

Complaints Audit 2013-2014: Report to the CPS Board from the Independent Assessor of Complaints, Stephen Shaw

Introduction

1. This paper summarises an audit of CPS complaints in 2013-2014 that did not progress beyond stages 1 or 2.
2. The audit was carried out in line with paragraph 2.7 of my terms of reference which read as follows:

“The IAC also acts as the guardian of the CPS Feedback and Complaints policy, overseeing the process and supporting the CPS to develop best practice and improved service standards for victims and witnesses.

“In that capacity, he will review samples of cases that have not reached stage 3 to assess the quality and timeliness of stage 1 and 2 responses.

“The audit will involve a dip sample of all complaints to provide an update to the CPS Board, and to further develop internal guidance, protocols and training materials.”

3. I am particularly indebted to Harlyn Collins and those colleagues in CPS Headquarters who carried out the statistical analysis.

Methodology

4. A total of 40 stage 1 and 2 complaints from 2013-2014 were selected at random from the KIM database. This is a sample of sufficient size to be able to draw some broad conclusions, but it does not allow the data to be disaggregated by CPS Area.

5. I read all the papers associated with each case, and completed a simple spreadsheet. I completed fields for timeliness, whether the response flagged up the complaints procedure and escalation process, whether the use of language was appropriate, and whether the response answered the complainant's questions. In a free text field, I recorded other comments on the complaint.
6. The geographic breakdown of the 40 cases is shown in the table below:

Cymru/Wales	3
East Midlands	3
Eastern	3
London	3
Mersey/Cheshire	2
North East	4
North West	1
South East	1
South West	2
Thames Chiltern	2
Wessex	5
West Midlands	1
Yorkshire and Humberside	5
CPS Direct	4
Special Crime and Counter Terrorism	0
Organised Crime	0
Specialist Fraud	1
Total	40

7. It is of note that in 2013-2014 no complaints from CPS Direct, South East, South West, Specialist Fraud or Special Crime and Terrorism were referred to me to be examined at stage 3. Therefore, this review represented my first

opportunistically to consider the quality of correspondence from four of these Areas,

8. A slight majority of the complainants in the sample were male (21). Nineteen were female. The overwhelming majority were victims of crime, including many victims of domestic violence. This is in line with what I see at stage 3, where victims of domestic violence are also heavily represented.
9. Details of age and ethnicity were not available to me.
10. As in any sample, there were a small number of data errors. I do not believe these affect the overall picture.

Findings

11. I begin by setting out the results as recorded in my spreadsheet.
12. So far as adherence to the CPS time targets for responses to correspondence are concerned, the crude results were very encouraging as shown in following table:

Did the response adhere to CPS time targets?

Stage 1	Yes	No
Acknowledgement	39	1
Reply	36	4

Stage 2	Yes	No
Acknowledgement	7	0
Reply	5	2

13. However, these figures may be misleading in at least some cases. The clock was started in each instance when the complaint was formally registered on the KIM database. There were several complaints that were misdirected or mismanaged before being registered (I give examples in the annex to this report).

14. I next assessed if the language used and tone of the reply was appropriate to the circumstances of the complaint. Here again the headline results are very pleasing (just one reply was assessed as inappropriate in tone), but the true picture is a little more mixed as this table shows:

Was the language and tone of the response appropriate?

	Yes	Yes*	Yes**	No	D/K
Stage 1	27	3	6	1	2
Stage 2	6	0	1	0	0

Yes* - Marginal/borderline

Yes** - With comments

D/K - Unable to consider as a copy of the final response was not uploaded to the KIM database

15. The next question was whether the Complaints Procedure was mentioned in the acknowledgment/reply.

Was the Complaints Procedure mentioned in the acknowledgment/reply?

	Yes*	No	N/A	D/K
Stage 1	31	5	1	2
Stage 2	5	2	0	0

Yes* - Acknowledgment or reply

D/K - Unable to consider as a copy of the final response was not uploaded to the KIM database

16. In almost all cases the reference to the Complaints Procedure was made in the initial acknowledgement letter, rather than in the response itself. It could be argued, therefore, that a further reference in the actual reply would have been otiose. On the other hand, in some instances 20 working days may have elapsed between the complainant's receipt of the acknowledgement and their receiving the considered response.

