

Independent Assessor of Complaints
for the Crown Prosecution Service

Annual Report 2014-15

Independent Assessor of Complaints
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April 2015

Independent Assessor of Complaints for the Crown Prosecution Service: Annual Report 2014-15

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1. Introduction

1.1 This is the second annual report, and the first covering a full year's activities, that I have submitted as the Independent Assessor of Complaints (IAC) for the Crown Prosecution Service.

1.2 It has proved a very successful year, with administrative procedures in support of my role now such that all complaint investigations are completed within target time. Much more significantly, my reviews have shown how far the CPS has now progressed in developing an open, positive, and engaged approach to complaints about its service delivery.

1.3 Perhaps inevitably, the view that I obtain of CPS casework is a less happy one. I appreciate that those cases I see are, by definition, those that have occasioned a complaint on the part of a victim, witness or defendant. Nonetheless, I have encountered a series of flaws and oversights in case preparation that have not reflected well upon the Service. It is of note that a disproportionate number of my complainants are victims of domestic violence who have felt let down by the CPS and the criminal justice system as a whole.

1.4 Publication of my first annual report was delayed while the CPS considered its response to my recommendations. I am very pleased that it has been agreed that this report and its successors will be published as soon as practicable after submission, and that any responses to recommendations will follow thereafter.

1.5 As in my first year, I have benefited greatly from the support and interest of the Director of Public Prosecutions, Ms Alison Saunders CB, and her senior staff. I am particularly indebted to Mr Harlyn Collins and his colleagues for the generous and very efficient support that I have received.

2. Workload

2.1 I received a total of 76 complaints in the year to 31 March 2015, 73 of them in the ten months from 1 June 2014.¹ This compares with an annual equivalent figure of 42 in 2013-14.²

2.2 It is clear to me that in the early months after my appointment, an unduly strict interpretation of my terms of reference had been taken by the CPS, resulting in some complainants being excluded from the scheme. Most complaints are hybrid in nature – embracing both legal elements (for which there is no appeal beyond stage 2 of the CPS complaints process) and service elements (that are fully within my jurisdiction).³ The fact that a complainant's principal concern may be about a legal matter (the decision to pursue or discontinue a prosecution, for example) does not mean that there are not service issues as well.

2.3 Given that I have identified no false positives in the past year (cases referred to me that do not meet my terms of reference), I am content that accurate eligibility decisions are now being taken. I am hopeful, therefore, that the volume of complaints received in 2015-16 will stabilise at around 80 - 85 cases, all other things being equal.⁴

2.4 Two-thirds (52) of the complaints accepted were from victims of crime or someone acting on behalf of the victim, 23 complaints were received from

¹ There were 32 complaints received in the first six months of the year, and 44 in the second six months.

² I actually received 29 complaints in the period to March 31 2014.

³ 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.

⁴ Figures for the second half of the year show that 127 complainants sought access to stage 3 (the independent tier) of which 83 were judged ineligible. This was for a range of reasons including: (i) the complaint was exclusively 'legal' in nature; (ii) the complainant had not exhausted stages 1 and 2; and (iii) the complaint did not relate to the CPS.

defendants or someone acting on behalf of the defendant, and one was from someone intending to bring a private prosecution.

2.5 Amongst the victims, the largest single category were victims of domestic violence. Almost without exception, their complaints had been triggered by an acquittal.

2.6 Twenty-four complainants were female, 48 were male and four were from couples.

2.7 A breakdown by CPS Area is shown in Table 1 below.

Table 1: Stage 3 complaints accepted by CPS Area, 2014-15

CPS Area	Number of Complaints
CPS Direct	0
Cymru/Wales	9
East Midlands	12
East of England	5
London	13
Mersey Cheshire	7
North East	7
North West	1
Organised Crime Division	1
South East	0
South West	4
Special Crime and Counter Terrorism Division	2
Specialist Fraud	0
Thames & Chiltern	5
Wessex	5
West Midlands	0
Yorkshire & Humberside	5
Total:	76

2.8 Almost all complaints have concerned matters in the magistrates' courts. The summary nature of these proceedings, and the limited access that victims have to

the prosecutor before the hearing, are frequently at variance with the expectations of victims themselves.

3. Output

3.1 By the end of the year, drafts had been completed on all but three of the complaints received. Seventy-two cases had been closed (including two from 2013-14) and three were awaiting fact-checking.

3.2 All cases are now being closed within the 40 day time target to which I work.

3.3 The vast majority of cases are completed by way of a formal report. However, where there are no substantive matters to discuss, or in other relevant circumstances, I have adopted the practice of replying to complainants by letter.

3.4 In only eighteen cases closed in 2014-15 did I find no aspect of the complaint to uphold either fully or in part. However, as I have explained previously, in many cases, I uphold a complaint in part simply in recognition of some relatively minor flaw in complaint-handling. In others, I uphold the complaint on the same grounds and to the same extent as has been acknowledged by the CPS itself at stage 2. My experience is that the distinction between a partial and full uphold is rarely easy to make, but there have been occasions when I have criticised the closure outcomes recorded by the CPS on its KIM database.

3.5 I made recommendations in a smaller proportion of cases than in 2013-14. 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.

