



CPS

Victims' Right to Review Interim 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 scheme set out below will apply in all qualifying cases from 5 June 2013.
3. This new scheme replaces the system of review as detailed previously in the CPS Feedback and Complaints Policy ('the complaints policy').
4. 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 scheme comes into operation. Requests for reviews of decisions made prior to this will be considered in accordance with the complaints policy in existence at the time.
5. This guidance is subject to a three month public consultation. At the end of the period, the guidance will be reviewed in light of the responses received. Thereafter, final guidance will be published.

Background

6. On 29 June 2011, the Court of Appeal gave a decision in *R v Christopher Killick [2011] EWCA Crim 1608 (R v Killick)*.
7. 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.

8. The scheme gives effect to the principles laid down in *Killick* and in Article 10 of the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime.

Qualifying decisions: Which decisions are subject to the scheme?

9. The Victims' Right to Review (VRR) arises from the finality of the decision not to prosecute and 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.'

10. It follows that the VRR applies where the CPS:
 - (i) makes the decision not to charge (i.e. at the pre-charge stage); or
 - (ii) decides to discontinue (or withdraw in the Magistrates' Court) all charges involving the victim, thereby entirely ending all proceedings relating to them; or
 - (iii) offers no evidence.

11. These are known as 'qualifying decisions'.

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

- (i) 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) where a full file of evidence has not been provided with a view to the CPS taking a formal prosecution decision;
- (ii) cases where a single charge or charges are discontinued but another charge or charges relating to that victim do continue;
 - (iii) cases where a single charge or charges are substantially altered but proceedings involving that victim continue.
 - (iv) cases which are concluded by way of out of court disposal.
 - (v) cases where the victim requests that proceedings be stopped.

13. Legal decisions which do not fall within the scope of the VRR and service complaints will be dealt with by the local CPS office in accordance with the feedback and complaints policy.

1. Do you agree the guidance is clear in respect of which decisions fall within the scope of the scheme?

To whom does the VRR apply?

14. The VRR applies to all victims subject to a qualifying decision set out in paragraph 10.

15. A victim is defined in The Code of Practice for Victims of Crime (Victims' Code), as follows:

'Any person who has made an allegation to the police, or had an allegation made on his or her behalf, that they have been directly subjected to criminal conduct under the National Crime Recording Standard (NCRS).'

16. This definition also includes bereaved relatives or partners in homicide cases¹; parents where the primary victim is a child or youth under 18;

¹ The categories of homicide cases included are: murder; manslaughter; corporate manslaughter; familial homicide; causing death by dangerous driving; causing death by careless driving while unfit through drink or drugs; causing death by careless or inconsiderate

police officers (who are victims of crime); and a family spokesperson, entitled to receive services under the Code, where the victim is incapacitated as a result of disability.

How can victims exercise the VRR?

17. Victims will be provided with sufficient information to enable them to decide whether, and how, to exercise the right to review.
18. At the time the qualifying decision is notified, the following information will be provided to the victim:
 - (i) the nature of the decision – i.e. not to charge or to discontinue a charge(s);
 - (ii) whether the decision was on evidential or public interest grounds;
 - (iii) how they can access further information about the decision should they wish to do so; and
 - (iv) their right to seek a review of the decision and how to exercise it.
19. Additional information about how to exercise the VRR is available on the CPS website and we will also provide information by way of a published booklet.

2. Do you agree that the guidance clearly sets out how victims can exercise their right to review?

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

Local resolution

20. 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. The first step for a victim seeking to exercise the VRR is

driving; causing death by driving whilst unlicensed, disqualified or uninsured; and aggravated vehicle taking where death is caused.

therefore to contact their local CPS office or CPSD (CPS Direct is the team responsible for making the majority of charging decisions) depending on where the decision was made.

21. The cause of dissatisfaction may be capable of being resolved immediately by the local office or CPSD. Although local resolution is aimed primarily at helping victims to understand the decision taken by providing further information, it also provides the CPS with the opportunity to look again at the decision, to confirm that the right decision was taken.
22. In order to initiate local resolution, the victim will be directed to contact their local office or CPSD depending on where the decision was made. Whilst the preferred method of contact will be e-mail, victims will also be provided with the telephone number and address of their local office or CPSD in order that they can make contact by telephone or letter if they prefer. Victims will be asked to make initial contact (normally) within 7 calendar days (but in any event within 3 months) of notification of the decision being issued. If a victim contacts the Public Accountability and Inclusion Directorate or the Appeals and Review Unit in CPS Headquarters first, they will, if appropriate, be referred back to the local office or CPSD in the first instance.
23. The local CPS office or CPSD will look again at the decision to confirm that the right decision was taken and take the opportunity to ensure that a proper explanation of the decision is given where it has not been provided previously.
24. Wherever possible, the local office or CPSD will aim to complete the local resolution stage within 14 calendar days of receipt.
25. In cases where, on reflection, it is considered that a different decision should have been taken and it is appropriate to do so, action will start to institute/reinstitute proceedings and the victim notified.

