3 may indicate that the problem is reducing).

- Administrative errors: such as the wrong date for a court hearing being provided to a witness, or a letter being written but not sent.
- Case management: sometimes cases are not actively managed, and the CPS fails to chase the police for overdue or missing information, or to chase up or escalate police failures to enact action plans. This can result in the discontinuance of a trial.
- Last minute review/preparation: this remains central to many complaints. Case files are often reviewed too close to the court date, typically the day before, when it can be too late to secure missing information. This may mean that a trial has to be adjourned, or a prosecution dropped altogether, leaving victims feeling that justice has not been done.
- Compensation: a failure to seek compensation for victims of crime continues to be a theme.
- Agent prosecutors: they continue to feature in complaints cases. Perhaps because they are external to the CPS, they feel less allegiance to the organisation and are less familiar with its policies (despite receiving training).
- 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 wanting the defendant and the court to understand how they have been affected by a crime. This can be very cathartic for victims, and some believe that the outcome would have been different if only the court had understood the full impact of the crime on them.
- 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 so sparce that it is impossible to establish what happened – such as whether compensation was asked for; what the reasons were for magistrates refusing an adjournment; or what instructions were given in phone calls to the CPS.

- Behaviour at court: Sometimes victims complain about poor communication at court, insufficient time with prosecution counsel, or insensitivity and brusqueness (often involving agent prosecutors).

Consolatory payments

Complainants often seek a consolatory or 'goodwill' payment (a payment to make amends for stress, distress or hurt caused by service failures or maladministration) as their desired resolution. In line with HM Treasury guidance, consolatory payments from the public purse must be modest – usually 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 light of the PHSO interest (see earlier section), I intend to seek clearer guidance from the CPS on amounts for (and caps on) consolatory payments.

In the cases closed during 2021-22, I recommended 11 payments. The lowest was £200 (although this was on top of the £300 the CPS had already offered, to bring it up to the maximum consolatory payment of £500); the highest was £500; and the total came to £4,300 (compared with £6,633 in 2020/21; £4,550 in 2019/20; £2,600 in 2018/19; and £3,470 in 2017-18).

Increasing payments

Sometimes a consolatory payment has already been offered and accepted before a case reaches the IAC. Unless the amount is so low as to be unreasonable, the IAC will not substitute a larger sum at Stage 3. Unusually, there were three cases this year where I believed an additional payment was merited, the case of Mr C and Mr D, and the case of Ms Z (which was completed during the year but awaiting final authorisation of payment at the year-end).

Mr C

A failure to link charges related to the same incident had serious repercussions: the defendant did not face the more serious charges that he would have had the error not been made.

Mr C and his young son were in a taxi that crashed, leaving them with painful injuries that required ongoing hospital treatment. Police charged the driver with three drug-driving offences (as these needed to charged within six months), but sought CPS advice on the more serious offence of causing serious injury by dangerous driving – a charge that required CPS authorisation and could not be charged independently by the police, unlike the drug driving charge. Before a decision could be made, the charging lawyer requested a forensic pharmacologist report.

The defendant appeared before Magistrates and entered guilty pleas to drug-driving. At the sentence hearing, sentencing was adjourned, then further adjourned. Finally, he was given a suspended prison sentence and a two-year driving disqualification.

The CPS received the pharmacologist's report and authorised charges of causing serious injury by dangerous driving based on the same facts as the drug driving offences. At court, the defence said that the defendant had already been convicted of offences based on the same allegations. The case was adjourned, and the defendant's solicitor wrote to the CPS questioning the validity of the new charges. The prosecuting advocate who had been at court contacted the charging lawyer querying the dangerous driving charges. Before this contact, the charging lawyer had been unaware that the case had been dealt with in the Magistrates' Court. Following further review that day, the CPS charging lawyer sent a notice of intended discontinuance to the police.

At Stage 1 it was conceded that the lawyer should have taken proactive steps to adjourn the drug driving hearing until a decision on the more serious dangerous driving offence had been taken. The police had submitted the two offences under different reference numbers (one to the CPS Magistrates' Unit and the other to the CPS Crown Court Unit) so the cases were never properly linked, although there was reference on the earlier case that a case

would be submitted on the more serious offences, but the note was twice missed by the lawyer dealing with the drug-driving.