17. The next issue was whether the reply properly answered all the questions raised by the complainant. In the vast majority of cases I concluded that it did, but in four of the 40 stage 1 replies I was not persuaded this was the case, and in a further five I identified some shortcomings:

Did the reply answer all the issues raised in the complaint?

	Yes	Yes*	No	No*	D/K
Stage 1	28	5	4	0	3
Stage 2	4	1	0	2	0

Yes* - With comments

No* - With comments

D/K - Unable to consider as a copy of the final response was not uploaded to the KIM database

18. The final issue was whether the escalation process was explained at the end of the reply. It is of concern that only a minority of stage 1 replies was this the case, and two of the seven stage 2 responses were also inadequate in this regard.

19. In a set of generally encouraging findings, this outcome has clear implications for training and advice.

Was the escalation process explained at the end of the reply?

	Yes	Yes*	No	No*	D/K	N/A
Stage 1	16	1	18	2	2	1
Stage 2	0	0	2	0	0	5

Yes* - With comments

No* - With comments

D/K – Unable to consider as a copy of the final response was not uploaded to the KIM database

N/A – Escalation was not possible and/or appropriate

Detailed commentary

20. In an annex to this report, I have reproduced a slightly edited version of the comments I recorded on each of the cases I reviewed. All cases have been anonymised and references to the specific CPS Area that dealt with the complaint removed.

21. As the audit was conducted on complaints closed during 2013-14, the sample included pre-VRR grievances about prosecutions being dropped etc.

22. I have identified a number of cases where there was very good practice on the part of Complaints Coordinators (cases 2, 12, 22 and 36), and as noted above almost all acknowledgement letters were in time.

23. Other cases to demonstrate good complaint handling include 23, 26 and 32.

24. A counter-example is case 18.

25. Some stage 1 letters included legalese that may have been obscure to the recipients (cases 3, 28 and 31). The tone in some letters was also rather drily

official (cases 4, 6, 24). One sentence in a letter in case 29 is over 60 words long, defying the principles of Plain English.

26. In two cases (36 and 39), what had been a 'legal' complaint (and therefore with no appeal beyond stage 2) took on a 'service' element. But this was not identified in either case in the stage 2 reply, and the complainants were thus prevented from escalating their grievance to the independent tier.

27. One of the 'complaints' in the sample was an HR issue in relation to a former employee. I understand that the current guidance only excludes complaints from current employees, but I am not persuaded that the complaints system is the appropriate vehicle for any HR matters – whether involving past or present members of CPS staff.

Conclusions

28. This report provides a snapshot of the CPS complaints process during 2013-2014. Some of the complaints covered in the audit are approaching 18 months old, and none is fresher than six months old.

29. It is therefore worth remembering that some of the cases I have reviewed are much closer in time to the Chief Inspector's January 2013 characterisation of CPS complaint handling as defensive, lacking empathy, and not addressing the points raised than they are to today.

30. In that light in particular, I think that overall the results from the audit are encouraging. On the objective criteria of timeliness, the CPS's performance has been good. I have also judged that most CPS responses have adopted an appropriate tone, and most complainants have found their questions answered. However, there were still some infelicities in language, and the escalation process was not explained in the majority of stage 1 responses, and this is an important message to feed back to the Areas.

31. My view of the stage 1 and stage 2 responses I have seen in the course of my own casework over the past 15 months is that the Chief Inspector's criticisms are now behind the curve. In particular, I have seen candid acknowledgements of when things have gone wrong, an eagerness to put them right when that is possible, and a commitment to learn the lessons. This will be one of the themes of my six-monthly review that I will submit to the Board in November.
32. The results from this audit are not quite as strong, but that may be because the cases themselves are a little older. However, it is clear that the CPS approach towards handling complaints has indeed improved, and there are examples of very good practice that I have been able to document.
33. The methodology adopted for this review is relatively straightforward to organise, and not too demanding of either myself or of those CPS colleagues who work with me. However, an alternative (or supplementary) method would be to concentrate in greater depth upon those Areas whose performance is of concern or those types of complaint that cause most anxiety. The Board's views would be very welcome.