3.6 In a small number of cases I recommended compensation or the making of a consolatory payment. This reflected the extension of my terms of reference (and a change in CPS policy) that I had called for in my first annual report twelve months ago. The CPS is now in line with practice across Whitehall (and the Treasury guidance in *Managing Public Money*) in respect of the payment of modest financial

redress when an apology and/or change in procedure is insufficient in the circumstances.⁵

3.7 In those cases where I have found breaches of the Victim's Code, I endeavoured to set a consolatory payment at a level I anticipated would be the outcome were the complainant to approach the Parliamentary and Health Service Ombudsman (PHSO), thus reducing the burden on both the complainant and the CPS.

3.8 The Ombudsman can only consider complaints involving the CPS where there has been an alleged breach of the Victim's Code.⁶ So far as I can see, there is some ambiguity whether rights under the Witness Charter also engage rights to a review by PHSO if they involve the CPS. **I recommend that the CPS raise this issue with their colleagues in the Ministry of Justice.**

4. Findings from casework

4.1 In carrying out my reviews, I have been very impressed by the quality of response at stage 2 from Chief Crown Prosecutors or Deputy Chief Crown Prosecutors.

4.2 In my six-monthly report to the CPS Board I wrote as follows vis-à-vis the two thematic inspections conducted by HM Chief Inspector of the CPS that led, amongst other things, to the appointment of an Independent Assessor of Complaints:

“From what I have seen, I conclude that the Chief Inspector's criticisms that the CPS's complaints-handling is defensive, lacking in empathy, and fails to address the points raised, are no longer true of stage 2. Efforts to learn the lessons from complaints are also evident.”

⁵ Paragraph 4.4 of my Terms of Reference now reads: “The IAC can recommend that the CPS consider making a compensatory or modest consolatory payment where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.”

⁶This means, amongst other things, that defendants have no right of access to the PHSO.

4.3 This is a hugely encouraging finding, consistent with what I found when conducting a dip-test of complaints that had been resolved at stages 1 or 2 (see paragraph 4.9 below).

4.4 In general, stage 1 responses also evidence genuine engagement and empathy for the complainant.

4.5 I have also found much to praise in the work of the CPS's Victim Liaison Officers when communicating with complainants and co-ordinating the Service's responses. For example, in one Area the commissioning note to those responding to complaints includes a standard paragraph requiring the provision of monitoring information. This covers the following: (i) If the reply deals with all the issues the complainant raised; (ii) Does the reply offer a resolution to the complaint, where appropriate; (iii) Does the reply comply with House style (eg is it in plain English); (iv) Have any action points or lessons learned from the complaint been taken forward? This strikes me as very good practice from which other Areas could learn.

4.6 In a number of complaints I considered, I found some uncertainty on the part of CPS staff as to the ambit of the Victim's Right to Review (VRR) scheme. I have also encountered some confusion as to how joint VRR requests and complaints are handled. CPS guidance permits the VRR and complaint to be managed serially or, as I generally prefer, in parallel.⁷ Whatever process is followed, the important thing is that both aspects are identified and covered.⁸

4.7 In another complaint, I considered the CPS's approach to email and its practice of sending replies to complaints by standard post. The security of personal information is a very important one, and it is not hard to understand the reluctance to

⁷ A document entitled 'Victims' Right to Review scheme: Desk notes' supplied by CPS HQ on 23 May 2013 says: "Correspondence from a victim may be part request for VRR and part complaint. It is for the Area to decide whether it is appropriate to delay handling the complaint until after the VRR has been dealt with or whether to deal with the issues concurrently." I understand this is not a public document. New (publicly available) guidance on VRR was issued by the CPS on 21 July 2014, but so far as I can see it does not cover the issue of a joint VRR request/complaint.

⁸ In a second change to my Terms of Reference, paragraph 2.3 now clarifies that: "The IAC will not consider service complaints relating to live or on-going proceedings (whether criminal or civil) until those proceedings are completed. This includes cases that qualify under VRR but have not yet exhausted all stages of the scheme."

send letters as attachments to email addresses that are not known to be secure. However, standard mail is not secure either. Indeed, in some cases – for example, for those living in multi-occupied residences – it will be significantly less secure than email. It is not clear to me, for example, why the CPS could not operate a system of password protection for its correspondence.

4.8 A number of complaints have focussed on the performance of Witness Care Units (WCUs). The WCUs are a joint responsibility of the CPS and the police, but they are generally staffed by those employed by the police and are thus in a grey area so far as my jurisdiction is concerned. **It would be helpful if it were clarified if the actions or inactions of WCUs come within the police or CPS complaints systems, and I recommend accordingly.**

4.9 I carried out a dip-sample of 40 stage 1 and stage 2 complaints in September 2014 in line with my responsibility as ‘guardian’ of the CPS complaints system. The results have been published alongside my first annual and six-monthly reports (http://www.cps.gov.uk/contact/feedback_and_complaints/iac_reports/index.html). Although I found some legalese and other language that was not notably customer-friendly, the overall results were consistent with the view I have expressed in this annual report and elsewhere that the CPS’s complaints-handling has improved markedly.

4.10 A second audit, using identical methodology, will be conducted in September 2015.

5. Case summaries

5.1 A chronological list of all cases received in 2014-15 is at Annex 1. Here I provide more detailed case histories of some of the more significant complaints I have considered.