At Stage 2 it was accepted that the reviewing prosecutor was aware that offences had already been charged to the Magistrates' Court and he should have joined the cases up and ensured that a request was made to the Magistrates' Court to adjourn the case pending the further charges decision being finalised. Mr C was offered a consolatory payment of £350 and told that: "As your complaint relates to CPS legal decision making, this letter represents the second and final stage of the CPS Complaints Process."

Mr C was not provided with the IAC's leaflet or details of how to get in touch to further escalate the complaint. This was a service failure. Furthermore, I did not share the CPS's view that this was solely a legal complaint. In fact, the failures were largely service errors, which resulted in the defendant not being held to account for the correct (more serious) charges. This case highlights my concerns about suggested changes to my Terms of Reference, in which the CPS would decide which complaints were eligible to be escalated to the IAC.

These errors resulted in an injustice to Mr C and his son. Two different lawyers failed to join up the two cases. The reviewing prosecutor made a similar error. These were not legal errors; they were maladministration.

My review identified two further errors, neither of which affected the eventual outcome. After the CPS received the pharmacologist's report, the lawyer authorised charges only in relation to the son. Charges relating to Mr C were initially overlooked. This was subsequently corrected but the Stage 1 letter was not accurate when it stated that that dangerous driving charges were authorised in relation to both victims.
The other error was in relation to Victim Personal Statements (VPSs), which are an opportunity for victims to explain the impact of a crime. The police did not submit VPSs for Mr C and his son, and the CPS failed to request them. The two advocates who dealt with the drug-driving hearings should have identified the need for a VPS. This failure was a breach of the Victims' Code.

I was also concerned about the lack of candour in a letter to Mr C from the CPS charging lawyer, who wrote to inform him that the causing serious injury by dangerous driving charge had been stopped. He wrote: "I have been asked by the police to advise as to whether the taxi driver's actions could amount to an offence of causing serious injury by dangerous driving. I took the view that there was a realistic prospect of a conviction for this offence but given that the suspect has already been sentenced for imprisonable offences arising out of the collision, and that the court had imposed a suspended prison sentence being aware of all the circumstances of your case, it would no longer be appropriate to prosecute the taxi driver for further offences. I hope this explains what has happened in your case."

There was no mention of: the failure to connect the two cases; the failure at an earlier stage to suspend the proceedings for the drug-driving until the CPS could review the forensic pharmacologist's report; the defendant's appearance in court on the second set of charges; or the defence solicitor's challenge that the charges were not lawful. Nor was there an apology for the errors. I found the letter misleading and lacking in transparency.

Although it is unusual for the IAC to suggest an increase on an amount already offered by the CPS, in this case, given the number of errors and their potential impact, a higher amount was merited. I recommended a £500 payment to Mr C's son and a further £150 to Mr C to bring his total to £500 in recognition of the distress caused by the CPS's avoidable breach of the Victims' Code and the many other errors in the handling of the case.

<u>Mr D</u>

Mr D and his son were hospitalised after being hit by a speeding car driven by a sixteen-year-old without a driving licence or insurance. Mr D almost died, and suffered serious, life-changing injuries including multiple broken bones and amputation, thereby losing his livelihood as an HGV driver. The whole family has been significantly affected emotionally, practically and financially.

The police asked the CPS for a charging decision. A Senior Crown Prosecutor (SCP) reviewed the file and considered two possible charges:

- careless driving, a ‘summary’ offence (a charge must be brought within 6 months of the incident occurring).
- dangerous driving, an offence that has no time limit.

The SCP advised the police that on the evidence, the level of driving was careless. Further evidence was requested, which might increase the level to dangerous. The SCP reminded the police of the careless driving time limit and asked that any additional evidence be provided within seven days.

Following notification from the police that there was no further information, the SCP advised a charge of careless driving, driving without insurance and driving without a licence. The defendant was charged.

The police then unexpectedly sent additional evidence including CCTV footage and a statement from a new witness expressing the view that the driving was dangerous. The SCP decided that dangerous driving could now be proved. Police were advised to charge the offence of causing serious injury by dangerous driving. The SCP added her review to the file, which made note of the change in charge. The police took no action, although the CPS accepted that the SCP was not clear enough in specifying what the police should do in these fairly unusual circumstances.
At court, the prosecutor failed to notice the SCP’s note on file about the change in charge. The defendant pleaded guilty to the original charges.

