

Independent Assessor of Complaints
for the Crown Prosecution Service

Annual Report 2013-14

Independent Assessor of Complaints for the Crown
Prosecution Service, Stephen Shaw CBE

April 2014

Contents

	Page
Introduction	2
Caseload	3
Guardianship role	6
Issues arising from casework	6
Case summaries	8
Conclusion	15
Annex 1: List of cases	16
Annex 2: Terms of Reference	21

Independent Assessor of Complaints for the Crown Prosecution Service: Annual Report 2013-14

1. Introduction

1.1 I take great pride in having been appointed the first Independent Assessor of Complaints (IAC) for the Crown Prosecution Service. I now have great pleasure in submitting my first annual report in that capacity.

1.2 The office of IAC was established following two critical reports on the CPS's handling of complaints from the Chief Inspector of the CPS, Mr Mike Fuller. Most public authorities and agencies had established an independent tier to their complaints procedures well before the CPS, and it may be fairly said that the CPS had not developed a strong culture of what in other walks of life would be termed customer service. The position was put very clearly by Mr Fuller in his follow-up review of complaints handling published in January 2013:

“The most important element in the complaints handling process is the way in which complaints are responded to. Our 2009 report identified a general culture of perceiving complaints as a nuisance rather than as an opportunity to improve services ... However the [subsequent] inspection continued to show that too often replies were defensive, lacked empathy, and did not address points raised ... Capturing lessons from complaints and engagement with witness care units was also weak. Overall, it is evident that CPS culture towards handling complaints has not improved as much as we would have expected ...”

1.3 At paragraph 3.78 of his report, Mr Fuller recommended: “The CPS should introduce an Independent Assessor for complaints who is independent of the complaints process, in order to increase public assurance and confidence in the system.”

1.4 My appointment began on 13 May 2013. I have a three year contract (expiring 12 May 2016) but with the possibility of extension beyond that date. Information about my role is available on the CPS intranet and publicly.

1.5 I benefited greatly from early meetings with the then Director of Public Prosecutions and other senior staff. Both Sir Keir Starmer and his successor as DPP, Ms Alison Saunders, have offered strong support during my first months in office. I have also met with the Chief Inspector and with the Attorney General and Solicitor General. Within the HQ building and more widely in the CPS, I have

been made very welcome indeed. I am particularly grateful to Mr Peter Lewis, Chief Executive, and his colleagues on the CPS Board, and to Ms Dale Simon, Director of Public Accountability and Inclusion, and to all her colleagues in the Public Accountability and Inclusion Directorate.

1.6 However, it must be acknowledged that for much of the period covered by this report the administrative arrangements in support of my office have been in their infancy, and for the whole period I worked without formal terms of reference. As a result, there have been some delays in forwarding complaints to me, and some uncertainty as to the boundaries of my remit.

1.7 There has also been a higher volume of complaints than was anticipated when I was appointed. This has had a number of consequences: I have had less time to develop an ambassadorial role; a proposed dip-test of stage 1 and stage 2 complaints has been postponed; and some complainants have faced unacceptable delays. On the other hand, a higher volume has meant both a greater number of recommendations to the CPS and a stronger evidence base for the feedback I have offered to the Service.

1.8 By the end of the reporting period, CPS Headquarters had completed a review of complaint handling – to which I was able to contribute – that should ensure a more robust approach to complaints management across the CPS. The review also set out proposed terms of reference for my office that, after further amendment, have now been published. They are reproduced as Annex 2 to this report.

2 Caseload

2.1 The CPS introduced a wholly new complaints procedure at the beginning of June 2013 to coincide with the introduction of VRR (Victims Right to Review). In short, complaints about legal matters may be considered at just two stages (culminating in a review by a Chief Crown Prosecutor or their Deputy). Complaints about service matters (acts or decisions or omissions or failures to act) are considered at three stages: the two local stages as for a legal complaint plus an independent review at stage 3 for which I am responsible.

2.2 In practice, the distinction between ‘legal’ and ‘service’ complaints is often a fine one. In many cases, both elements are present in what I term ‘hybrid’ complaints.

2.3 Although it is not entirely satisfactory – and it is certainly not conspicuously independent – the ‘gatekeeping’ role (that is, the primary decision about whether a complaint is within my remit) is performed for me by CPS staff. On a small number of occasions, cases have been referred to me that I did not feel came within my remit.