Ms AB was a victim of domestic violence. Although her attacker was convicted, the CPS had failed to present her Victim Personal Statement (VPS) or applied for a restraining order. This breached two of the CPS’s standards. Standard 7 says that

the CPS will assess the needs of victims and witnesses, keep them informed about the progress of their case, and help them give their best evidence. Standard 9 says that the CPS will assist the court in the sentencing process. Neither standard was met in Ms AB's case. Ms AB had been badly let down and she had rightly received a succession of apologies. However, this was also a matter not best resolved by an IAC review. The CPS's failures could not be undone, and for that reason I encouraged Ms AB to take up the CPS's offer of a personal meeting. I also considered the quality of response Ms AB received from the CPS. On the whole, I felt it was good. In retrospect, one letter would have been better advised not to have repeated a police phrase about Ms AB getting things off her chest (or to have suggested that the process had been cathartic), but in other regards it was courteous, sympathetic and candid about the mistakes that had occurred. The Deputy Chief Crown Prosecutor likewise emerged well. Her letters were also courteous, sympathetic and candid. She took and reported upon actions designed to prevent a repetition of what had happened to Ms AB. And she recognised that a face-to-face meeting would be the best way of trying to find some kind of resolution when the fundamental mistakes could not be put right.

Ms AB was the victim of an assault by her former partner. She said her Victim Personal Statement had not been used and, as a consequence, was now out of pocket as a result of paying for repairs to damage the defendant had caused. She sought compensation. I concluded that the principal failure was on the part of the police. In retrospect, the CPS could have chased harder for the VPS, but I judged that the failure to have done so did not meet the threshold for a payment from the public purse.

Ms AB was a victim of domestic violence. Because of failures by the CPS, the trial of her husband did not proceed. The CPS acknowledged that the case had been handled badly throughout: "We have failed to action information concerning a witness promptly; we do not appear to have explored the possibility of the witness attending notwithstanding her holiday; we did not have a result promptly from the agent; we did not send a letter to the victim immediately. In short, on this occasion the service provided to a witness fell far short of the standard of witness care and case preparation we would expect." There was little I could add other than to ensure

that my report on this case was, like all others, seen and considered by the Director of Public Prosecutions herself.

Mr AB was a male victim of domestic violence. His principal charge was that the agency prosecutor was 'negligent' resulting in the acquittal of his wife on the most serious charge she faced. I identified a series of service failures: the prosecutor was not provided with the papers until the morning of the trial; Mr AB was not shown a copy of his statement to refresh his memory; and the prosecutor spent very little time with him before the trial. However, my principal concern was that a junior barrister with no obvious experience in domestic violence cases had been instructed, and I recommended the publication of new national guidance. Given the importance the CPS attaches to cases of domestic violence (including the guidance that it is more likely than not in the public interest to prosecute if the evidential test in the Code for Crown Prosecutors is met and the complainant is willing to give evidence), the instruction of any agent prosecutor with little or no experience of DV cases seems highly undesirable. I was pleased to learn of a review conducted in light of Mr AB's complaint in the CPS Area concerned. However, the need to ensure that those prosecuting cases of domestic violence are appropriately experienced is an issue of national significance.

Ms AB was a victim protected by a restraining order. The CPS decided to discontinue proceedings against the man named in the order. The decision was late, not properly shared with Ms AB, and there had been a delay in listing the case in the first place that the CPS had done nothing to hurry along. I found other issues relating to case-handling, including the need to make clear that under my terms of reference I cannot consider a case until Victim's Right to Review (VRR) procedures are completed. I made two recommendations, but was especially pleased to learn that, as a result of this case and one previously referred to me, the CPS Area had instigated a multi-agency review of how cases of domestic abuse are handled. The review would focus on how cases of domestic abuse could be prioritised, given the volume of cases classed as high priority, and how the CPS communicates with vulnerable and intimidated victims and witnesses to ensure compliance with the Victim's Code.

Ms AB was the victim of an alleged assault by her former partner. At trial he was acquitted. Copies of her police statements had not been made available at the court from which Ms AB gave her evidence remotely, a mistake acknowledged by the CPS (albeit this was actually the fault of the Witness Support Unit). Although there was no evidence that the prosecutor had been poor, Ms AB criticised her lack of experience. I repeated the recommendation made in the case involving the male victim of DV above.

Mr AB's mother had been injured in a road accident. His principal complaint was that the prosecution against the person who knocked her down had been abandoned. However, no letter had been sent to Mr AB's mother regarding the discontinuance as the CPS lawyer did not believe a letter was necessary as she had not given a statement to the police. (A statement was not taken from her in recognition of her age and the injuries she had suffered; in most cases a statement would of course be taken from the victim of a road accident. These were therefore unusual but not exceptional circumstances.) The CPS has apologised to Mr AB for this oversight. I recommended that the Chief Crown Prosecutor remind all lawyers of the importance of informing victims of decisions to discontinue prosecutions, whether they have given statements to the police or not.

Mr AB was a victim of crime; the CPS had offered no evidence when the case came to trial. The alleged service failures were the barrister's lack of preparation and engagement, and that proceedings could have been abandoned earlier. The CPS had accepted that weaknesses in the case should have been identified more promptly, and I recommended that the Chief Crown Prosecutor write to Mr AB to explain the actions taken to prevent a recurrence of similar circumstances.