Stephen Shaw

Independent Assessor of Complaints

September 2014

Annex: Specific comments on the 40 complaints sampled

Stage 1 complaints

Case 1: Complainant is a victim. Prosecution failed as defence evidence was put in the bundle for the prosecution case. Stage 2 reply is fairly short but does offer a meeting. Reply says that lawyer who made the mistake been "spoken to" and told about the consequences. Complainant had asked how the mistake had happened and this was not explained.

Case 2: Useful guidance from the Complaints Coordinator (see case 12 below). Good practice to be commended. Complaint re: discontinued prosecution from father of victim (pre-VRR). Speedy and comprehensive stage 1 response (whether this complainant and others in a similar position consider the underlying judgements to be reasonable may be a different matter. I cannot judge the quality of decision-making in this exercise).

Case 3: Complainant is recorded as witness; may also be related to victim. Good quality acknowledgment. Compare this with the poor one in case 1. Some jargon ("basis of plea", "Newton hearing"). The stage 1 reply acknowledges a number of CPS errors (witnesses warned for wrong time, email not telephone to Witness Care, no word from prosecutor, no witness expenses claims forms) and one by the police.

Case 4: Complainant was a witness who said the defendant now knew her name. She was distressed and wanted to know when the defendant would be released from prison. Stage 1 response was speedy and covered the issues raised. However, it failed to engage in a sympathetic fashion. The letter is tidy, grammatical, well laid out and accurate. But it is not very kind or understanding: "You have indicated that you wish to be informed of the date of the defendant's release from prison. Enquiries with the victim liaison unit have led me to

understand that such notification is only given in specific categories of cases. This case does not fall within those categories."

Case 5: Complainant was victim of racially aggravated offence(s). Stage 1 response did not spell out reasons for two of nine charges being dropped, but relied on complainant's knowledge of previous conversations. Interesting complaints handling - Complainant was first offered a telephone conversation to try to resolve his issues. He was intemperate and subsequently accused the person he had spoken to of racism. Response is fairly short, but does offer a meeting if the complainant wants further clarification.

Case 6: Complainant was victim of burglary. Sought review of a decision not to prosecute but offence pre-dated VRR. Good quality acknowledgment. Stage 1 reply is addressed to Ms AB when she is in her 80s and describes herself as Mrs AB. Not a letter showing much sympathy or understanding for a victim in her 80s. Reads very much like an official communication without engagement with the complainant herself.

Case 7: A couple of errors in the KIM record. Complainant is victim in DV case. Her complaint focussed on the delays and adjournments. The stage 1 reply refers to police and court failures - reasonably enough as it seems the CPS were not responsible for any of the delay. Generally sympathetic and well constructed letter.

Case 8: Complainant is son of a man in his 80s who was swindled by his independent financial advisor. He objects to the decision not to prosecute (pre-VRR). A separate complaint on the file is from the daughter of another elderly man also swindled by the IFA. The papers I have been given are incomplete but they show that the complaint was upheld by the DCCP and that prosecutions would go ahead, subject to further inquiries by the police. Stage 1 reply offers further contact if required.

Case 9: Complainant is mother of child victim (aged 15) of sexual abuse by her uncle. Man was acquitted. Stage 1 response was focussed on decision to prosecute. Also included some details of what emerged at court - acknowledging that their impact on the jury was a matter of conjecture. Not the most sympathetically worded letter, but not too bad. Response failed to engage with one matter raised in the complaint: that prosecutors should introduce themselves to witnesses.

