

## **Half-yearly report to the CPS Board from the Independent Assessor of Complaints, Stephen Shaw**

1. This paper summarises the work that I have carried out as Independent Assessor of Complaints (IAC) in the six months from April – September 2015. The board will receive this report alongside the complaints audit that I conducted in September in my role as ‘guardian’ of the CPS complaints system.

### **Input**

2. The most striking feature of the past half-year has been the reduction in the number of complaints received. In the six months to 30 September, I received 27 complaints (one of which is currently suspended). This compares with 32 in the equivalent period in 2014, and 44 in the six months between 1 October 2014 and 31 March 2015.
3. As a consequence of this fall in workload, I have not needed to work beyond my contracted hours during most months.
4. Statistical theory teaches that small numbers can vary widely in the short term, so it may be too early to say whether the reduction in complaints coming to Stage 3 is a consequence of better case management or better complaints handling or some other cause.
5. Six of the complaints received were from Wales, and four from London. There were two from Wessex, two from the North West and North East, two from East of England, and two from the East Midlands (plus one that partly engaged the East Midlands and partly the Appeals and Review Unit). There were one each from the South East, South West, Mersey-Cheshire, Thames and Chiltern, Yorkshire and Humberside, and Organised Crime Division.
6. In the 26 cases that have proceeded to a review, all but five of the complainants were victims of crime (or those complaining on their behalf).

There were complaints from three defendants, one person who had been considered for prosecution, and one witness. Victims of domestic violence have been less prominent in the caseload than in earlier six-month periods.

7. Amongst the victims, there were broadly equal numbers of men and women. All three defendants and the person considered for prosecution were male; the witness was female. I am not able to provide a more detailed demographic breakdown, and given the relatively small numbers involved it is questionable whether such an exercise would be statistically significant or worthwhile.

## **Output**

8. By the end of September, I had closed 21 of the cases received in the half-year plus six received in 2014-15. Draft reports had been submitted in respect of four of the other five. Although most cases are closed by formal report, I have continued my practice of responding by letter where the issues are straightforward or I have no recommendations to make.
9. All cases were closed within the time targets to which I work.
10. Of those cases received in 2015-16 and closed within the last six months, I upheld 13 complaints, partially upheld nine and rejected three.
11. The number of partial upholds is higher than in previous six month periods.
12. I have discussed before the limited value of the concept of an 'uphold rate'. In many cases, in upholding a complaint I am simply endorsing a view already reached by the CPS itself. However, it is interesting to note that the cases in the complaints audit (which are selected randomly) show a much lower rate of upholds than in my own caseload. This suggests that in a number of Stage 3 cases the complainant has already been told that their grievance is justified, and been offered an apology and explanation, but is pursuing the matter in the hope or expectation of additional redress.

## **Case studies**

13. I have annexed summaries of twelve of my reviews. The issues that arise from them include inaccuracies on the KIM database, breaches of the Victim's Code, and the importance of responding to complaints in an empathetic manner. The latter is one of the themes of this year's complaints audit.
14. The reviews continue to evidence extremely good practice on the part of Deputy/Chief Crown Prosecutors at Stage 2. I am also greatly assisted by the first-rate background notes that Deputy/Chief Crown Prosecutors provide.
15. Although less apparent from the summaries, my reviews have also identified problems that may be indicative of pressures affecting all parts of the criminal justice system (CJS). Such matters are of course wholly outside my jurisdiction, although the distinctions between the different parts of the CJS may be neither evident nor important to the complainant.

## **Other matters**

16. I am aware of one case that I had previously reviewed that was subsequently considered by the Parliamentary and Health Service Ombudsman (PHSO) under her power to consider breaches of the Victim's Code. The complaint – which I had upheld in the strongest terms – pre-dated the change in my terms of reference enabling me to recommend the making of consolatory payments.
17. Ever since my appointment in 2013, I have been grateful to those CPS colleagues who have supported me in my role. However, in recent months the appointment of a dedicated resource in Ms Jade Whittle-Barnes as Assistant to the IAC has made a huge difference, not least in reducing the average time that I need to spend on each review. Her appointment also ensures greater independence in the triage process, determining whether a complaint meets my terms of reference (a matter the board discussed a year ago).

18. I will submit my third annual report in time for the board's meeting in May 2016.

**Stephen Shaw**  
**Independent Assessor of Complaints**

**October 2015**

## **Annex: Case Summaries**

### **Complainant 1**

Ms AB complained on behalf of her grandson, the victim of an assault causing life threatening injuries. After a long delay, there had been two trials, at the first of which the jury could not agree and at the second the defendant (who had pleaded self-defence) was acquitted. I found several service failures, all of which had been frankly acknowledged by the Deputy Chief Crown Prosecutor at Stage 2. Indeed, I commended the complaint handling, while finding that both Stage 1 and Stage 2 responses had been (wrongly) recorded as not upheld on KIM<sup>1</sup>. (I frequently find errors on KIM, particularly when dates are entered at the time complaints are processed not when they are received.) A proactive approach had been taken with 'lessons learned' that reflected well on the Area. There had been issues with the Chambers, and the CPS had taken this up, as well as pursuing other actions with the Courts and the Witness Care Unit.

### **Complainant 2**

Ms AB complained in respect of a prosecution that was discontinued. There had been significant service failures. She had not been informed within 24 hours as required by Victim's Code. And her letter of complaint had simply been filed and not answered. I also found that both Stage 1 and Stage 2 had been recorded as not upheld when they should have been part upheld. I recommended a consolatory payment of £100 in light of the breach of the Victim's Code and other failures. I was also concerned that the matter had been treated as a complaint and not under the Victim's Right to Review (VRR) scheme.

