



CPS

**Victims' Right to Review
Guidance**

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Introduction

1. This guidance sets out how victims can give effect to their right to seek a review of certain decisions taken by the Crown Prosecution Service (CPS).
2. The Victims' Right to Review scheme applies in all qualifying cases from 5 June 2013.
3. The scheme is not retrospective in its application and will only be applied to cases in which the qualifying decision is made on or after the 5 June 2013.

Background

4. On 29 June 2011, the Court of Appeal gave a decision in R v Christopher Killick [2011] EWCA Crim 1608 (R v Killick).
5. In the course of the judgment the Court considered in some detail the right of a victim of crime to seek a review of a CPS decision not to prosecute and concluded in clear terms that:
 - a victim has a right to seek a review in such circumstances.
 - a victim should not have to seek recourse to judicial review.
 - the right to a review should be made the subject of a clearer procedure and guidance with time limits.
6. The scheme gives effect to the principles laid down in Killick and in Article 11 of the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime.
7. The Victims' Right to Review (VRR) arises from the finality of the decision not to prosecute having applied the evidential and public interest tests under the Code for Crown Prosecutors. It is co-extensive with the right of a victim to seek judicial review of such a decision. Indeed, as stated by the Court of Appeal in Killick:

'... it has for some time been established that there is a right by an interested person to seek judicial review of the decision not to prosecute ...; it would therefore be disproportionate for a public authority not to have a system of review without recourse to court proceedings ... As a decision not to prosecute is in reality a final decision for the victim there must be a right to seek a review of such a decision.'

8. It is important to note that the “right” referred to in the context of the scheme is the right to request a review of the Code Test decision. It is not a guarantee that proceedings will be (re) commenced.

Which decisions are subject to the scheme?

9. The right to request a review arises where the CPS:
- (i) makes the decision not to bring proceedings (i.e. at the pre-charge stage);
 - (ii) discontinues (or withdraws in the Magistrates’ Court) all charges involving the victim, thereby entirely ending all proceedings relating to them;
 - (iii) offers no evidence in all proceedings relating to the victim; or
 - (iv) asks the court to leave all charges in the proceedings to ‘lie on file’¹.

10. These are known as ‘**qualifying decisions**’.

11. The following cases **DO NOT**² fall within the scope of the VRR:

- (i) cases where the qualifying decision was made prior to 5 June 2013;
- (ii) cases where the police exercise their independent discretion not to investigate or not to investigate a case further (whether in consultation with the CPS or not) and the CPS have not been requested to make a formal decision to charge. Requests for review of such decisions must be addressed to the relevant Police Force;
- (iii) cases where charges are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects, where the evidence of the victim in question has been considered by a Crown Prosecutor;
- (iv) cases where a single charge or charges are terminated but another charge or charges relating to that victim do continue;

¹ This is the term used in circumstances where the CPS makes a decision not to proceed and requests that the charges be allowed “to lie on the file” marked ‘not to be proceeded without the leave of this Court or the Court of Appeal’

² As Lord Judge C.J. explained in *A v R* [2012] EWCA Crim 434 at paragraph 84 there may be instances in which “it remains open to the prosecution in an individual case, for good reason, to disapply its own policy or guidance”. It follows that there may be very exceptional circumstances in which cases that fall within the exceptions of paragraph 11 may nevertheless be considered for inclusion in the VRR scheme on the advice of the ARU manager or other senior manager.

- (v) cases where proceedings against one (or more) defendants are terminated but proceedings (relating to that victim) against other defendants continue;
- (vi) cases where a single charge or charges are substantially altered but proceedings involving that victim continue;
- (vii) cases where some (but not all) charges are left to lie on file;
- (viii) cases which are concluded by way of out of court disposal³;
- (ix) cases where the victim requests that proceedings be stopped or withdraws support for the prosecution and a decision is therefore taken not to charge/to terminate proceedings; and
- (x) cases which are brought to an end in circumstances where the prosecution may have a right of appeal⁴ or where a decision is made not to oppose an application to dismiss charges pursuant to Rule 9.16 of the Criminal Procedure Rules 2015.