Case 10: Complainant was a co-defendant in public order offence (two brothers vs two bouncers). Charges against all four were dropped. Note on KIM says: "As this complaint was generated by a defendant in the case I considered it more appropriate to write rather than telephone him." Discontinuance based on CCTV not showing the start of the incident with both parties claiming self-defence. Brisk but sensible stage 1 reply.

Case 11: Complaint from wife of man dismissed from the CPS on competency grounds. HR issue recorded as a complaint. She asked if the correct complaints procedure was being used: "Yes this is the correct complaints procedure. We only have the grievance procedure which is for current employees and the CPS complaints procedure. As [name] is no longer employed with the CPS and was not employed at the date the complaint was made he will fall under that procedure, we do not have anything specific for ex-employees." Stage 1 response acknowledges poor level of service and offers apologies. I am very surprised this was treated as a complaint rather than a HR matter about pension entitlements etc.

Case 12: Victim complaining about discontinuance (pre-VRR). Good practice by Complaints Coordinator in advising reply drafter to include information about escalation. Also advice to adhere to complaints guidance and house style. (Although the standard paragraph says if you go beyond the time limit we "will refuse to examine" your complaint rather than, as I would prefer, "we may refuse" or "we will normally refuse except in exceptional circumstances".) Very speedy reply, endorsing withdrawal of prosecution.

Case13: Complainant was a victim. Charges against attacker had been withdrawn. Had been sent a draft DCV letter, in which names of victim and offender had been transposed, not on headed paper, typos etc. Stage 1 apologised for the wrong letter having been sent. I would have been more fulsome in the circumstances. Reply also explained the grounds for withdrawing the prosecution. Not clear why a draft DCV letter was sent or if any action taken to prevent recurrence.

Case14: Complainant is a witness in an appeal. Some failures in complaint handling as CPS wrote to barrister at wrong set of chambers. Stage 1 reply was late as a consequence. Initial response from Witness Care Unit. Barrister had not spoken with witnesses before hearing ("busy with pre-trial issues"). Stage 1 reply informed by barrister's comments ("as witnesses the complainant and her witnesses were vague and inconsistent ... [the Judge] was deeply unimpressed by the evidence ... This I'm afraid is someone who wasn't believed and doesn't like it...I'm with the Judge, a weak case, with no real prospect of success.") Sensibly, none of this was actually in the stage 1 reply.

Case 15: Complaint about agent prosecutor ("To say he was incompetent is a bit strong but I was not impressed by the way he conducted the trial.") Complainant was victim of a dog attack. Fairly short stage 1 response, saying that the prosecutor is experienced and used regularly and therefore "no reason whatever to doubt what he says in reply". Also pointed out that the magistrates convicted the perpetrator. No compensation was sought - this was blamed on police. No acknowledgement that CPS could have chased police re: compensation form.

Case 16: Complainant was a victim of an assault who complained about charges brought and decision not to charge one alleged attacker (pre-VRR complaint). Courteous and informative stage 1 response, following a review of the evidence. Nicely laid out letter too.

Case 17: Complainant is father of victim of driving incident. Complaint was initially treated as Feedback and then revised as a Complaint. (Again the KIM record does not reflect the initial delay). Complaint concerned reasons for charging decisions. There seems to have been a proper investigation (police did not provide some material as promised) and the letter fairly explains the charges that were brought.

Case 18: A complicated matter. The complainant is the Investigation Manager for a large bank that was the victim of a £300K fraud. He wrote in August to enquire why no order for compensation had been made. His email was not even acknowledged until 6 November and despite his repeated chasing, he did not get a full reply until 13 January. The KIM dates do not reflect the delay between August and November. The stage 1 reply does not apologise for any of the delay. The reply acknowledges that an application for compensation should have been made, even though it was very unlikely to have been awarded. Shoddy complaints handling.

Case 19: First case I have seen where the reply to the complaint took the form of an email. Complainant is mother of victim whose bike was stolen by another boy. CPS determined that theft could not be shown as there was no evidence that the boy intended to permanently deprive the victim. Stage 1 response did not mention escalation but offered a face-to-face meeting.

