



Independent Assessor of Complaints
for the Crown Prosecution Service

Bi-annual report 2016-17

Independent Assessor of Complaints for the Crown Prosecution Service: Half-yearly Report April – September 2016

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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 between April and September 2016. 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. In the six months to 30 September, I received 31 complaints (compared with 27 in the equivalent period in 2015 and 32 in the equivalent period in 2014). If the experience of the past two years is any guide, a somewhat higher volume of complaints can be anticipated in the period from October to March.
3. As would be expected with small numbers, the monthly totals vary widely. I received ten new complaints in April, five in May, three in June, five in July, seven in August, and just one in September. Given that the time target for all stages of the complaint to have been completed is relatively tight, variations on this scale do make my personal work-planning somewhat difficult.
4. Seven of the complaints received were from CPS Wales, and there were four each from East of England, Thames and Chiltern, and Yorkshire and Humberside. There were three from London, the North East, and the East Midlands, and one each from Wessex, the West Midlands, and the South East. There was none from CPS Direct, CPS Proceeds of Crime, the South West, Mersey-Cheshire, or any of three central casework divisions¹.
5. The majority of the complainants were victims of crime (or those complaining on their behalf). But there were six complaints from defendants,

¹ The Specialist Fraud Division, the Special Crime and Counter Terrorism Division, and the International Justice and Organised Crime Division.

and one from a solicitor (whose complaint was not specific to a client and which I felt was at the margins of the CPS complaints policy). Male complainants outnumbered female complainants by a small margin because all six defendants who complained were male. Amongst the victims, there was a slight majority of female complainants.

6. There were fewer victims of domestic violence in the caseload in this six-month period than has been the case in past, but an increased number of victims of non-recent sexual abuse.

Output

7. By the end of September, I had closed 38 cases (30 of the cases received in the half-year plus eight received in 2015-16). In consequence, just one case remained open at the end of the period.
8. One report and its appendices amounted to more than 16,000 words, but the majority are of course much shorter. Although most reviews are concluded by way of a formal report, I have continued to respond by letter where this seems more appropriate to the circumstances.
9. All but two cases were closed within the time targets to which I work. There were special circumstances in the two cases that went beyond the target.
10. Of those cases received in 2016-17 and closed within the last six months, I upheld 11 complaints, partially upheld ten, and rejected eight. (One case was not classified.)
11. It is conventional amongst Ombudsmen and other Complaints Assessors to aggregate full and partial upholds to give an overall 'uphold rate', so it will be seen that mine exceeds two-thirds. However, the Board will know that I regard the idea of an 'uphold rate' as having only limited value. This is partly because the 'uphold' may be on some minor administrative issue, tangential to the principal cause of the complainant's unhappiness. More significantly

so far as the CPS is concerned, we know that the cases that proceed to stage 3 (the independent review) have frequently been upheld already at stage 2. In other words, the complainant is seeking something beyond the apology and explanation with which they have already been provided. In some cases, this may well be in the hope or expectation of financial redress, but I sense that for many complainants it is simply the prospect of having their story heard by someone outside the CPS itself.

12. In approximately half of all cases I made a recommendation or recommendations to the CPS. Six recommendations involved the making of a consolatory payment in respect of one or more service failures. The individual sums were between £150 and £500 and came to £1,500 in total.
13. All recommendations were accepted and implemented, with compliance being monitored by my support staff.

Case studies

14. I have annexed summaries of a selection of my recent reviews.
15. Inevitably, many of these reviews follow upon and comment upon casework failures or weaknesses. A significant number include breaches of a victim's entitlements under the Victims' Code, or other examples of poor service (carelessly drafted or laid-out Victim Letters, for example). Several of the reviews have highlighted a gap between the high ideals of CPS policy documents and the day-to-day reality in very busy offices.
16. However, much of the complaint handling I have reviewed is of a very high standard. I simply do not accept the Inspectorate's view – repeated in a report at the beginning of the year – that complaint handling in the CPS has not improved. Nonetheless, where I agree with the Inspectorate is that a sympathetic tone and a demonstration of empathy are critical. These must not be seen as 'un-lawyerly' skills.

Other matters

17. I was very pleased to note that a commitment to develop further the role of the IAC was one of the outcomes from the CPS Conversations exercise. As a small contribution to that development, a presentation on findings from my reviews was made to the regular meeting of Deputy Chief Crown Prosecutors in June, and an updated version was presented at a meeting of a range of staff in the East Midlands in September. A more 'ambassadorial' role was anticipated at the time of my appointment, but has not previously proved feasible. There are evident costs involved, but I understand that additional opportunities are likely to arise in the New Year.