Mr AB was a victim of crime involving a disruptive neighbour. The major mistake for which the CPS was responsible was a decision not to oppose a variation in bail conditions for the defendant. This had been fully acknowledged by the Chief Crown Prosecutor, and appropriate action had been taken. Nonetheless, I found that Mr AB's life had been made a misery, and he had been insufficiently protected and supported by the criminal justice system. In this review, as in others, I was concerned that the CPS tends to deny responsibility for the actions of Witness Care

Units – even when, as was the case here, they are jointly staffed by CPS employees alongside those employed by the police.

Ms AB was a victim of property crime. The case was dropped by the CPS because witnesses essential to the prosecution were not asked to attend court on the trial date. As a consequence, Ms AB and her family could not receive any court-ordered compensation and had to meet the costs of the damage they suffered. The failure on the part of the CPS to ensure that the appropriate witnesses attended court was a very serious breach of what is now the Casework Quality Standard on Casework Preparation. Moreover, this failure had had a seriously detrimental effect on Ms AB and undermined her confidence in the criminal justice system. This is to say nothing of the waste of police and CPS time in preparing for a two day trial that collapsed with no evidence offered. The actions taken by the CPS to prevent any recurrence of these events – both procedurally and with the individual members of staff concerned – were appropriate and robust. Nonetheless, I recommended that the CPS consider making an ex gratia payment to Ms AB in light of its failure to ensure a trial of those charged with offences against her.

Ms AB was a victim of crime at work. The prosecution was unsuccessful as a consequence of a series of failures by the CPS, notably not checking that a key statement had been served on the defence. However, I found both the stage 1 and stage 2 replies to have been incisive, frank, and sensitive. Indeed, the stage 1 response – which provided a genuine apology and set out the action to prevent any recurrence of the circumstances that had caused the prosecution to fail – was one of the most impressive stage 1 replies I had seen as the CPS's Independent Assessor of Complaints.

Ms AB was also a victim of crime in her workplace. My review demonstrated service failures at an administrative level and on the part of lawyers. The CPS failed to warn Ms AB to attend court after recognising an earlier mistake had been made. There was a breakdown in case progression processes when the problem was identified. This error was then compounded by the decisions made by the prosecutor at court. As a result, a man accused of the vilest verbal abuse did not have to account for his behaviour. The handling of Ms AB's complaint had also been

protracted and had led to further uncertainty and unhappiness. Such was the succession of failures by the CPS that I recommended a personal apology from the Director of Public Prosecutions.

Mr and Mrs AB complained about the outcome of a trial (Mrs AB was the victim of historic sexual abuse). The only service issue was the failure of the prosecutor to speak before the trial to Mr AB and his daughter as witnesses. The matter had been very well handled by the Chief Crown Prosecutor who had recently issued guidance to all advocates on exactly this point. I agreed with Mr AB that lawyers sometimes forget that appearing in court is not an everyday experience for ordinary members of the public. All the more so in a harrowing case such as the one involving Mr AB and his family. Witnesses must not be 'coached', but it is critical that they understand what is going to happen when they give evidence and that any questions they have are answered.

Ms AB complained that CPS failures had led to those guilty of racially motivated public order offences escaping justice. It emerged that there had been a succession of failures, culminating in no evidence being presented. I upheld this complaint in the strongest possible terms, while endorsing the apologies made at stages 1 and 2 (which I judged to be heartfelt and sincere). In the particular circumstances, I also recommended a consolatory payment in recognition of the CPS's mishandling of this sad and sorry case.

Ms AB was a victim of an assault by a man with whom she had previously been in a relationship. Ms AB was unhappy with the outcome of the trial and the decisions of the prosecutor. The CPS had acknowledged a range of mistakes (in particular, there was some mishandling of the actual charges to be brought against the defendant), and there had been a very candid stage 2 response – evidently, the fruit of many hours. I agreed there were a number of failings but, as I often observe in my reviews, the failures involved other parts of the criminal justice system (in this case, the police and the Witness Care Unit) as well. However, Ms AB had been right to remind the CPS of the real anxiety about the court process that is felt by many victims and witnesses, not least in cases of domestic violence. So far as the prosecutor's contact with Ms AB before the hearing was concerned, I entirely

understood why she, like many victims, had sought or anticipated a considerable degree of personal attention pre-trial. The Victim's Code makes clear that some pre-trial contact is indeed an entitlement, but the amount of contact possible in a busy magistrates' court may not always meet the victim's expectations.

Ms AB complained that the case against her attacker had been discontinued without her consent. She further complained that she had been told that a restraining order could be imposed when this was not the case. I found both limbs of her complaint were made out. Indeed, it seemed most likely that both the District Crown Prosecutor and the advocate at the sentencing hearing had misled Ms AB as to the possibility of a restraining order being imposed. As a separate hearing was to be held, this meant that Ms AB waited a whole month in the false expectation that she might benefit from such an order being made. These two occurrences suggested that there might be a general lack of understanding of the circumstances in which restraining orders can be sought on behalf of victims, and I recommended that the Chief Crown Prosecutor consider what additional advice should be offered to prosecutors on this issue.

Ms AB was the victim of harassment. She said that the prosecutor had ensured she was not present for the case and had lied about calling her over the court tannoy. I was content that the CPS had conducted a proper inquiry (including seeking the views of independent witnesses) and did not uphold the complaint. There had been an unfortunate breakdown in communications, but nothing more.