The CPS wrote to Mr D informing him of the error, but did not explain how it occurred. Shocked, angry and upset, Mr D complained that he had suffered an injustice and was worried about systems not being in place to prevent repetition. He was upset when he discovered that the defendant’s court attendance for an initial hearing (where the incorrect charge was presented) resulted in sentencing there and then, without any opportunity for Mr D to make representations. He asked whether the sentencing process would have been different had the defendant been properly charged with dangerous driving – for example, whether another hearing would have taken place which he could have attended to read his victim personal statement to the court.

The CPS responded that immediately after the mistake was discovered, an urgent enquiry looked at whether it was legally possible to bring the case back to court to rectify the position and proceed with the intended charge, but there were no options available. Furthermore, there was sufficient evidence to charge for dangerous driving from the outset (even without the additional evidence). The CPS offered a consolatory payment of £300 to recognise the additional distress these errors had caused.

Mr D was not convinced that something similar would not happen again, so he escalated the matter to me and sought assurance.

I was concerned that two lawyers made errors in the same case: one a legal misjudgement and the other a service error. These mistakes led to the injustice of the youth who left Mr D with life-changing injuries not facing charges for driving dangerously.

I was satisfied that the collective actions taken following this case were sufficiently robust to prevent similar errors being made in future cases. I noted that although Mr D had never asked for financial payment, and to date had not accepted the £300 already offered by the CPS for the distress caused, I recommended a higher payment (that the £300 already offered be increased to £500 to recognise the significant level of distress that this matter had on the family).

Ms Z

This case was completed during the year but was awaiting approval from finance at the year end.

Mistakes were made in the prosecution of Ms Z's mother's former partner which led to his walking free. The defendant had been issued with a harassment warning and following various incidents being reported to the police, police asked the CPS for a charging decision in relation to allegations of harassment and coercive and controlling behaviour.

CPS staff rejected the case as some statements were missing from the police submission. The file was then resubmitted and accepted, and the Reviewing Lawyer decided there was sufficient evidence for a realistic prospect of conviction in relation to the harassment. She informed the police, but she failed to include the wording for the charge or to make it clear that charges of harassment were authorised.

The police again submitted a request for advice, which was again rejected as items were missing. The police queried this, but their request was once more rejected as the nature of the query was misunderstood. A reminder to lawyers to take a decision on appropriate charges was tasked, but later cancelled as admin staff noted that the computer system indicated that the charging decision had been given.

The police chased the pre-charge decision, but the charging team replied that charges were authorised some time ago. The police again queried that authorisation, as no charges were on the pre-charge advice, and asked what the charges were. Police were eventually given the charges, but by now they were out of time to be charged.

Later the police resubmitted the case for charging advice, as the defendant was alleged to have continued harassing by parking near to a place frequented by the victim. Following this further request, the Reviewing Lawyer looked at the case, but the original charge of harassment was outside the 'summary time limit' as the last incident in the course of conduct was more than 6 months previously. The Reviewing Lawyer requested and received further evidence, and then authorised charges which brought back in the previous allegations that were out of time, and added the new parking allegations as a course of conduct.

The defendant did not attend the first hearing. A warrant was issued, he was arrested, appeared before court and was released on bail. He did not attend court again. Another warrant was issued, he was arrested and appeared before magistrates, where a not guilty plea was entered.

The trial was on a Monday. The case was reviewed on the Friday before by a different lawyer, who concluded that there was no realistic prospect of conviction in relation to the harassment, as the parking of the car could not be said to be part of the same course of conduct as the earlier incidents due to the significant time gap between the last harassment incident and the car parking. Furthermore, the conduct was of a different nature and quality, which meant in law it could not amount to the same course of conduct. Supported by two District Crown Prosecutors, he amended the charge to reflect only the car parking incidents.

At the trial the defendant produced new evidence that he was attending business meetings near to where the car was parked on the dates alleged. The lawyer concluded that in light of this, the prosecution would not be able to establish harassment, so he offered no evidence.

Ms Z complained that her family had waited for three hours at court before the Prosecutor explained the CPS had offered no evidence. They could not understand why they were not told this before the trial day to avert an unnecessary journey and time off work. They felt cheated of justice and were confused over two different explanations: one that there was not enough evidence, and the other that no evidence was offered.

The CPS upheld the family's complaint, acknowledged that there has been a service failure, offered an apology, and outlined steps taken to avoid similar mistakes in the future. Because of the extreme distress and anxiety caused, a consolatory payment of £300 was offered.