2.4 I received my first referral on 20 July. By 31 March 2014, I had received a total of 29 complaints (representing an annualised rate of around 42). Reviews of some 27 of those complaints had been completed by the year’s end.

2.5 The number of complaints has been significantly more than the Service had anticipated and has caused some difficulties for me - and some inconvenience for complainants.

2.6 One case was closed by letter. In all other cases, completion was by way of a formal report.

2.7 Eighteen of the complainants were male; eleven were female. I do not currently have the capacity to carry out more detailed analysis of the make-up of my caseload or how representative it is of all those who have contact with the Crown Prosecution Service during the course of the year. The numbers to date are too small to make meaningful comment on which CPS Areas generate the highest proportion of stage 3 complaints.

2.8 The subject matter of the complaints has been wide-ranging. Several had their starting point with a decision not to prosecute and then became complaints about the service offered by the CPS. Five of the first ten complaints I considered included a specific request for financial compensation – in particular where incorrect details of financial loss had been presented at court. Other complaints concern an alleged failure on the part of the CPS to keep victims informed. Failure to respond in a timely fashion to letters and telephone calls has been another theme.

2.9 Of the 27 closed cases, I upheld the complaint in full in ten cases, and partially upheld in six more. In eleven cases, I did not uphold the complaint.

2.10 At first sight, an uphold rate of 59 per cent (adding together full and partial upholds) looks very high. But it can be misleading to speak of an overall ‘uphold’ rate because I may simply be upholding part of a complaint (sometimes on quite a trivial issue relative to the fundamental grievance). For example, if the CPS were to reply to a complainant outside its published time limits, that aspect of a

complaint should be upheld notwithstanding that in all other regards an Area's service has been admirable. I will also sometimes include within reports minor criticisms or advice as to good practice that do not justify formal recommendations.

2.11 Moreover, in many of these upheld cases, I was simply endorsing a finding or acknowledgement of service failure already made by the relevant CPS Area. Indeed, in general I have been very impressed by the quality of response at stage 2 from Chief Crown Prosecutors or Deputy Chief Crown Prosecutors. This may be the place too to acknowledge the high quality background notes provided for me by CPS Areas whenever a case is referred for independent review. There has been no evidence here of the CPS failing to engage with the issues that complainants have raised. Quite the contrary.

2.12 I have also seen good practice on the part of CPS staff – both at stage 1 and stage 2 – in talking to complainants by phone and arranging face to face meetings. Most stage 2 responses (and many of those at stage 1) have been thorough and courteous, and the fruit of many hours work.

2.13 I made recommendations in 17 of the cases I reviewed. I have limited powers of redress, and the most common recommendation has been for the Chief Crown Prosecutor to write to the complainant either to apologise or in recognition of the findings of my review.

2.14 In the first few months after my appointment, there were delays in assessing eligibility and in passing complaints to me for review. In one case, after exhausting the CPS's internal complaints system, a complainant wrote as he thought direct to the IAC on 17 September. However, the papers regarding his complaint were not actually referred to me until 30 October. This and other examples meant that in many of my early cases the 40 working day target for a reply was not met.

2.15 There was in any event some ambiguity as to when the 40 days started and ended. My terms of reference now make clear that the IAC will develop a draft response within 30 working days of the matter being referred to me, with 10 working days for the CPS to 'fact-check' a draft report (making 40 working days in total).

2.16 I am also pleased to report that new administrative support procedures have now been put in place by the CPS and that these are working extremely well. Cases are referred to me in good time,

and arrangements are made for the papers to be collated without delay. As a consequence, all recent cases have been completed within the eight-week target.

3. Guardianship role

3.1 As IAC I contribute to the CPS's assurance process in two ways. First, by conducting independent reviews of individual complaints at stage 3 and feeding back conclusions (both positive and negative) to the Areas concerned. Second, by acting as the 'guardian' of the complaints system as a whole.

3.2 The vast majority of complaints proceed no further than stages 1 and 2. But without some form of independent oversight (of the kind the Chief Inspector has twice provided), there can be no certainty that this is because complaints have been handled well. It could be that complainants have simply given up the battle having received an unhelpful response at stage 1 or 2.

3.3 In furtherance of my guardianship role, it had been hoped that by now I would have carried out some form of audit of complaints, by dip-testing a sample of stage 1 and stage 2 complaints that did not reach stage 3. However, the methodology and timing of this audit have yet to be agreed, and the caseload itself has taken priority.