18. I should also say how much I welcome the CPS's Speaking to Witnesses at Court guidance and roll-out, as concerns on this score have been a regular feature of complaints that I have reviewed since 2013. Public expectations may still run ahead of what can practically and properly be offered by a prosecutor before a trial, but the guidance should lead to a more confident and consistent approach on the part of all advocates and thus to a reduction in complaints.

19. Finally, I remain very grateful to colleagues in the Parliamentary and Complaints Unit for the support and kindness that they continue to show me, and to Derek Manuel for taking a special interest in my work on behalf of the Board. I look forward to working with Tony Pates following his appointment as Assistant to the IAC in succession to Jade Whittle-Barnes.

20. I will submit my fourth annual report in time for the Board's meeting in May 2017.

Stephen Shaw

Independent Assessor of Complaints

October 2016

Annex: Case Summaries

Complainant 1

Mr AB's car had been damaged while parked outside his home. The defendant was found guilty at trial but the court made no compensation order. It subsequently emerged that the reason the court made no order was that the agent prosecutor had said that no claim for compensation had been made. This was despite the fact that her file included the police form MG19 in which Mr AB had calculated his losses to cover the cost of repairs to his vehicle. (Mr AB had chosen to pay the costs outright rather than claim on his motor insurance policy.) Mr AB retained the ability to bring a civil claim against the offender, and my default position is that it is for the offender not the taxpayer to meet the costs of his or her wrongdoing. However, as so much time has been lost since the trial – it had taken the CPS seven months to ascertain what had happened from the agent prosecutor – and in light of the inconvenience Mr AB had already suffered, I recommended a consolatory payment of £250. (The CPS had pointed out that a common practice of the courts is to award compensation equivalent to the excess on an insurance policy.)

Complainant 2

Ms AB was also the victim of criminal damage. She complained that the Area did not keep her updated on progress with the case and that she was not awarded compensation. My review focused on the latter issue in particular, as well as whether Ms AB's rights under the Victims' Code had been breached. I found that the CPS had made an application for compensation on the information provided by the police and the court decided not to make an order. Whatever view was taken about the court's decision, it was not possible to argue that the CPS failed in its duty to Ms AB. In contrast, the CPS's failure to send her a victim letter when a charge of assault was formally dropped was a breach of her rights under the Victims' Code. However, given that the dropping of the charge followed Ms AB's own retraction statement, and the evidence that she had been informed by telephone by the Witness Care Officer that the charge was not proceeding, I regarded the failure to send a victim letter to be more akin to a technical failure rather than one of substance, and concluded that the apologies offered and the management action taken represented appropriate and proportionate redress on this occasion.

Complainant 3

Ms AB had been assaulted in her own home. The two defendants were acquitted. A DVD showing CCTV coverage of the defendants entering the house could not be played at court, and since the court refused an adjournment this significantly weakened the prosecution case. I found that the disc had become defective while in the CPS's possession, but was content that apologies at stages 1 and 2 did not need repeating. The disc had been mistakenly taken to his chambers by the

prosecutor, and then had gone missing – probably in the DX system, for which the CPS could not be held responsible. The complaint handling had been excellent.

Complainant 4

Mr AB had been convicted and sentenced for three motoring offences. He said that he had been treated unfairly and shown a lack of respect by the prosecutor during the hearing, but I judged that the prosecution's approach to the examination and cross-examination of witnesses was a legal matter outside my jurisdiction. On the service issues, I found that there had been a delay (or a complete failure) to respond to three letters from the defence, and the stage 1 reply was dated several days before it was actually posted. However, I considered that the apologies Mr AB had received represented adequate request. I did not endorse Mr AB's more general criticisms of the responses he had received.

Complainant 5

Mr AB was the victim of non-recent sex offences. The CPS had twice decided not to prosecute. His complaint concerned the circumstances of a video-conference during which he said the CPS staff were rude and dismissive. I took the view that videoconferences are not the best way of imparting bad news, but are inevitable in an age of austerity when large distances are concerned. The CPS denied being discourteous and it was one person's word against the other.

Complainant 6

Ms AB was another victim of non-recent sexual abuse. I found there had been there was a succession of failures in case-handling. The decision to reinstate the charges against the defendant was too slow, and Ms AB was not kept properly informed. The Witness Care Unit had failed to inform Ms AB of the date of the first hearing (which I noted was also a breach of her Victims' Code rights). A special measures meeting should probably have been held (albeit the CPS could not really be criticised for not doing so given the information it had to hand). The CPS did not check that Ms AB had had an opportunity to refresh her memory before the trial. And the CPS failed to chase for a Victim Personal Statement (the right to make one being a further entitlement under the Victims' Code). While it was clear that there were failures on the part of the police as well, aspects of the CPS's handling of this prosecution were weak and disappointing. Turning to the complaint handling, the holding letter to Ms AB and the stage 1 response itself were both late. However, I was impressed by the quality of both the stage 1 and stage 2 letters and believed they reflected well upon their authors and the service they represent. However, Ms AB's Member of Parliament was correct to say that neither letter offered a remedy beyond an apology. In light of the reference to Ms AB seeking "recompense", I therefore considered whether this was a case where an apology – however genuine – was simply insufficient. (I should emphasise that such payments are in no sense 'compensation' for the

failure of a prosecution.) It seemed to me that this was a case where this clause should be triggered. Although the CPS could not be held exclusively responsible for the errors and omissions that occurred (or for the two breaches of Ms AB's rights under the Victims' Code), the Area had acknowledged poor service and significant failures. That these had caused Ms AB severe distress was apparent from her correspondence.