### **Complainant 3**

Mrs AB had been injured in a car accident. She made complaints about the prosecution of the driver, but the handling of her correspondence had been poor. I found that the Stage 1 reply was over a month late, and it was possible that Mrs AB had never received the Stage 2 reply at all.

### **Complainant 4**

Mr AB's car had been taken from outside his house. One of the perpetrators was charged with unlawfully taking a vehicle without the driver's consent, but pleaded not guilty. Successive mistakes by the CPS meant that Mr AB was not identified as a witness who needed to be in court, and when the case came for trial the CPS offered no evidence. It also emerged that the CPS had concluded that there was in fact sufficient evidence to bring the more serious charge of theft. The Area had acknowledged its failures, apologised and taken management action in respect of the two prosecutors involved, but Mr AB remained dissatisfied that justice had been done. The Area had concluded that compensation was not due, but finding a breach in the spirit (and possibly the

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<sup>1</sup> The CPS Complaints Management System.

letter) of the Victim's Code, I recommended a consolatory payment of £250, judging that this is what the Parliamentary and Health Service Ombudsman might offer if the case were referred to her.

### **Complainant 5**

Ms AB complained that Stage 1 of the complaints process had been ignored, and the Deputy Chief Crown Prosecutor (DCCP) should not have replied because of his previous involvement in her case. I found there had been a mountain of previous emails and that, in the circumstances, the DCCP was entirely within his rights to accelerate the complaint. The DCCP was also entitled to reply as his previous involvement had been marginal. Notwithstanding errors on KIM and that the Stage 2 reply was late, my investigation found much to praise in the Area's handling of the matter. Complaints systems exist to solve people's problems and good practice need not mean the slavish following of procedures.

### **Complainant 6**

Ms AB complained that she had been unable to read her Victim Personal Statement (VPS) at court. Instead, the prosecutor had only allowed her to read two paragraphs from her special measures statement. The CPS had acknowledged that it would have been easy for the agent prosecutor to have obtained the VPS (as it was not in the court papers but readily available on CMS) and had apologised. I found this was a clear breach of the Victim's Code and therefore recommended £250 in consolation. Given my approach, and that of the Parliamentary Ombudsman, it may be that Areas would benefit from further advice suggesting that they automatically consider making a consolatory payment following a breach of the Victim's Code.

### **Complainant 7**

Mr AB had been the victim of an assault. The CPS had initially charged common assault but, following review, this had been increased to ABH. Unfortunately, this information had not been included in the agent prosecutor's brief and the defendant had pleaded guilty and been sentenced for the lesser charge. In addition, a second VPS had not been provided by the police until the late afternoon before the trial, and this too had not been placed in the prosecutor's bundle. As a consequence, no application had been made for a restraining order. This was a sorry tale, although the subsequent complaints handling had been good. Again, I recommended a £250 consolatory payment in recognition of the breach of the Victim's Code

### **Complainant 8**

Mr and Mrs AB complained in relation to a hate crime of which Mr AB had been the victim. The defendant was acquitted. There had been failures on the part of the police and, particularly, the Witness Care Unit. Surprisingly, the CPS Area had operated on the basis that prosecutors did not separately check that witnesses had been warned for court - a procedure now introduced.

### **Complainant 9**

Ms AB's son had been the victim of sexual offences against a child. Ms AB had successfully argued for a referral to the Court of Appeal against a lenient sentence, and argued that she should have been consulted before the prosecutor accepted a plea of guilty to one of the counts, allowing the other to remain on file. The Deputy Chief Crown Prosecutor had wrongly described consulting victims about plea as 'best practice', when it is in fact a commitment in the Code for Crown Prosecutors. The failure to consult Ms AB had also not been identified at Stage 1.

### **Complainant 10**

Ms AB had been a witness. The details of her personal phone number had been disclosed to the defence as 999 recordings had not been edited by the police or the CPS. Ms AB said she had been made unsafe as a consequence. This breach of Ms AB's right to privacy had not been acknowledged at Stage 1, but an apology was offered at Stage 2. However, I found there had been a second witness whose details had also been revealed, but no apology had been offered to him. I recommended £200 in consolation to Ms AB, plus a letter to be sent to the other person whose details had been disclosed.

### **Complainant 11**

Ms AB was a victim of crime. There had been seven adjournments in the case before the CPS offered no evidence. I found a succession of failures in complaint handling, a failure to complete a case management form properly (which resulted in the abandonment of the case as Ms AB had not been warned for court), and a breach of the Victim's Code in that she had not been told the trial outcome or why the CPS had offered no evidence. The Stage 1 response was late and not very sympathetic. The Stage 2 reply was well-drafted and on time, but failed to draw attention to escalation to the IAC. All in all, this was a very sorry tale indeed.

### **Complainant 12**

Ms AB was the victim of domestic violence (DV). Her former husband was acquitted. There had been failures in complaint handling (the Stage 1 letter was simply not sent), not entirely reflected on KIM. However, the major issue was about providing a sensitive and supportive service to the victims of domestic violence. This is something that arises time and again in my reviews. Finding the right words when a victim of DV is upset or angry following an acquittal is no easy task. But that very fact makes it all the more important that replies to correspondence should be understanding and empathetic.