Mr AB was the father of a man killed in a road accident. The other driver had been acquitted of causing death by careless driving. Mr AB raised several service issues – including the state of preparedness of the CPS barrister. The Area had admitted several service faults at stages 1 and 2 and, on the basis of a series of errors in his opening statement to the jury, I concluded that the advocate had indeed been unprepared and partially upheld the complaint.

Mr AB was the victim of an attack. The CPS had accepted a plea to a lesser offence without documenting why – and without any attempt to solicit Mr AB's views. The Code for Crown Prosecutors says at paragraph 9.2 that: "Prosecutors should

only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient." Paragraph 9.3 adds: "In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor." I could not be certain whether paragraph 9.2 had been followed, but it was apparent that paragraph 9.3 had been breached as no attempt had been made to solicit the views of the victim, much less to take them into account. There was no evidence that the decision taken and process followed in Mr AB's case was anything other than an unfortunate one-off. However, in light of my findings, I recommended that the Chief Crown Prosecutor consider if further advice should be offered to prosecutors on the acceptance of pleas to lesser charges.

Mr AB was also the victim of an assault. No evidence was presented as the CPS said Mr AB had declined to come into the court and an adjournment had been refused. Mr AB disputed this account, but I found it proved on the balance of probabilities. There was a contemporaneous note from the prosecutor and he had consulted his manager at the time. However, there were errors on the part of the CPS in misinforming Mr AB about the dates and location of hearings, for which apologies had already been given. I judged they represented sufficient redress.

Mr AB had been a defendant, the case against whom had been discontinued. His principal complaint was legal (another person involved in the affray should have been charged). He also complained that an application for compensation had not been made against two men who admitted they had assaulted him. I upheld his complaint in part (it turned out that the compensation form [form MG19] had been passed to the prosecutor but not acted upon), but I was not persuaded this was a case where I should recommend compensation.

Mr AB was charged with affray following a fight in a public house. At trial, the CPS offered no evidence and Mr AB was formally acquitted. He contended that he

was the victim of an attack and should never have been charged in the first place. He also said the CPS had failed to disclose evidence to his defence and that, as a consequence, the prosecution against him was not dropped as quickly as it could have been. The CPS accepted it had failed to chase the police effectively for materials that might be useful to the defence. Had the CPS ensured that the police made available all the material that should have been disclosed, it is possible that the case against Mr AB would have been abandoned earlier. Alternatively, the matter would have gone to trial where Mr AB would have been judged by a jury of his peers. As it was, neither Mr AB nor the public interest could be said to have been served well. However, I had no reason to suppose that the CPS's inactions resulted from conspiracy or malice as Mr AB alleged. The more likely explanations were lack of attention, ineffective management oversight, and the absence of good working arrangements with the police. (I need hardly add that these more probable causes were not a source of pride.)

Mr AB had been convicted of an offence but acquitted on appeal. He had been charged with assault on his former partner in circumstances where it is acknowledged that she was in breach of a court order resulting from family proceedings. Mr AB's principal concern was the decision to charge, but he also raised service complaints. I made no recommendations but identified learning for the CPS: (i) ensuring complainants are informed when replies will be late; (ii) apologising when this occurs; and (iii) identifying 'hybrid' complaints – those that embrace both 'legal' and 'service' elements – even where the service elements may be marginal to the complaint as a whole.

Mr AB was a defendant in a road traffic case. The CPS offered no evidence when the prosecution witness (a police officer) did not appear. Mr AB's complaint principally concerned the actions/inactions of the police and the courts. However, his first correspondence had been inappropriately characterised as feedback and as a request for VRR. I found it bemusing that Mr AB's correspondence was ever considered as coming under the ambit of VRR. While I did not make a formal recommendation, I asked the Chief Crown Prosecutor to assure himself that staff have a robust understanding both of the complaints process and of VRR.

Mr AB was the father of a man considered for prosecution. On the morning of the trial the prosecutor viewed CCTV footage and the charges were dropped. Mr AB argued that the case would have been dropped earlier, saving him money and anguish, had the CPS carried out regular reviews. Unfortunately, the CPS file had been destroyed under the 12 month rule and the police file shone no light on when the CCTV had been passed on, or when reviews were carried out, and with what consequence. There was insufficient evidence to support the charge that the CPS was at fault. There was also no case for compensation (case law dictates that the CPS has no duty of care in respect of those it considers for prosecution). However, the Service's complaint handling had been very poor, and I drew attention to the wider national issue of the destruction of case files when a complaint is under investigation.

Mr AB complained about the dropping of a prosecution. Mr AB's partner and son had been stopped by two security staff and mistakenly accused of shoplifting. Subsequently, the two guards were summonsed on charges of common assault, but these charges were discontinued. Mr AB raised both a complaint and asked for the decision to withdraw the prosecution to be reviewed under the Victim's Right to Review. The CPS had already acknowledged one service failure when CCTV was not supplied to the court on the first hearing. I recommended that the Chief Crown Prosecutor review how joint VRR requests and complaints are handled, as this case illustrated the challenge of ensuring that both aspects are covered in responses.

Mr AB was a victim of crime during which the windscreen of his car was smashed with a hammer. The CPS had failed to disclose unused material in a timely fashion and, following legal argument, the prosecution could present no evidence and the case was dismissed. A very frank background note provided for my review acknowledged shoddy case-handling. However, because of the particular circumstances, I felt the apology and lessons learned represented sufficient redress. An issue as in many reports was why the complaint had only been recorded as part upheld.