Complainant 7

Mr AB had been the victim of a dangerous dog attack. He said that the CPS had failed to ensure special measures and/or an intermediary. In a very long report, I found that there was a gap between the high ideals of CPS policy documents on victims and the day-to-day reality. The failure to progress Mr AB's request for an intermediary was particularly poor, and the CPS accepted that the consideration of other special measures was flawed. There had been a breach of the spirit of the Victims' Code, and possibly of the letter of the Code as it applies to vulnerable victims.

Complainant 8

Ms AB was the victim of non-recent sexual abuse. The defendant had been acquitted. My review was inevitably much narrower than Ms AB may have anticipated. Issues such as whether the prosecutor should have intervened during Ms AB's cross-examination by the defence are regarded as 'legal' in nature since they relate to the conduct of the trial and the evidence that is presented. In any event, I was simply in no position to assess whether the prosecutor was "weak" as Ms AB had alleged, or whether he paid careful attention to her and other victims during the trial. Indeed, it was not entirely clear what contact the prosecutor had with Ms AB on the day of the trial. There were clearly very different perceptions: the prosecutor saying he paid careful attention; Ms AB saying she had no opportunity to speak with him. As I frequently observe in these reviews, it is sadly inevitable that a victim's expectations of the degree of contact possible pre-trial may be greater than any prosecutor or the CPS as a whole can deliver. So far as the complaint-handling was concerned, the target for the stage 1 response was not met because of staff sickness, and for that reason was unavoidable. However, it should have been identified that the response was going to be late and a holding letter sent before the time target expired. An offer of a face-to-face meeting was good practice, but had led to further uncertainty and some rancour. As I had not met any of the parties, I did not think it would be wise to make a formal recommendation, but I said the Area might wish to consider if – even after the passage of many months since the trial – a face-to-face meeting would be helpful.

Complainant 9

Mr AB complained about the way a prosecutor presented during a sentencing hearing. The key element was that she had read the Victim Personal Statement (VPS) in part not in full. I found this was a breach of the Victims' Code and made

two recommendations: for the CPS to offer advice to prosecutors that reading out a VPS in part is a breach of the Victims' Code, and a consolatory payment of £200. The stage 2 response was late and included an unfortunate reference to another case entirely.

Complainant 10

Ms AB had been subject to verbal abuse in the street. Alternative charges (one including racial aggravation) had been laid against the defendant. Ms AB's statement had not been provided by the police and she had not been warned as a witness. The CPS's attempts to obtain the statement (a single email) had been ineffectual. Moreover, in Court when the defendant was found guilty of the charge without racial aggravation, the prosecutor did not read any of Ms AB's VPS. This was a breach of her rights under the Victims' Code. The complaint handling had been very good - in contrast to the casework decisions.

Complainant 11

Mr AB was a victim in a neighbour dispute. On the day of the trial it became clear that the defence had not received all the unused material it had requested. In consequence, the District Judge said that he would exclude all of the Crown's evidence and that an adjournment would not be granted. The agent prosecutor decided she had no choice but to offer no evidence. The CPS told me that the District Judge had no power to exclude the Crown's evidence, but that he could have dismissed the prosecution on the basis of an abuse of process. It therefore argued that the agent prosecutor should have challenged the decision to exclude evidence and that, by formally offering no evidence, she prevented any legal challenge to the District Judge's actions. Mr AB criticised the CPS's trial preparation and the decision to offer no evidence. He also criticised the subsequent handling of his complaint, and asked for financial redress to enable him to fund civil action against his neighbour. The principal issues of poor case preparation and the agent prosecutor's decision to one side, Mr AB raised a number of other matters that in general I did not think held water. I shared the CPS's view that this was not a case where there were sufficient grounds for a consolatory payment, and the CPS could certainly not fund a civil action.