Ms Z told the IAC that the family was under the impression that the CPS had a great deal of evidence ready for trial, only to learn that there would be no evidence offered. She explained that the payment was insufficient given their suffering.

I found that the reviewing lawyer made an error in not sending charges to the police, or even being clear that charges had been authorised. Admin staff did not fully understand the police query and sent it back several times. The CPS was fully aware that this was a time-

sensitive charge, and given the nature of the police queries, I was disappointed that the matter was left to run out of time when the CPS could and should in this case have checked or queried the police's queries. Then when the case was picked up again, the CPS lawyer admitted making an error in law in believing that the parking issues represented a continuation of the previous conduct. During my investigation I found a further service error: the Stage 1 letter contained incorrect information.

When the case was reviewed in preparation for the trial, and the lawyer concluded that there was no realistic prospect of conviction in relation to the harassment, there was a requirement to inform the witnesses. I asked the CPS why this did not happen, and the CPS explained that the reviewing lawyer: "would have felt it was better to explain in person the position bearing in mind the type of case, than allow third party [the Witness Care Unit, WCU] to explain, as something may have got lost in this communication given the complexity." I did not accept that explanation, as although it is easier to explain face-to-face than over the telephone, it would have been possible for the lawyer to give the family this explanation on Friday, rather than leave the family waiting in court for three hours the following Monday.

On the Friday, the CPS intended to proceed to trial on the Monday with the parking charges. It wasn't until the Monday that the defence produced the additional evidence which led to the CPS stopping the case. Nonetheless, the family attended court expecting a trial for harassment, and no doubt endured an agonising weekend mentally preparing for this. The lawyer appeared not to have put himself in their shoes so that expectations for Monday could be managed. Had they known, the family could have used the weekend to come to terms with the harassment charges being dropped,

Ms Z's mother was entitled to an enhanced service (to be informed in writing, within 24 hours of the decision to offer no evidence, of that decision and the reasons for it). The CPS claimed that in these circumstances a letter was not required, as she was spoken to at court and told the outcome. I disagreed. It was clear that she had not understood the information: a written explanation would have helped the family to understand what had happened and why. The prosecutor at court did not clarify whether the mother still wanted a victim letter.

While this may not have been a breach of the letter of the Victims' Code, it was a breach of its spirit.

The CPS explained that as the harassment charges were initially never charged, it should have been the police who explained to the victim what had happened. The CPS claimed it did not discontinue/withdraw anything at that stage to invoke a victim letter. I found that although technically a 'victim letter' was not required, the CPS should have informed the family proactively that an error had been made.

The CPS offered a consolatory payment of £300. Ms Z complained that it did not compensate for financial losses. I explained that the CPS Consolatory Payments Policy distinguishes between 'compensation' (a payment for actual, uninsured financial loss) and 'consolation' (a payment in recognition of stress and distress as a result of a CPS error). The CPS payment was a consolatory or goodwill payment that recognised that the initial error led to a train of events that caused distress.

I considered whether this case qualified for compensation following uninsured financial loss as a direct result of the CPS's error. It did not. I had no doubt that the family lost money – Ms Z mentioned stolen property, legal fees, taking time off work and property damage. These were the result of the defendant's actions rather than the CPS's failures, and such losses would have occurred even if the case had gone ahead and the defendant had been found guilty. There was a possibility that the magistrates may have awarded compensation had the trial proceeded but it was by no means certain. As no compensation details were provided to the police, compensation was not applied for as part of the court case. Property damage was not part of this case. It appeared unlikely that the court would have awarded compensation had he been found guilty.

I considered whether the consolatory payment already offered was sufficient. Given the clear distress suffered, and the number of avoidable errors, I asked the CPS to increase its original goodwill payment to £500 to acknowledge avoidable errors, and additionally make a payment of £300 to Ms Z for the stress caused to her.

In addition to consolatory payments, the IAC has the power to award compensation where appropriate. This year there were no cases where I recommended that the CPS make such payments.

Complainants' Voices

By the time people complain to the IAC, they have already completed two stages of the CPS complaints process and have been left feeling dissatisfied. Some remain dissatisfied after an IAC review, particularly if their complaint has not been upheld, or they have not been given the outcome they would have liked.

While expressions of satisfaction come mainly from those who got the result they wanted, this year I received thanks from victims whose complaints were not upheld. One wrote: "I appreciate your thoroughness, empathy and understanding… thank you for your kindness." Sometimes just being listened to and having one's perspective understood, can be a help and a healer, even in the absence of the desired outcome.