3.4 I have also been a less visible presence in CPS Areas – and publicly – than had been hoped at the time of my appointment. Although I have attended one meeting with Area Complaints Coordinators, I would have liked to have been more obviously ambassadorial in support of the CPS's new approach to complaints and its connection to the wider process of performance improvement within the Service.

4. Issues arising from casework

4.1 One issue above all others has caused me concern since my appointment: the CPS's approach to the payment of compensation and other financial redress.

4.2 In most walks of life, compensation or a consolatory payment would almost certainly be due when a citizen has incurred losses as a consequence of an act, omission or decision of a public body

amounting to maladministration. However, the CPS has for years argued that it is exempt from this general principle of public life.

4.4 The CPS has relied upon the case of *Elguzouli-Daf v Commissioner of Police [1995] QB 335*, in arguing that the Service does not owe a duty of care and thus is not liable to pay compensation. However, the total reliance on the case of *Elguzouli-Daf*, the circumstances of which involved the CPS's duty of care to someone it was considering for *prosecution* for a serious sexual offence, has caused me great concern. The implication that the CPS has no duty of care to victims and witnesses does not seem remotely acceptable as a matter of public policy.

4.5 I am therefore very pleased that my Terms of Reference now include a specific provision enabling me to recommend that the CPS consider compensation where there is clear evidence of material loss.

4.6 I am no less pleased by the decision taken by the CPS following one of my reviews to meet a victim's uninsured costs of pursuing a civil claim where there had been a failure by the prosecution to pursue compensation from the offender in Court (see the final case in para 5.2 below).

4.7 However, I remain of the view that there may be a case for consolatory payments, separate from compensation for material loss, where an apology from the CPS is simply insufficient in the circumstances. Such payments would be utterly exceptional – and modest in amount (not least to ensure that they comply with Treasury guidance on the proper use of public money). But they would apply to the most egregious examples of maladministration where saying sorry is just not good enough. **I therefore recommend that the CPS develop a policy on consolatory payments in line with Cabinet Office and Treasury advice.**

4.8 Given the short time I have been in this role, and the limited evidence base that my caseload to date represents, I have identified only one other issue that I believe would benefit from some attention. This concerns the responsibility of the Parliamentary and Health Service Ombudsman (PHSO) for matters within the purview of the CPS.

4.9 The Ombudsman can consider complaints that the CPS has acted in breach of its obligations under the Victims Code. However, I have been very conscious that complainants whose grievances

do not derive from a failure by the CPS to apply the Victims Code have no point of appeal beyond my office.

4.10 It is not obvious that there is any issue of principle requiring complaints of maladministration in respect of the service the CPS offers to members of the public – whether victims, witnesses or others – to be excluded from the Ombudsman’s remit. (For the avoidance of doubt, it would clearly be unacceptable were the PHSO to have any role in respect of the CPS’s legal decision-making.) With the CPS’s agreement, I will be exploring this matter further over the year ahead.

5. Case summaries

5.1 A chronological list of cases is at Annex 1. The majority of complainants to the IAC are victims of crime.

Mr AB was the victim of an assault at his workplace. His assailant was acquitted on grounds of self-defence. My review focussed on two questions: (i) was there a failure on the part of the prosecutor to engage with Mr AB before the trial, and (ii) did Mr AB receive appropriate replies to his complaints? Although Mr AB had raised a hybrid complaint that was not immediately recognised as such, I did not uphold his complaint overall. Perhaps as a result of courtroom dramas on film and television, some complainants have an unrealistic expectation of the contact they will have with a prosecutor before a trial, and a misunderstanding of the role the prosecutor plays (at least one complainant referred to the prosecutor as ‘my barrister’). Mr AB wrote subsequently to thank me for my review and to say that he now understood the decisions that had been taken.

Ms AB complained on behalf of her son who had been assaulted. The assailant was identified but no prosecution was brought. Ms AB alleged that her son had been discriminated against because of his mental health problems and previous offending. In the course of my review, I uncovered no evidence of improper discrimination. The CPS had been conscious of its responsibility to Ms AB’s son as a vulnerable witness. The replies Ms AB received were sensitive and well judged. The case had been the subject of a careful review by the Deputy Chief Crown Prosecutor. The decision not to prosecute was based on a range of factors of which the credibility as a witness of Ms AB’s son was only one.