12. Concerns about legal decisions which do not fall within the scope of the VRR scheme and service complaints will be dealt with in accordance with the CPS Feedback and Complaints⁵ policy. There is a six month time limit for bringing a complaint under the policy in all but the most exceptional circumstances.

Who can apply under the scheme?

13. Any victim, where a qualifying decision⁶ has been made, is entitled to seek a review of that decision under the scheme.

14. A victim for the purposes of the VRR scheme is as follows:

‘a person who has made an allegation that they have suffered harm, including physical, mental or emotional harm or economic loss which was **directly** caused by criminal conduct.’

³ An “out of court disposal” is a term used to describe alternatives to prosecution such as cautions, conditional cautions and penalty notices for disorder, intended for dealing with low- level, often first-time offending, where prosecution would not be in the public interest.

⁴ This includes applications for judicial review or to state a case

⁵ Service complaints are complaints relating to the way in which the CPS has conducted itself.

⁶ See paragraph 9.

'Criminal conduct' is behaviour constituting a criminal offence under the National Crime Recording Standard.

The definition of a victim includes:

- close relatives of a person whose death was directly caused by criminal conduct;
- parents or guardians where the main victim is a child or youth under 18;
- police officers who are victims of crime;
- family spokespersons of victims with a disability or who are so badly injured they cannot communicate; and
- businesses, providing they give a named point of contact.

15. It does not matter how old or young a person is in respect of those entitled to seek a review of a decision.

16. If someone wishes to submit a request for review on behalf of a victim and does not fall within one of the definitions listed above, written confirmation that they have the authority of the victim to act on their behalf must be provided.

How can victims exercise the right to review?

17. Victims will be notified of the prosecution decision not to bring proceedings / bring proceedings to an end. This notification will include the following information:

- (a) the nature of the decision – i.e. not to charge or to discontinue proceedings;
- (b) whether the decision was made on evidential or public interest grounds.

18. If the decision is a 'qualifying decision', the notification will confirm that the victim is eligible to seek a review under the scheme and will provide sufficient information to enable the victim to decide:

- (a) whether or not they wish a review to take place;
- (b) if they do want a review what steps they need to take.

19. The **only** action a victim need take is to notify the CPS of their request for review. Victims will be provided with contact details of the relevant CPS office in order that they can make contact by their preferred means.

20. A request for a review should ordinarily be made within 5 working days of receipt of the notification of the decision. However, a request can be made up to three months after the communication of the decision to the victim (further detail regarding time limits can be found at paragraphs 53-62).
21. Additional information about how to exercise the VRR is available on the CPS website.

What does the CPS do with a request for a review?

Local resolution

22. We recognise that many victims who are dissatisfied with the decisions we have made will want someone to look at the problem as quickly as possible.
23. Once the victim has notified the CPS of their request for review, the CPS will seek to resolve the issue at the local CPS office or with CPS Direct (CPSD), the team responsible for making the majority of charging decisions, depending on where the decision was made. This stage of the process is called 'Local Resolution'.
24. Local Resolution is aimed at helping victims to understand the decision taken by providing additional information and provides the CPS with the opportunity to look again at the decision and to establish whether it was correct. The cause of dissatisfaction may be capable of being resolved quickly by the local office or by CPSD.
25. Local Resolution is an important part of the process. If a victim contacts the Appeals and Review Unit first, they will be referred to the local office or CPSD in the first instance so that Local Resolution can be considered.
26. The local CPS office or CPSD will assign a new prosecutor to review the decision and take the opportunity to ensure that a proper explanation of the decision is given where it has not been provided previously.
27. The outcomes of the Local Resolution process are:
- (a) In cases where, on review, it is considered that a different decision should have been taken and it is possible and appropriate to do so, action will be taken to (re) commence proceedings and the victim will be notified. If it is not possible or appropriate to (re) commence proceedings we will provide an explanation and, where it is right to do so, an apology to the victim