Another victim phoned the office and, despite his complaint not being upheld, wanted to pass on his thanks. He said that the review provided him with a better understanding of what had happened, and filled in the gaps. It had also, as he put it, restored his faith in humanity and the system. He said he was more than satisfied with the findings and truly thankful for the review.

Defendants in particular are most likely to remain dissatisfied, so it is always heartening to receive a thank you. One defendant, whose complaint was not upheld, wrote: "Thank you for the response. I am disappointed with the outcome, however, thank you for having taken time to investigate it."

Another defendant wrote: "I would like to thank Moi Ali for her response, and for getting it to me quickly then she envisioned. While not entirely satisfied with it, for example… I can see time and effort has been put into it for which I am grateful."

Many victims want to know that their complaint has made a difference. One wrote: "When we asked if you would consider our complaint against the CPS we had no expectations, so therefore when you agreed to do so it was very encouraging. In your conclusion there are

both negative and positive comments but we prefer to focus on the positive! We think that your investigation will have brought our complaint further into the light and in turn perhaps will establish better practice within the CPS. For this we give you our sincere thanks."

Every year I report on how even a small consolatory payment can make a difference. This year one complainant wrote to say "Would just like to say I appreciate the email and the in detail review of what happened to me at court and your understanding. I would very much like to accept the £250 and put this behind me. And I'd just like to add that I received this email on my birthday and appreciate it :)"

Many complainants express appreciation to my assistant, who has a wonderful ability to listen and to be empathetic. One wrote to him: "…thank you for your kindness and understanding." This is typical of the thanks he frequently receives.

In the interests of balance, I also receive negative feedback. Sometimes my independence is questioned, and sometimes the feedback is threatening or abusive. That is not unusual in the complaints field and I do not take it personally, although I recognise that for my assistant during these two years of working from home, it is tough to deal with. The same goes for those who deal with complaints within the CPS: dealing with angry people when you are at home, and have no colleagues around you to provide support, is very hard. In the circumstances, I think that the CPS has done a very good job in maintaining the system throughout the pandemic.

Moi Ali
Independent Assessors of Complaints

May 2022

Acknowledgements

As ever, I have to offer very sincere thanks to Tony Pates, Assistant to the IAC, who manages casework administration and liaises with CPS Areas on my behalf. He is excellent at supporting me in my role, while at the same time maintaining a first-class working relationship with the CPS in order to enable us to secure the best outcome for complainants. He is also kind and patient with complainants. I am very grateful to him.

Sincere thanks also to Mercy Kettle (the Public, Correspondence and Complaints Team Manager), for her support during the year. Mercy provides considerable assistance in the running of the IAC's office, and she quality assures my letters before they are issued to check for typographical and other errors. There are occasions during the year when, without complaint, she has come in on a day off, or worked late, to ensure that work is progressed so that letters go out on time. She has gone above and beyond the requirements of the role and has always shown a deep empathy for complainants.

Both Mercy and Tony are employed by the CPS, yet they always respect my independence, have never sought to influence the IAC, and always provide the support that I require. The year has been challenging and I am hopeful that the move of the IAC's office to a new home will address any tensions between their CPS role and their support role for the IAC.

Finally, as ever I remain grateful for the interest in the IAC's work shown by the Director of Public Prosecutions, Max Hill and the Chief Executive of the CPS Rebecca Lawrence, both of whom read every one of my reviews. I am sorry to see the departure of CPS Board Member Caroline Wayman, who has been my named non-executive, and who has been available should I wish to raise any issues. Due to the pandemic we have not met as we normally would during the course of the year.

Thanks also to the Board in general and to the senior leadership of the CPS Areas. There have been some tensions, largely healthy ones, and I hope that the move of the IAC's office will provide a good environment for full circle organisational learning from complaints,

which can only result in a better experience for all – whether victims, witnesses or defendants - who come into contact with the prosecution service.

Moi Ali

May 2022

Annex: IAC's 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 gives 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 IAC's Office.

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.gov.uk

8. Review Period

8.1 The IAC terms of reference will be reviewed annually.

Moi Ali
Independent Assessor of Complaints
c/o Crown Prosecution Service
102 Petty France
London
SW1H 9EA

IAComplaints@cps.gov.uk