Case 20: Complainant is mother of victim of assault. Complaint is about the leniency of sentence. Poor reply that failed to engage with the emotional nature of the complaint. No explanation of why the sentence could not be referred as "unduly lenient". Buck passed to the Court. Clearly, the sentence imposed was the Judge's decision, but the reply was rather curt - not justifying the three-and-a-half weeks it took to reply.

Case 21: Complaint was made to Court. Forwarded to CPS 18/4 but not re-forwarded to correct legal manager until 12/5. KIM records dates from that point falsely giving the impression it was dealt with in time. Complainant was

victim complaining of decision not to prosecute (pre-VRR case). Reply apologies for the delay. Explains reasonably well why decision was taken to withdraw the prosecution. Email evidence shows the DCV letter was poor but this is not mentioned in the reply.

Case 22: Useful advice from Complaints Coordinator to Senior Crown Prosecutor about the need to include a paragraph on escalation. Complainant was off-duty police officer, assaulted in her home. Complaint concerned lost statement (a failure by the police, it seems) and decision on what charges to prosecute. Very good quality reply.

Case 23: Complainant recorded on KIM as solicitor representing the actual complainant who was a defendant against whom no evidence had been offered. This was a complaint against the police (contradictory evidence from PCSO) and CPS (failure to disclose log). Reply by DCCP. Apologised for failure to disclose. Also said matters were being raised with the police. Serious issue, handled seriously by DCCP.

Case 24: Complainant was acquitted defendant who sought compensation. The reply made no mention of compensation: "The CPS complaints procedure is not a mechanism for defendants to complain about being prosecuted. If you have an issue with the legality of the case brought against you, you should seek independent legal advice." A bit terse: "I refer to your complaint of xx, the contents of which I note."

Case 25: Complainant was a witness. Stage 1 response begins by apologising for how he was treated. Much of the complaint concerned police failures or failures by the Witness Care Unit ("managed by the police"). Response did not mention escalation process but did end with an offer of further assistance.

Case 26: Complainant was mother of victim of assault. Complaint concerned choice of charge (legal decision making). Excellent, sensitive, well explained, well laid out letter.

Case 27: Carelessly drafted acknowledgment. Rather coldly worded stage 1 response. Complainant was victim. There were acknowledged failures by the Witness Care Unit (jointly managed with the police at the time) to keep her informed. The letter offered an apology.

Case 28: Complainant was victim of assault by former partner. Case was delayed. Excellent stage 1 response. Case was still live, so there was some limit on what the reply could say, but it addressed all issues with great care and compassion. Some legalese ("the court agreed to vacate the trial date", "the OIC"). Reply included acknowledgment that prosecuting agent could have explained things more effectively. Also invited complainant to come back if matters needed clarification.

Case 29: Very good acknowledgment letter. Also good that it was left-justified (this makes letters more user-friendly and easier to follow). Complainant was victim of anti-social behaviour. Alleged culprit was not prosecuted. Complainant argued that decision was borderline (decision preceded introduction of VRR). Stage 1 letter is poorly laid out. One sentence was 62 words long. However, it is a long letter addressing all the evidential issues.

Case 30: Complainant(s) were victims of very unpleasant assault in a prison where they work as nurses. The complaint was about the concurrent sentence imposed. They received a very speedy reply referring them to the Clerk to the Justices at the Magistrates' Court, although no address was given. Escalation clearly not appropriate. Some legalese ("disposal"). Some carelessness in acknowledgment and stage 1 re: the titles of the two complainants.

Case 31: Complainant(s) were victims of a fraud. Defendant was formally acquitted when the Judge "decided that the indictment should be stayed" (legalese in letter to two people for whom English may not have been their first language). Misspelling of one name on KIM. Not clear where the home address came from (it appears there were two complaints and a single reply to one

address - not that of the complainant in the audit). There had been problems of disclosure in the case (defendant represented himself) - hence Judge's decision.