Mr AB was the victim of a violent crime. The defendant was acquitted. Mr AB said the responses to his complaint had been patronising. In contrast, I found that

the stage 2 complaint in particular was very thoughtful: engaging in the gap between CPS knowledge and experience of trials and the expectations of witnesses and victims. The Chief Crown Prosecutor also said he would discuss the implications of Mr AB's case with witness care and communications colleagues.

Ms AB complained that she had been misled about aspects of the VRR scheme. My review showed that Ms AB had indeed been given incorrect advice (this was the second case where I had made such a finding). Given the importance of the scheme, I recommended that CPS Headquarters remind all Areas that VRR does not apply once another charge has been laid, notwithstanding that the charge is summary, and notwithstanding that the suspect has yet to appear in court.

Mr AB was a victim of crime involving public order offences. The charges against the defendant were subsequently dropped in return for his accepting the terms of a restraining order in another case. Under my Terms of Reference, any questions relating to the charges brought in a particular case, the evidence relied upon, or the legal decision-making, are not ones upon which I may comment. As a consequence, I could offer no personal views on the decision to drop the charges in the case involving Mr AB in return for a restraining order involving other victims. However, it was clear from the stage 2 response that the Deputy Chief Crown Prosecutor had concluded that the decision to do so was in error, and this view has been shared with the prosecutor and the prosecutor's manager. Other issues did come within my jurisdiction. In particular, when the charges involving Mr AB were dropped he was told he was entitled to a review of the decision, but there was no express mention of the Victim's Right to Review. Moreover, when he submitted his representations they were then treated as a complaint (and processed through the complaints system) rather than through the VRR scheme. This was never explained to Mr AB, nor was it clear to me that it had been a properly reasoned judgement to apply the complaints system rather than VRR. I recommended that the Chief Crown Prosecutor consider whether further advice should be offered to staff on the handling of VRR requests and their relationship to complaints. For one thing, I felt it would be good practice if any reference to a possible review of a charging decision should expressly mention the Victim's Right to Review and provide a link to information about the scheme. I also found that both the stage 1 response and the stage 2

response were made outside the Service's time targets, and that the stage 1 response was rather defensive and not very sympathetically worded. It included no acknowledgement that Mr AB was a victim of crime who felt that decisions had been taken without considering his best interests. In retrospect, this failure was exacerbated by the knowledge that the legal decisions taken have subsequently been judged to have been mistaken. Nor was it clear why at stage 2 the complaint had been recorded as only part upheld. A finding of fully upheld would more accurately have captured the outcome.

Mr AB complained about general incompetence in the way the CPS had handled a prosecution in a case where he was the victim. I found there were flaws in the complaint-handling, including the repeatedly misspelling of the offender's name, and partially upheld the complaint. In particular, it was not apparent to me why Mr AB's initial email was not recorded as a complaint. At the time it was not registered on the grounds that "this is a live case", the offender was actually serving his sentence. I assumed the reference to a 'live case' was in respect of the confiscation proceedings (which had still to be concluded), but I was not persuaded that such proceedings should prevent consideration of a complaint about a prosecution that had already ended.

Ms AB complained that she had not been informed when charges against her attacker had been dropped. The CPS had acknowledged this significant service failure and apologised. My review also criticised the lateness of two VRR reviews and the work of the Witness Care Officer. I made two recommendations: that the Chief Crown Prosecutor should apologise for the lateness of the VRR reviews, and that the CPS should share the observations in my report with managers of the WCU.

Mr AB ran a company whose offices had been damaged. When the case came to court, the prosecutor did not have the details of the compensation claim that Mr AB had provided to the police. As a consequence, the offender was ordered to pay £150 compensation – a figure considerably lower than the actual damage he had caused. Mr AB sought the balance from the CPS but, given that I did not hold the CPS exclusively responsible for what occurred, and given that it had tried to make good its mistake but was turned down by the Court, I did not think this case passed

the threshold at which I should recommend the CPS make a payment in compensation. The principle on which I work is that, but for exceptional circumstances, it is the offender who should be expected to pay for the damage they have caused. Only if that is unsuccessful should a claim be entertained against the taxpayer. I therefore encouraged Mr AB to bring proceedings against the offender in the small claims court. However, if at the end of those proceedings Mr AB could show uninsured losses not met by the offender, I recommended that the CPS look favourably upon any further claim for financial redress.

Mr AB's car had been damaged in an act of vandalism. He complained that no compensation order had been made as the prosecutor had overlooked the details and mistakenly told the court that the value was unknown. Apologies had already been offered and management action taken. The question in this and other cases was whether the threshold for compensation had been reached. I was of course conscious that, had the prosecutor put the full facts about the value of the damage caused before the court, there was no certainty that the court would have ordered the whole sum to be paid. I was also uncertain how far the damage caused to Mr AB's vehicle might be covered by insurance. However, it seemed likely that the court would have made an order for at least some compensation to be paid. I suggested that Mr AB bring proceedings against the offender in the small claims court. However, as in the case above, if at the end of those proceedings he could evidence losses not met by insurance or the offender, the CPS should consider making a compensation payment. I appreciate that this and related cases put the onus on the victim and do not bring matters to a close. But when there remains the possibility that offenders can be made to pay for their crimes, I do not think the costs should be borne by the Exchequer.