Ms AB complained about the failure to provide an interpreter for her mother who was a witness in a case of domestic violence. I concluded that the principal responsibility for this failure rested with

the police who had conducted the initial interview. However, there had been a clear CPS failure in complaint handling in that Ms AB's letter had not been loaded onto the computerised complaints file and I made two recommendations.

Ms AB was the victim of a road traffic incident which she suffered serious injuries. She first wrote to the CPS to say that she was deeply upset by the leniency of the sentence imposed on the offender. In her letter, she asked if the case had been conducted in an acceptable manner. The CPS apologised for the fact that Ms AB had not been informed of the sentencing date. When the defendant changed his plea to guilty, the CPS had informed the police to cancel the witnesses for the trial but omitted to tell them that a new date had been set. As a consequence, Ms AB was in turn not told the new date and was not aware of the sentencing hearing and could not attend court. When she escalated her complaint, she referred again to the failure to inform her of the changed hearing date, the likelihood that her victim personal statement had not been presented to the court, and many examples of what she said was poor communication from the CPS. CPS Core Quality Standard 7 reads: "We will assess the needs of victims and witnesses, keep them informed about the progress of their case and help them to give their best evidence." Judged against that standard, I felt the service offered to Ms AB had been poor. She was most certainly not kept informed about the progress of her case, nor in my opinion was she helped to present her best evidence. I concluded that her victim personal statement had not been presented to the Court, and made three recommendations. (This case preceded the new version of the Victims Code that came into force on 10 December 2013 and which provides clear guidance on how victim personal statements should be used.)

Mr AB was the victim of a racially aggravated assault. Two men were charged but the case was eventually discontinued. Unfortunately, there was a significant breakdown in witness care when inaccurate information about the defendants' pleas was given to Mr AB (he was wrongly told that they had pleaded guilty). Mr AB sought compensation, but I did not see why the CPS should make up the shortfall following a decision of the Criminal Injuries Compensation Authority to reject Mr AB's claim. However, this was a case that offered little satisfaction to anyone.

Ms AB was the victim of a sexual assault. Her attacker was convicted of the assault but the jury accepted the defence he put forward of sleep-walking (sexsomnia). Much of Ms AB's complaint concerned legal issues outside my remit, and my review therefore could not address the fundamental sense of injustice she felt. However, I recommended that the CPS legal guidance on

sleepwalking be supplemented by advice to be shared with the victim on the sentencing outcomes available to the Court if this rare defence is successful.

Ms AB was the victim of historic sexual offences. Her alleged attacker was acquitted after an eight-day trial. Much of Ms AB's complaint concerned legal matters – which evidence had been relied upon by the prosecution, for example. However, she had also alleged she had been disadvantaged by a late change in Counsel. I sympathised with Ms AB as this was clearly an unfortunate, if not unusual, circumstance. However, I was not persuaded that the Court would have granted a further adjournment on these grounds and the barrister appointed was actually more senior than the one who had dropped out. This case too revealed errors in complaint handling – senior staff in the CPS Area seemingly unaware of the arrangements for complaints introduced in June 2013.

Mr AB was also the victim of historic sexual abuse. His principal concern was about a decision not to prosecute on the grounds that the alleged offender had already served a lengthy prison sentence for similar offences committed at the same time. However, Mr AB had also been let down by failures in complaint handling – pardonable perhaps at a time of major changes to the CPS complaint system, but that was scant comfort to Mr AB. I recommended an apology.

Ms AB was another victim of sexual assault whose alleged attacker was acquitted. She made a number of complaints about the evidence (all outside my remit), but also criticised the lack of contact from the Witness Care Unit (WCU). Witness Care Units are joint initiatives between the police and CPS but are staffed by employees of the police. My role, therefore, strictly relates to the actions of the CPS in bringing issues to the attention of the WCU. However, it also became clear that the CPS had failed to hold a mandatory pre-trial conference between the instructing lawyer and Counsel, and had not been candid with Ms AB about this failure. I recommended that the Chief Crown Prosecutor should apologise.

Mr AB alleged he was the victim of assault. The defendant was acquitted. It subsequently became clear that a statement and report from Mr AB's doctor, confirming that he had attended the surgery on the day after the alleged assault, had not been served on the parties and presented in Court as they should have been. Several aspects of Mr AB's case were outside my remit, but it was apparent that there had been a serious error in case management that led to important evidence not being put before the magistrates. Whether the trial outcome would have been different had the medical evidence been presented cannot be known, but it was hardly surprising that Mr AB was angered by

his experience. Unfortunately, the stage1 reply did not identify the error in handling the medical report. This had not formed part of Mr AB's initial grievance, although another way of saying this is that it was only due to Mr AB himself that the oversight was identified.