- (b) In cases where the local CPS office or CPSD confirms the original decision as correct the victim will be provided with additional information/explanation and advised that, if they remain dissatisfied with the decision, they should contact the Appeals and Review Unit or Chief Crown Prosecutor as appropriate (see paragraph 36 below). Contact details will be provided together with guidance as to how to proceed should they wish to.
- (c) In cases where the local CPS office or CPSD confirms the original decision as correct and where an appropriate explanation has previously been given (and the victim will not therefore benefit from any further correspondence at this stage), the victim's request for review will be sent directly to the Appeals and Review Unit or to the relevant CCP as appropriate (see paragraph 36 below). The victim will be advised that this has happened.

28. The Local Resolution process will be completed within 10 working days of receipt of the request for review. If this is not possible, the victim will be informed of this fact together with the reason and a date by which the response will be provided.
29. Qualifying decisions made by prosecutors at grade CCP or above or those made at any grade within the Central Casework Divisions will not be subject to Local Resolution and will go straight to independent review.

Independent review

30. Where the victim's dissatisfaction has not been resolved locally, the decision will be subject to an independent review (see paragraphs 33 to 39 below).
31. This review will comprise a reconsideration of the evidence and the public interest i.e. the new reviewing prosecutor will approach the case afresh to determine whether the original decision was right or wrong⁷.
32. Where the CPS deems that VRR is available in respect of a qualifying decision made in accordance with our Private Prosecutions policy, because the private prosecutor is a victim who has made an allegation to the police⁸ in England and Wales that he/she has directly experienced criminal conduct and has subsequently started a private prosecution in respect

⁷ However where in accordance with paragraph 4.2 of the Code for Crown Prosecutors, it is clear from the particular facts or circumstances of the case that the public interest does not require a prosecution, it will not be necessary to conduct a review of the evidence.

⁸ Allegations investigated by other Government Agencies for whom the CPS is the principal prosecuting authority are included within this definition.

of the matter, the independent review will be based on the material that was provided to the original prosecutor.⁹

Reconsidering a prosecution decision

33. It is an important principle that people should be able to rely on decisions taken by the CPS as being final and that such decisions should not ordinarily be revoked. However, we also recognise that a careful balance must be struck between providing certainty to the public in our decision making and not allowing wrong decisions to stand. It is right therefore, in order to maintain public confidence in the criminal justice system, that the CPS will sometimes have to look again at a prosecution decision, and change it if it is found to be wrong. If a decision is found to be wrong, it may be necessary to commence or re-institute criminal proceedings.

34. The Victims' Right to Review scheme provides a victim with a specifically designed process to exercise the right to review. The reviewer must conduct a re-review of the case afresh, and in order to overturn a decision not to prosecute they must be satisfied:

- that the earlier decision was wrong in applying the evidential or public interest stages of the Full Code Test (as set out in the Code for Crown Prosecutors); and
- that for the maintenance of public confidence, the decision must be reversed.

35. Guidance has been provided to prosecutors to assist in their decision making. The guidance is headed "Reconsidering a Prosecution Decision" and is available via the Prosecution Policy and Guidance (Legal Guidance) section of the CPS website.

Who will carry out the independent review?

36. In most cases the independent review will be conducted as follows:

- (i) where the qualifying decision is 'not to charge', 'discontinue', 'withdraw' or where all charges are ordered to "lie on file", in circumstances in which proceedings may be commenced or reinstated, the independent review will be carried out by the Appeals and Review Unit who will not have been involved in the original decision.
- (ii) where the qualifying decision was to 'offer no evidence', or any other decision not to prosecute in circumstances in which reinstatement is not possible, the formal review will be

⁹ Nothing in this paragraph excludes a prosecutor from taking into account credible and reliable additional evidence in circumstances where such new material is provided via the police or an investigator as defined in footnote 8 above.

conducted by the Chief Crown Prosecutor / Head of Division or Deputy Chief Crown Prosecutor / Deputy Head of Division in the Area or Division where the decision was made, unless paragraph 37 below applies.