Mr AB was a victim of violent crime. He said that the sentence imposed on his attacker was 'ludicrous' and that he was significantly out of pocket as insufficient compensation had been offered. The CPS had indeed not processed the MG19 appropriately. Nonetheless, an application for £1,200 had been made, but only £300 awarded. In the circumstances the CPS error was not so grave that a consolatory payment could be offered. I suggested that Mr AB should pursue a civil claim against his attacker.

Mr AB was the victim of a dog attack and received serious injuries. The CPS had acknowledged breaches of the Victim's Code which provides (amongst other things) that a victim of crime may:-

- Make a Victim Personal Statement (VPS) to explain how the crime has affected him/her;
- Read their VPS aloud or have it read aloud on their behalf, subject to the views of the court, if a defendant is found guilty;
- Make a complaint if he/she does not receive the information and services entitled to, and to receive a full response from the relevant service provider.

In this case the CPS request for a VPS had not been actioned, and nor had Mr AB been advised that he could read his statement to the court. These failures were not solely the responsibility of the CPS, but no CPS review of the file had revealed that the VPS was missing or that Mr AB had not been told that he could read from it (with the court's permission). There had been subsequent handling failures by the CPS in respect of the stage 1 complaint, but the actual responses at both stage 1 and stage 2 were sympathetic, candid and comprehensive, and reflected well upon the authors and the Service they represent. The ultimate arbiter upon breaches of the Victim's Code is the Parliamentary and Health Service Ombudsman, but I was conscious that PHSO investigations can be protracted and they are of course funded from the public purse. In these circumstances, I felt entitled to make a recommendation in line with what I judged the Ombudsman would do in similar circumstances. The principal means of redress (beyond an apology) recommended by the Ombudsman is financial. Although I have found no published account of the quanta offered in other cases involving a breach of the Victim's Code, I estimated that on the facts of Mr AB's case the PHSO would propose a consolatory payment in the region of £250. Although the failures in this case were as much the fault of the police as of the CPS, I did not think it would be seemly (or kind to Mr AB) to make a recommendation that reflected only part of the breach of the Victim's Code he had suffered.

Mr and Mrs AB were the victims of theft from their car. Damage to the car meant that Mr AB incurred a loss of £150, the excess on his insurance. However, despite his having completed a compensation form, this was not available to the prosecutor

at the sentencing hearing. As a consequence, the court awarded him no compensation against the offender. There were other errors in the CPS's case handling. In light of those failures, the evidence of material loss, the length of time that had passed, and the relatively modest sum of money involved, I recommended payment of compensation of £150. I made three other recommendations including that CPS HQ should issue advice to all Areas on the new approach to compensation/consolatory payments. The advice was issued in April 2015.

Ms AB was a victim of fraud and forgery in relation to a property she owns.

The CPS had not made a compensation claim despite having been given the MG19. In the particular circumstances, I did not think the threshold for compensation had been met (there was no clear evidence of material loss as it was very likely the Court would have awarded nothing or made a very small award). Likewise the threshold for a consolatory payment was not met (one error, albeit serious but of uncertain impact). This was one of a number of cases during the year when the CPS had recorded the outcome as part upheld, when I felt it should have been recorded as upheld in full.

Mr AB was a victim of violent crime. He complained that one of his attackers had received a caution and the others had been bound over. This case revealed flaws in CPS case handling (a failure to warn witnesses for trial in a timely manner) and in complaints handling (the stage 1 reply was not very empathetic, and it was factually wrong on a key issue). It became clear that the CPS had decided that a caution should be offered to a defendant without asking the victim's views. As this engaged the Victim's Code, I recommended a consolatory payment of £150, anticipating that the PHSO would do likewise.

6. Conclusion

6.1 I regard the last 12 months as particularly successful. From a domestic point of view, the procedures to which I work as Independent Assessor of Complaints have now bedded down. While the volume of complaints has been much higher than anticipated on my appointment, I am meeting all time targets and, by substituting

letters for reports where appropriate, am ensuring a more proportionate and cost-effective response to the issues raised by complainants.

6.2 More significantly, the CPS complaints handling that I review demonstrates a genuine engagement with complainants that I must assume was not present at the time of the Chief Inspector's two thematic inspections of the CPS complaints process in 2009 and early 2013.

6.3 I am particularly pleased that the CPS has adopted the approach to compensation and consolatory payments that I recommended in my first annual report a year ago.

6.3As IAC I have two objectives. First, to ensure that victims and others are provided with thorough, independent reviews of their service complaints. And second, to assist the CPS to improve its performance both in case management and in complaint handling. I look forward to contributing further to both objectives in 2015-16.