Ms AB complained about a decision by the CPS not to proceed with a case in which she was the victim of racial abuse. A decision to withdraw proceedings is outside my remit. However, I could focus on the failure of the CPS to inform Ms AB that the case had been withdrawn and other aspects of the service she had received. I uncovered a catalogue of errors and a failure to respond to a victim of crime. Indeed, even after a very candid and sensitive letter from the Deputy Chief Crown Prosecutor acknowledging these errors, there was a further failure to update the computer record to show that this letter had ever been sent.

5.2 I received several complaints from those seeking compensation from the CPS following failures to obtain compensation orders in the Courts. The circumstances of these complaints were very similar.

Mr AB reported that his car had been smashed in act of criminal damage. It appeared that an application for compensation of £50 (the excess on Mr AB's insurance) had been made at a first hearing, but that at the second hearing the prosecutor did not challenge the court for its failure to give reasons for not awarding compensation (s.63 of the Legal aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 3 December 2012, applies). Given the modest sum involved, and the less than satisfactory way in which Mr AB had been served by the criminal justice system, I recommended the CPS pay him £50 in full and final settlement of his complaint.

Ms AB was another victim of vandalism. The CPS had acknowledged a failure on two occasions to provide the Court with full information about the extent of the damage to Mr AB's car, but declined to pay compensation. It was clear to me that Ms AB had received an extremely poor level of service throughout this sorry affair. The handling of her complaint was particularly unsatisfactory. However, having taken advice on the CPS position at the time, and since Ms AB did have the possibility of pursuing a civil claim against the offender, I did not recommend financial redress.

Ms AB had found her car damaged along with those of eight other victims. The Court had awarded compensation to some victims but not to Ms AB. However, in this case it was not clear whether details of Ms AB's damage had been presented to the Court or not. Because of the passage of time,

the CPS file had been destroyed and the prosecutor could no longer recall the details. In these circumstances, I did not feel that the payment of compensation from the public purse could be justified.

Mr AB's car was one of several vandalised in the street. The offender was arrested and subsequently pleaded guilty to criminal damage. However, while the Court ordered the offender to pay compensation to one of the victims, it made no such order in respect of Mr AB. The CPS acknowledged that the prosecutor had failed to put the details of Mr AB's damage before the Court, and failed to ask for an adjournment while those details were sought. It had apologised and taken management action, but had declined Mr AB any financial redress. In support of its position not to make an *ex gratia* payment, the CPS had cited the case of *Elgouzouli-Daf*. And in this case, as in others, I entirely agree it should be the offender not the taxpayer who is expected to meet the costs of the damage caused. However, following my review, the CPS has now agreed to meet any uninsured costs Mr AB faces in pursuing a civil claim against the perpetrator. I regard this case as setting a very important precedent.

5.3 Several complaints came from those who had been considered for prosecution.

Mr AB sought compensation for the time the CPS took to determine whether he should face criminal charges. He said he had been unable to work for a year. The CPS had acknowledged that aspects of the case could have been dealt with more promptly. However, the case of *Elgouzouli-Daf* manifestly applies to those considered for prosecution, however compelling their personal circumstances. There was no question of Mr AB being compensated. But sometimes the very use of the words 'case' or 'proceedings' may mask the fact that behind every case file is a member of the public for whom events are not part of a case but major life-changing experiences.

Mr AB had been convicted at Crown Court and served a prison sentence. He raised various matters in his correspondence, but the only one I judged within my terms of reference was that relating to loss of exhibits/evidence by the CPS. I am not in a position to conduct primary investigations, and must rely on what the CPS tell me. In this case, it readily became clear that documents had indeed gone missing and had had only subsequently been found by serendipity. I recommended an apology from the Chief Crown Prosecutor and that robust procedures be put in place for the recording and storing of documents that form part of proceedings.