Complainant 12

Ms AB had been the victim of an assault by her former partner. The first trial was postponed because the court had failed to alert the Prison Service that the defendant needed to appear. However, the prosecutor failed to note on the Hearing Record Sheet that the new date was a full hearing and, in consequence, to require the WCU to warn the prosecution witnesses. On the second hearing date, the (second) prosecutor did not enquire why the witnesses were not present, nor request an adjournment, but simply offered no evidence. This was a sorry tale of two CPS errors resulting in justice being denied. Apologies had been offered but I suggested that the consequential breach of Ms AB's rights under the Victims' Code required a consolatory payment of £200. I also offered mild

criticism of the Area's standard letter that refers to the complainant having expressed "some dissatisfaction" with the outcome of the case.

Complainant 13

Ms AB's son was (along with other children) the victim of child cruelty at a specialist school. The CPS determined that the charges should be dropped and designed a strategy to ensure all complainants and their parents were informed before the outcome was announced in court. Unfortunately, the letter intended for Ms AB was delivered by the police to the wrong address (it was supposed to be hand delivered), and the letter wrongly referred to Ms AB's other son who had no involvement in the matter. (Ms AB found out the case had been dropped from a local newspaper.) A subsequent CPS letter had also gone astray, and I found minor flaws in the complaint handling.

Complainant 14

Mr AB had been involved in a car accident. The other driver had been charged with offences relating to no insurance, and making false applications for insurance, but these were dropped at court when the prosecutor wrongly judged that evidence was not available. The CPS had accepted that a mistake had been made and had apologised. I noted that the stage 2 response contained several typographical errors which were not suggestive of the level of care and attention one would expect. Moreover, while the letter indicated that the complaint "relates to the level of service that you received", and could therefore be escalated to my office, I did not believe this was in fact the case. The DCCP told me that she considered the 'service' element of the complaint to be that the CPS "did not take sufficient care when deciding to withdraw the prosecution". However, the absence of sufficient care does not alter the fundamental position that a decision not to proceed with a case is a legal matter that does not come within my terms of reference.

Complainant 15

Mr AB was an acquitted defendant. Much of his complaint concerned legal issues, but correspondence he had hand delivered to the CPS had been lost, and his stage 1 complaint did not receive a reply for three months. He also said there had been failures to disclose material to the defence that had caused him to incur additional legal costs. He sought compensation. Although I acknowledged that there had been failures, I did not think it was for the CPS to make up for any shortfall in the cost orders made by the courts.

Complainant 16

Ms AB's daughter had been assaulted by her father (from whom Ms AB was divorced). At trial he had been acquitted. Her complaint engaged legal issues regarding the evidence relied upon, and her concerns for her daughter's future safeguarding. However, there had been a breach of the Victims' Code in that Ms

AB had not been told the trial outcome within one day (Ms AB had had to chase), and there were wider lessons about the support offered to child witnesses in the magistrates' court. Like so many of my reviews, this engaged more than one part of the criminal justice system.

Complainant 17

Mr AB is a defence solicitor. He complained about aspects of disclosure in respect of a case. The CPS had accepted that it had failed to comply with a direction of the court (albeit a direction it now said the court had no power to make but which it had not challenged at the time) and the late editing of a taped interview. I was not certain that this correspondence should have been dealt with under the terms of the complaints policy. It was not manifest that the solicitors were still representing their client, and professional exchanges between the defence and the prosecution are presumably not covered by the complaints policy.

Complainant 18

Ms AB complained about the outcome of a trial in which her daughter was the victim. She said that the prosecutor had said the jury would acquit and had offered very little support or explanations. She also said she and her daughter had been 'sent home' after giving evidence and had not been told they could attend the rest of the trial. I could reach no view on the support offered by the prosecutor or the exact words he had said. However, I was disappointed that Ms AB had not been told she could stay, albeit this was principally the fault of the Witness Service at Court not the Crown Prosecution Service. CPS advice on the internet makes clear that witnesses can attend court proceedings after they have given their evidence.

Complainants 19 and 20

By chance, I reviewed two complaints in succession that raised questions about the CPS's policy relating to defendants who are on the autism spectrum.

Mr AB's son, who has Asperger's Syndrome, had been prosecuted for harassment. The CPS had acknowledged a failure to handle the prosecution in line with the policy on mentally disordered offenders. More positively, the Area had identified important learning points. As well as providing awareness training for CPS staff in autism and Asperger's Syndrome, I was particularly struck by a proposal in similar cases "to identify a trial advocate at the earliest opportunity and that the case be reviewed and presented by a lawyer that has experience in dealing with stalking offences, has a good understanding of how to deal with defendants suffering from mental health disorders and has an understanding on how to conduct a trial where there are intermediaries involved in supporting others to give evidence in court."

In the second case, Mr AB's son had been prosecuted and then acquitted. His son has autism, and the Area in this case had also acknowledged that there had been a failure to apply its policy on mentally disordered offenders (albeit the outcome might have been the same anyway).

In carrying out these two reviews, I discovered that the policy link on the CPS website to the National Autistic Society was broken. But overall I found much to applaud in the actions taken in light of the two complaints.