Stephen Shaw
Independent Assessor of Complaints

April 2015

Annex 1 List of Cases

Date of referral	Date completed	Principal complaint	Outcome(upheld?)
02/04/14	15/04/14	Not given personal apology or told details of disciplinary action	No
28/04/14	28/05/14	Witnesses not warned	Yes
27/05/14	11/07/14	Prosecutor not prepared	No
03/06/14	01/07/14	Failure to present VPS or apply for restraining order	Yes
09/06/14	08/07/14	Failure to use VPS	No
09/06/14	01/07/14	Prosecution abandoned	No
13/06/14	11/07/14	Compensation order not pursued	Part
23/06/14	08/07/14	Prosecutor not prepared	Yes
23/06/14	24/07/14	Prosecution abandoned	No
25/06/14	01/08/14	Prosecution not abandoned in time	Yes
07/07/14	27/08/14	Not using witness statement	Yes
07/07/14	01/08/14	Failure to oppose change in bail conditions	Yes
07/07/14	24/07/14	Prosecution not abandoned in time	Yes
18/07/14	29/07/14	Prosecutor performance	Part
22/07/14	13/08/14	Prosecution not abandoned in time	Yes
22/07/14	11/08/14	Failed prosecution	No
22/07/14	13/08/14	Discontinuance	Yes
23/07/14	07/08/14	Discontinuance	Yes
23/07/14	11/08/14	Failed prosecution	Yes

27/07/14	29/09/14	Failed prosecution	Yes
26/08/14	18/09/14	Prosecution not abandoned in time	Part
26/08/14	11/09/14	Failed prosecution	Yes
26/08/14	05/11/14	Discontinuance	No
26/08/14	26/09/14	Trial outcome	Part
03/09/14	02/10/14	Disclosure	Part
08/09/14	19/09/14	Failed prosecution	Yes
09/09/14	02/10/14	DPP approval for private prosecution	Yes
16/09/14	15/10/14	Prosecution decision	No
16/09/14	15/10/14	Information re VRR	Yes
24/09/14	20/10/14	Failed prosecution	Part
24/09/14	09/10/14	Failure to pursue compensation order	Yes
24/09/14	08/10/14	Prosecution decision	Part
07/10/14	03/11/14	Prosecution decision	Part
08/10/14	20/10/14	Trial outcome	Part
10/10/14	18/11/14	Discontinuance	Yes
24/10/14	14/11/14	Trial outcome	Yes
27/10/14	09/12/14	Discontinuance and failure to obtain restraining order	Yes
28/10/14	12/11/14	Video link	Yes
29/10/14	21/11/14	Failure to pursue compensation order	Part
05/11/14	06/01/15	Complaint handling	Part
12/11/14	16/12/14	DCV and VRR issues	Yes

14/11/14	23/12/14	Failure to review CCTV	Part
14/11/14	09/12/14	Failure to pursue compensation order	Yes
01/12/14	21/01/15	Prosecutor performance	Part
03/12/14	16/01/15	Discontinuance	No
03/12/14	08/01/15	Discontinuance	No
05/12/14	18/12/14	Complaint handling	Yes
10/12/14	26/01/15	Prosecutor performance	No
16/12/14	29/01/15	Discontinuance	No
23/12/14	29/01/15	Prosecutor performance	Part
05/01/15	29/01/15	Acceptance of plea	Yes
08/01/15	29/01/15	Trial outcome	Yes
08/01/15	11/02/15	Failure to obtain VPS	Part
16/01/15	26/01/15	Failure to pursue compensation order	Part
19/01/15	04/02/15	Trial outcome	Part
20/01/15	06/02/15	Breach of Victim's Code	Yes
23/01/15	25/02/15	Discontinuance	No
23/01/15	10/02/15	Prosecutor performance	Part
30/01/15	26/02/15	Discontinuance	Part
02/02/15	06/03/15	Discontinuance	Yes
02/02/15	27/02/15	Discontinuance	Part
03/02/15	10/03/15	Failure to pursue compensation order	Yes
10/02/15	26/02/15	Failure to pursue compensation order	Yes
10/02/15	31/03/15	Failure to apply VRR	Yes
16/02/15	18/03/15	Breach of Victims' Code	Yes

16/02/15	18/03/15	Decision to prosecute	No
16/02/15	13/03/15	Disclosure	Yes
19/02/15	18/03/15	Trial outcome	No
25/02/15	.....⁹	Trial outcome	No
06/03/15	31/03/15	Acceptance of plea	Part
09/03/15	31/03/15	Delay in amending bail conditions	Part
13/03/15	.....	Trial outcome	Yes
18/03/15	.....	Trial outcome	No
27/03/15	.....	Failure to warn witnesses for trial	Yes
30/03/15	.....	Prosecution decision	Part
30/03/15	.....	Discontinuance	No

⁹This and the final five cases were not closed as at 31 March 2015.

Annex 2 Terms of Reference (revised March 2015)

1. Introduction

1.1The 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

2.1The 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 The IAC cannot review complaints that are solely about prosecution decisions. Legal complaints are only considered at Stages 1 and 2 of the procedure. Victims who wish to exercise their right to request a review of decisions not to bring charges, discontinue proceeding, or offer no evidence in cases, should utilise the Victims' Right to Review scheme (VRR).

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

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

2.5Complaints 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.

2.6Complainants 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.

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

2.8The 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.

2.9The [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.

2.10The 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.

3.3The 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.

3.5A 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.

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

3.7The 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.

3.8The 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.

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

4. Remedies and Compensation

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

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

4.3The 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.

4.4The IAC can recommend that the CPS consider making a compensatory or modest consolatory payment where there is clear evidence of uninsured material loss or severe distress caused by maladministration or poor service by the CPS.

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

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

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
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2 Southwark Bridge
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SE1 9HS

Email: IAComplaints@cps.gsi.gov.uk

Fax: 020 3357 0567

8. Review Period

8.1The IAC terms of reference will be reviewed annually.

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