Ms AB complained that a charge against her should have been dropped at an earlier stage. I discovered that this was correct: a notice of proposed discontinuance (DP 1) had been sent to the police, but the police had not replied within the time set. As a result, there was a wasted court hearing and an unnecessary period of uncertainty for Ms AB. I concluded that the rules had been followed but good sense had not been shown. I recommended that the Chief Crown Prosecutor emphasise to staff the importance of telephoning the police when a DP 1 is to be issued shortly before a court hearing, and setting a target for reply before the hearing unless this would be unreasonable in the circumstances. On the plus side, this case was notable for good practice on the part of the Complaints Coordinator in making a note of a conversation with Ms AB and sharing it with her in draft to ensure she was satisfied with the contents.

Mr AB had been charged with perverting the course of justice following a neighbourhood dispute. However, it was decided just before the trial date that there was insufficient evidence and the CPS formally offered no evidence when court proceedings commenced. Mr AB believed that the prosecution was malicious and was not satisfied with the apology he had been given. I found no evidence that the prosecution was malicious. However, I was concerned that the response Mr AB had received to his complaint suggested that his case had been subject to continuous review - which was evidently not the case.

Mr AB, a road traffic offender, complained that the CPS had failed to compensate him for a period when his driving licence was wrongly revoked by the Driver and Vehicle Licensing Agency (DVLA) as a result of a CPS error. I found that the CPS had carried out a proper investigation and identified that the Service was at fault for not withdrawing a prosecution. However, I did not believe that compensation was justified in the circumstances.

5.4 Some cases appeared to have been referred to me inappropriately and others were insubstantial.

Mr AB is a solicitor. It was not unreasonable that the CPS had treated some of his correspondence as exchanges between professional colleagues rather than as complaints by a member of the public, and the matters he raised were complex and had several different elements. All that said, I was struck by the long delays in replying to his letters. Some were not acknowledged or appropriately referred on for a reply. One of his letters did not receive a substantive response for five months.

Mr AB was an unsuccessful applicant for a junior position with the CPS. He criticised the feedback he had received. I was surprised that feedback is offered to non-shortlisted candidates in the first place, and did not believe that the strong language used by Mr AB in his complaint was at all proportionate to the underlying issues.

Mr AB raised a legal complaint but this led to a separate service complaint about the timeliness of responses. I partially upheld his complaint as timescales had not been met.

Mr AB complained about a decision not to prosecute his attacker. I identified minor service issues, but concluded it would not be proportionate to conduct a full review.

Mr and Mrs AB submitted related complaints about circumstances surrounding the trial of their son. Mrs AB's complaint was at the margins of my remit as it concerned information that prosecuting Counsel had used during cross-examination. Mr AB said that the prosecutor had placed details of his employment in the public domain. After reviewing the court transcripts, I discovered that those details in fact been made known by the defence barrister. I did not uphold the complaint.

5.5 One complaint illustrated how the failure to resolve a simple problem sometimes snowball into a lasting sense of grievance.

Mr AB was a witness in a court case. His complaint began over an irritating but nonetheless relatively trivial matter: he had not been given a form to claim his expenses. However, the subsequent handling of his complaint caused a great deal of further irritation. He suffered several delays and a number of emails were neither actioned nor acknowledged. It seemed probable that Mr AB had fruitlessly phoned many telephone numbers he had been given, and that other calls went unanswered. What started out as a minor matter became a running sore. Sadly, he told me that he would never volunteer to be a witness in criminal proceedings again.

5.5 In addition to the cases cited above, I also conducted a special investigation on behalf of the Attorney General. In order to protect confidentiality, I have chosen not to summarise the details in this report. Suffice to say that it concerned an historic allegation of malpractice on the part of the CPS. My methodology was closer to that of an investigation than a review in that I met with the complainant, conducted a number of telephone interviews with past and present CPS staff and others, and considered a large bundle of documentation. I concluded that there had been no

wrongdoing on the part of the CPS, and that an investigation the Service itself had conducted at the time of the events had been scrupulous in the taking and exchanging of statements between the parties, and rigorous in its assessment of the evidence.

5.6 My terms of reference now say at paragraph 2.9 that the Attorney General may commission the IAC to undertake bespoke investigations on behalf of the Attorney General's Office or the CPS.

6. Conclusion

6.1 In this report, I have reflected upon approximately nine months during which the position and procedures of the Independent Assessor of Complaints have been successfully established. The volume of complaints has been higher than anticipated, and it has taken longer than I would have liked to ensure effective administrative support and processes. Nevertheless, I believe the cases I have summarised more than demonstrate the value of the office both to individual complainants and to the CPS as a whole.