Case 32: The complainant(s) were victims of criminal damage. The alleged offender was (perversely) acquitted by the magistrates. The CPS investigator had phoned the complainants before issuing her letter. The letter acknowledges two flaws by the CPS:

- Prosecutor not introducing herself at court
- Prosecutor's failure to ask for a restraining order.

The investigator had proactively raised further concerns with police and court. Lots of good practice on view - but no reference to escalation.

Case 33: Complainant was victim in DV case. Made retraction statement at the police station. Wants charges dropped "it seems the CPS are totally disregarding my thoughts and feelings on the matter". The KIM record says CPS dropped the case because victim withdrew her consent to cooperate with the police: "The full response letter was sent to [name] on 5/2/14. YCT sent a copy of the letter ... on 10/2/14. The case against [name] dropped and therefore the victim letter uploaded on CMS is also final response to complaint." (The letter enclosed with these papers was the wrong one and therefore I could not carry out a review of the stage 1 response.)

Stage 1 and 2 Complaints

Case 34: Complainant was victim of DV who made a retraction statement. The violence consisted of the perpetrator throwing two glasses of wine over the victim. Stage 1 response cites CPS policy on DV; in effect, that where there is sufficient evidence it is always in the public interest to proceed. Response says it would be inappropriate to provide full reasoning at this stage, but says it can be provided at the conclusion of the court proceedings. Complainant replied by emailing the same day. Did not expressly mention escalation but said she did not agree there was sufficient evidence: "The whole situation is clearly ridiculous

and has got grossly out of hand." She was asked if she wanted to escalate to stage 2.

Case 35: DV case. Victim does not agree with decision to drop the charges (pre-VRR). Response was speedy and comprehensive. It was predominantly legalistic given that it concerned definitions of affray and the limitation of six months on bringing charges of common assault. Letter tries to discourage a face to face meeting: "I have written to Womens' Aid enquiring what issues specifically would be discussed at that meeting which have not been covered in the correspondence to date. The purpose of any meeting would be to explain the decision that has been reached and it would not be possible to alter the same."

Case 36: Very good practice shown by the Complaints Coordinator. Complainant is man with mental health problems who was prosecuted, then the charge was dropped. He complained via the website and telephone. Excellent letter sent by Complaints Coordinator 27/2/14 outlining the complaint. The Stage 1 reply was not uploaded immediately so was not available when the Equality Manager took a further phone call from complainant indicating that he wanted escalation: "I should stress he has mental health issues and possibly learning disabilities. This may account for his apparent lack of understanding of some of the points ... made, and perhaps you could ask [the CCP] to consider this in drafting her reply."

Case 37: [Name] complained that he was out of pocket following damages to his car. The stage 1 reply explained that neither the police nor CPS had thought there was sufficient evidence to charge anyone with criminal damage. Therefore, the request for compensation did not apply. Service elements not identified. Should have been offered escalation to stage 3.

Case 38: A complicated business. Complainant is an American living in Florida, the victim of fraud involving the sale of his UK home. CPS pursued charges of fraud but not criminal damage (changes to the property where he let the potential purchaser live without a tenancy agreement). He wanted compensation. The DCV letter to the complainant wrongly mentioned VRR (not

applicable as two charges confirmed). Stage 1 letter is long and overly detailed. It makes no reference to stage 2. Email of 18/3/14 reads: "As much as it pains me I believe this will have to be dealt with as a second tier complaint ... Inevitably the victim will ask for the matter to be escalated to the A-G ... If he takes it any further we will be able to confirm compliance with the complaints procedure and provide a copy of our response."

Case 39: Messy affair. Complainant is victim of stalking and criminal damage by ex-partner. Stage 1 acknowledgment gave no indication of time target of 20 days - complainant had to chase. Stage 1 response is not in the papers referred to me. However, stage 2 reply shows it was inaccurate and that wrong advice was given regarding eligibility for VRR. Service elements should have permitted escalation to stage 3.

Case 40: Complaint concerns decision not to prosecute for harassment. Some papers not included. Stage 1 response is not especially sensitive to needs of victim. (No phrase like: "I am sorry to learn of the difficulties you have faced", etc.)