37. The right to request a review of a decision not to prosecute under the VRR scheme applies to decisions made by every Crown Prosecutor, regardless of their grade or position in the organisation. Therefore the scheme also applies to decisions made by the Director of Public Prosecutions, the Director's Legal Advisor, Chief Crown Prosecutors and Heads of Central Casework Divisions and the principles at paragraph 36 above will apply. Consequently, where a decision falls into (i), it will be dealt with by the Appeals and Review Unit regardless of the grade of the decision maker. Where the qualifying decision falls into (ii) or in any other case where the (re) commencement of proceedings is not possible and the original decision maker is at Chief Crown Prosecutor grade or above, it will be allocated to another senior lawyer within the CPS who was not involved in the original decision.
38. Where a case involves any qualifying decision taken by one of the Central Casework Divisions, the independent VRR review will be undertaken by the Appeals and Review Unit unless:
- i. the qualifying decision was to 'offer no evidence', or relates to any other decision not to prosecute in circumstances where reinstatement is not possible; or
 - ii. specialist skills are required.

In cases falling into i or ii above, the Head of Division may appoint a prosecutor from their own division who has not been involved in the original decision, or another suitably qualified prosecutor who has the necessary specialist knowledge, to undertake the VRR process. This different arrangement is necessary because the nature of the prosecutions undertaken in the Central Casework Divisions may mean that in some cases a prosecutor with experience of the particular specialism in question would be best placed to conduct the review.

39. Where the case is of a nature whereby, in accordance with established CPS policies, decisions are to be taken by specialists in a particular legal field (e.g. rape and serious sexual offences), the local resolution process and any independent review will also be conducted by a relevant specialist.

Outcome of the review

40. The outcome of the review process will be communicated to the victim, wherever possible,

within the time limits set out in paragraphs 53 to 62.

41. The method of communication will depend on the circumstances of the victim and the outcome of the review.
42. Where a victim has given reasons for requesting a review, the issues raised will be addressed in the decision letter to the victim, where appropriate.
43. The available remedy depends on the nature of the qualifying decision.
44. In cases where the qualifying decision was 'not to charge' then it may be possible to bring proceedings if the original decision is found, on review, to be wrong.
45. The same applies in cases where the qualifying decision was 'to discontinue' and, in some circumstances, 'to withdraw' all proceedings.
46. However, there is usually no such remedy available in cases where the qualifying decision was 'to offer no evidence'. This is because such decisions are final, proceedings cannot be reinstated and redress in these circumstances is limited to an explanation and apology. It is important to note that, although the case cannot be recommenced, the quality and thoroughness of the review undertaken will be no less than a review undertaken for any other category of case. The important issue being addressed in these cases is whether the original case decision was wrong.
47. The situation is the same in cases which become statute barred¹⁰ after a qualifying decision has been made but before a review is requested or completed as it is not possible to bring/recommence proceedings in these circumstances. If this occurs the CPS will provide an explanation to the victim and, where it is right to do so, will offer an apology.
48. Where the CPS has asked the Crown Court to allow all charges in a case to 'lie on file' and the court has so ordered, these cases cannot be reinstated without the leave of the Crown Court or the Court of Appeal. In the context of a VRR request, unless a significant change in circumstances has taken place since the order was made, it is highly unlikely that the court will grant leave. Redress is therefore likely to be limited to an explanation and apology where the original decision is found to have been wrong.

¹⁰ There are some offences that cannot be charged after a time limit has expired. If this applies an explanation will be given in the response.

49. Following the conclusion of the VRR process, there is no scope for any further review by the CPS and accordingly, if the victim remains dissatisfied with the decision, and/or wishes to challenge it further, then the victim should apply to the High Court for a judicial review.
50. There is likely to be an expectation, in any judicial review of a qualifying decision, that any right to review under this scheme will have been exercised before any such proceedings are commenced.
51. If proceedings are to be (re) commenced following review, the suspect/defendant will be advised. Suspects/defendants will only be made aware of the victim's request for a review where the original decision is overturned.
52. Where lessons can be learned from the outcome of a VRR request, the CPS will, where appropriate and possible, make the necessary changes to guidance, process or practice to reduce the likelihood of the situation arising again.