6.2 I look forward to building upon those achievements in 2014-15.

Stephen Shaw

Independent Assessor of Complaints

April 2014

Annex 1 List of Cases

Date of referral	Date completed	Complaint	Outcome (upheld?)
20/07/2013	07/08/2013	Discontinuance of prosecution	No. Closed by letter. Not in remit. Minor recommendations made
22/07/2013	26/08/2013	Discrimination (discontinuance of prosecution)	No
24/07/2013	04/10/2013	CPS represented by lawyer without practising certificate	Yes - apology from DPP
04/08/2013	04/10/2013	Sought compensation as compensation claim not put forward in court	No
07/08/2013	26/09/2013	Sought compensation for crime that was not prosecuted	No
07/08/2013	24/10/2013	Sought compensation as compensation claim not put forward in court	No
07/08/2013	25/09/2013	Insufficient feedback after failure to be shortlisted for job	No – should not have been in remit
07/08/2013	25/09/13	Compensation not pursued	Yes - £50

07/08/2013	14/10/13	Form not provided for witness expenses	Upheld - CPS had already acknowledged
07/08/2013	25/09/13	Complaint that he was charged then charges dropped	Upheld in part: recommended final apology from CCP
03/09/2013	10/10/13	Complaint that CPS had not responded to legal complaint in a timely fashion plus other service failures	Upheld in part: there were some service failures
14/10/2013	21/11/2013	Complaint that her victim personal statement was not presented in full to the court; nor was she informed about a changed court date	Upheld - three recommendations
25/10/2013	03/12/2013	Complaint that his occupation were disclosed at court	No - it was the defence that revealed his occupation
25/10/2013	03/12/2013	Complaint that personal details were disclosed at Court thereby creating negative view of defendant	No - arguably out of remit anyway

30/10/2013	06/01/2014	Victim of historic sex abuse. Various service complaints following the decision of the CPS not to prosecute his alleged attacker	Yes - a number of failures. He had received good quality responses from the Area but its attitude to him recording a meeting was rather old fashioned. Main interest of complainant was in getting the decision not to prosecute reversed
30/10/2013	19/11/2013	Complaint that she was not informed when case against her offender was dropped. No victim impact statement taken	Yes: catalogue of failures - all already acknowledged by CPS
30/10/2013	25/11/2013	Wanted compensation as lost his driving licence for a month because of CPS mistake	No
30/10/2013	05/12/13	Was critical of lack of contact with prosecution before trial of his attacker	No
18/11/2013	04/12/13	Wanted compensation for acknowledged delay in decision not to prosecute	No

18/11/2013	18/12/13	Various complaints concerning the trial and acquittal of her attacker.	Yes - in respect of pre-trial preparation. The Area did not hold a conference with Counsel, which meant Counsel was not well informed as to the circumstances
18/12/2013	06/02/2014	Complaint that charges against her could have been dropped earlier if the CPS had chased the police for a response	Yes - although guidelines were followed, little heed was paid to the circumstances (an impending court hearing)
18/12/2013	28/01/2014	Complaint that the CPS had mislaid case documents	Yes - Apology to be repeated and CCP to assure herself that procedures are now robust
09/01/2014	20/02/2014	Complaint relating to acquittal of attacker	Upheld in one aspect (victim was not informed in advance re the sentencing options) but this was not principally a service complaint
30/01/2014	10/03/2014	Complaint about the late change in prosecuting Counsel contributing to acquittal of man accused of historic sexual abuse	Part upheld in respect of complaint handling. Not upheld in respect to change of lawyer

03/02/2014		Complaint that prosecutor did not submit details of compensation claim to court	Upheld. CPS agreed to pay compensation for uninsured costs of pursuing civil claim against the perpetrator
04/02/2014	17/03/2014	Complaint that prosecution case had not been well presented	Part upheld, but several matters (including an allegation of a conspiracy) were out of remit. However, a key medical report was not presented in court as it should have been
10/02/2014	04/03/2014	Complaint that mother did not have an interpreter at court/that prosecutor did not ask for adjournment when the need for an interpreter became clear	Part upheld. The reason for there being no interpreter was down to the police. On balance of probabilities, prosecutor did ask for adjournment
25/03/2014	Not concluded at year end		
25/03/2014	Not concluded at year end		

Annex 2 Terms of Reference

1. Introduction

1.1 The Independent Assessor of Complaints for the CPS (IAC) reviews complaints in respect of the quality of service provided by the CPS and its adherence to its published complaints procedure and the complaints aspects of the Victims' Code. Stephen Shaw CBE was appointed to this new position in May 2013 for a three year term (with the possibility of extension).

2. Role and Remit

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

2.2 Legal complaints are considered at Stages 1 and 2 of the procedure and victims who wish to exercise their right to request a review of decisions not to bring charges, discontinue proceedings or offer no evidence in cases should utilise the Victims' Right to Review scheme (VRR). The IAC cannot review complaints that are solely about prosecution decisions. Complaints relating to live or on-going proceedings (whether criminal or civil) will not be considered until those proceedings are completed.

2.3 The IAC can consider the service elements of 'hybrid' complaints: i.e. those that embrace both legal and service aspects.

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

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

2.6 Complaints must be submitted within three months of the Stage 2 response. However, the IAC has discretion in relation to this time limit where there are exceptional factors.

2.7 The IAC also acts as the guardian of the CPS Feedback and Complaints policy, overseeing the process and supporting the CPS to develop best practice and improved service standards for victims and witnesses. In that capacity, he will review samples of cases that have not reached Stage 3 to assess the quality and timeliness of Stage 1 and 2 responses. The audit will involve a dip sample of all complaints to provide an update to the CPS Board, and to further develop internal guidance, protocols and training materials.

2.8 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.

2.9 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 postholder with quasi-judicial functions, the IAC sets his own procedure. However, in general an IAC review will consist of a review of the papers at Stages 1 and 2 of the complaint procedure. The relevant CPS Area/Central Casework Division will submit and prepare the relevant paperwork and a background note for consideration by the IAC.

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

3.3 The IAC will develop a draft response within 30 working days of the matter being referred to him which will be sent to the relevant CPS Area to allow for fact-checking in advance of the final response and recommendations being concluded. The timescales will begin once the complaint has been accepted by the IAC.

3.4 The CPS will have a maximum of 10 working days to respond to the draft report.

3.5 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 he hopes to provide a response.

3.6 The IAC will acknowledge receipt of complaints within five working days.

3.7 The IAC will normally conclude his review with a formal report. However, he will be at liberty to complete a review in whatever means he judges most appropriate.

3.8 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 his terms of reference.

3.9 Final reports will be sent on behalf of the IAC to the complainant and the Director of Public Prosecutions.

4. Remedies and Compensation

4.1 The normal form of redress recommended by the IAC will be a formal apology on behalf of the CPS.

4.2 The IAC may also recommend changes to CPS policies and practices that could help prevent a recurrence of the circumstances giving rise to the complaint.

4.3 The IAC may not recommend disciplinary action against CPS staff but he may recommend that the case for disciplinary action is considered under the CPS's HR procedures.

4.4 The IAC can recommend that the CPS consider compensation where there is clear evidence of material loss.

4.5 Recommendations will be made to the Director of Public Prosecutions. The IAC's recommendations are not binding, but if the CPS decides not to accept a recommendation it will explain its decision in writing to both the complainant and the IAC.

4.6 Victims have the opportunity to refer their complaint to the Parliamentary and Health Service Ombudsman (PHSO), via an MP, following the IAC review where they remain of the view that the Service has failed to meet its obligations under the Victims' Code.

4.7 Complainants who are not victims of crime do not have a right of access to the PHSO; the IAC review is the final stage of the complaints process in these cases.

5. CPS Responsibilities

5.1 The CPS will provide:

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

5.2 The CPS will ensure that the referral process for the IAC is clear and accessible for complainants and that the executive support arrangements are robust. Fact-checking of draft IAC reports will be undertaken in a timely manner no longer than the timetable in paragraph 3.4 above. Where the CPS is unable to meet that timetable it will inform the IAC immediately.

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

6. Reporting Arrangements

6.1 The IAC will report bi-annually to the Director for Public Prosecutions and the CPS Board. The CPS will publish the IAC's annual report on its website.

7. Contact Details

Stephen Shaw CBE
Independent Assessor of Complaints for the CPS
c/o Rose Court
2 Southwark Bridge
London
SE1 9HS

Email: IAComplaints@cps.gsi.gov.uk

Fax: 020 3357 0567

8. Review Period

8.1 The IAC terms of reference will be reviewed annually.

8.2 Supporting FAQ will be updated on a bi-annual basis.

Crown Prosecution Service

March 2014