Time limits

53. Qualifying decisions will be communicated to the victim in accordance with the time limits set out in the Victims' Code¹¹.
54. A request for a review should ordinarily be made within 5 working days of receipt of the notification of the decision. However, a request can be made up to three months after the communication of the decision to the victim and where the law permits us to do so (see footnote 9) we will consider all requests for review made during that period.
55. Any delay beyond the three months will only be allowed in exceptional circumstances after taking into account the facts of the individual case.
56. An early request from the victim allows for prompt review and, where appropriate, proceedings to be (re) commenced as quickly as possible. Conversely, a delayed request may increase the likelihood of the Court finding difficulty with any decision to (re) commence proceedings following the review.
57. Any action taken to provide a local resolution will ordinarily be completed within 10 working days of receipt of the victim's request for a review.

¹¹ Now the Code of Practice for Victims of Crime.

58. Where additional explanation of the decision is provided at Local Resolution and the victim remains dissatisfied with the decision, victims will be asked to contact the Appeals and Review Unit or Chief Crown Prosecutor, within 10 working days (contact details for the appropriate person will be provided together with guidance as to how to proceed). Cases where no additional explanation is required will be sent directly to the Appeals and Review Unit or Chief Crown Prosecutor and the victim need take no action at this stage.
59. Where the original decision has been taken by the Director of Public Prosecutions, the Director's Legal Advisor, a Chief Crown Prosecutor or a Head of Division, the victim should initially write to the Appeals and Review Unit. The victim will be notified of the identity of the senior lawyer who will be undertaking their review.
60. The CPS will, wherever possible, complete the review and communicate the decision to the victim within an overall timeframe of 30 working days (i.e. 6 weeks from receipt of the request from the victim).
61. In cases where it is not possible to provide a VRR decision within the usual time limits, the CPS will notify the victim accordingly. Regular updates will be provided as to the progress of the review, although these will not be more frequent than every 20 working days thereafter, until a final decision is made.
62. Where a case is due to become statute-barred before the VRR period expires, we will aim to expedite the VRR process and provide a decision within the statutory time period if possible¹². The date when the case will become statute barred will be identified and communicated to the victim when the qualifying decision is communicated so that the position is clear.

An enhanced service

63. The Victims' Code sets out enhanced entitlements for victims in certain groups who are more likely to require enhanced support and services through the criminal justice process.
64. Victims who are entitled to an enhanced service will be given increased support through the VRR process and offered the opportunity to discuss the outcome of the review. This will ensure that the victim fully understands the process and the decisions made and has an opportunity to ask any questions that s/he may have.

¹² It should be noted that where a case is referred for review on a date close to the expiry of the statutory time limit, it may not always be possible for a review to be completed within the time limit for bringing a prosecution.

65. The Police, CPS and victim will, at the outset of all criminal cases, work together to determine whether a victim meets the criteria for an enhanced service using the guidance set out in the Victims' Code:

- **Vulnerable or intimidated victims** - those under 18 years of age at the time of the offence, or whose evidence is likely to be affected because they suffer from a mental disorder within the meaning of the Mental Health Act 1983; they otherwise have a significant impairment of intelligence and social functioning; or they have a physical disability or are suffering from a physical disorder. A victim is considered intimidated if the quality of their evidence will be affected because of fear or distress about testifying in court.
- **Victims of the most serious crime** – those who are victims of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life, wounding or causing grievous bodily harm with intent (s.18) together with those who are close relatives bereaved by criminal conduct.
- **Victims who are persistently targeted** – those who are targeted repeatedly over a period of time, those who are deliberately targeted or are victims of a sustained campaign of harassment or stalking.

66. The CPS will additionally offer an enhanced service to those we believe to be “in greatest need” – those who would benefit from increased support but who do not fall within one of the Victims' Code descriptions.

67. Any person wishing to request a review of a decision, but who is unsure of how to do so, should contact their local CPS office and assistance will be provided.