26. In cases where the local CPS office or CPSD confirms the original decision as correct but where the victim would benefit from a (further) explanation of the decision, the victim will be provided with additional information and advised that, if they remain dissatisfied with the decision, they should contact the Appeals and Review Unit and contact details will be provided.

27. In cases where the local CPS office or CPSD confirms the original decision as correct and where an appropriate explanation has previously been given the victim's request for review will be sent directly to the Appeals and Review Unit or to the relevant Chief Crown Prosecutor as appropriate. The victim will be advised that this has happened.

The review

28. Where the victim's dissatisfaction has not been resolved locally, the decision will be subject to review.

29. The review will comprise a reconsideration of the evidence and public interest i.e. the reviewing prosecutor will approach the case afresh to determine whether the original decision was right or wrong.

The VRR and reconsidering a prosecution decision

30. 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, that the CPS will sometimes have to look again at a prosecution decision, and change it if it is found to be wrong, in order to maintain public confidence in the criminal justice system. If a decision is found to be wrong, it may be necessary to commence or re-institute criminal proceedings.

31. The VRR is consistent with this balance between finality and overturning wrong decisions. The VRR provides the victim with a specifically designed process to exercise the right to review. The principles for revisiting the decision are set out in the Legal Guidance on Reconsidering a Prosecution Decision. The reviewer must conduct a re-review of the case 'de novo' or 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; and
- that for the maintenance of public confidence, the decision must be reversed.

32. Every case should be considered on its own individual facts and merits. When considering the maintenance of public confidence, the following factors should be taken into account:

- (i) the need to ensure that justice is delivered in individual cases;
- (ii) the need to ensure that those involved or affected are provided with a sense that the criminal justice system has been used properly to address the offending behaviour;
- (iii) the need to preserve the public's understanding that decisions by prosecutors will usually be final; and
- (iv) the likelihood of a successful abuse of process argument.

Who will carry out the review?

33. In cases where the qualifying decision was 'not to charge' or 'discontinue', the review will be carried out by the Appeals and Review Unit. The review will therefore be conducted independently both from the prosecutor who took the original decision and the part of the CPS where the decision was taken.

34. The Appeals and Review Unit will also undertake VRRs of any qualifying decisions taken by Chief Crown Prosecutors, Deputy Chief Crown Prosecutors and Heads of Complex Casework Units.
35. Where the case decision has been taken by the Director of Public Prosecutions or the Principal Legal Advisor, the review will be undertaken by a senior prosecutor who was not involved in the original decision. The Appeals and Review Unit (in discussion with Private Office as appropriate) will determine the appropriate senior prosecutor and refer the case accordingly.
36. Where a case involves a decision taken by one of the Central Casework Divisions (Special Crime and Counter–Terrorism Division; Central Fraud Division; Organised Crime Division; and Welfare, Rural and Health Division), the Head of Division will appoint a prosecutor in their Division who has not had previous involvement in the case decision to undertake the VRR. This different arrangement is because of the specialised nature of the prosecutions in the Central Casework Divisions, which means that a specialist prosecutor is best placed to conduct the requested review.
37. Where the review is of a decision to ‘offer no evidence’, it will be carried out by the Chief Crown Prosecutor or Head of Central Casework Division in the Area or Division where the decision was made.

3. Do you agree that the guidance clearly sets out the basis of the victims’ right to review, reflecting existing principles for reconsidering a prosecution decision?

Outcome of the review

38. The outcome of the review will be communicated to the victim in every case.
39. The available remedy depends on the nature of the qualifying decision.
40. 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.
41. The same applies in cases where the qualifying decision was 'to discontinue' proceedings.
42. However, there is 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 will be limited to an explanation and apology. It is important to note that, although the case cannot be reinstated, 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.
43. The situation is the same in cases which become statute barred² after a qualifying decision has been made but before a review is requested as it is not possible to bring/reinstitute proceedings in these circumstances.
44. Following the conclusion of the VRR, 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, they will have to proceed by way of referral to the Parliamentary and Health Service Ombudsman and/or seek judicial review as appropriate.

² Statute barred means that the offence cannot be prosecuted after a specific period of time as dictated by the particular law.

Time limits

45. It is important that the qualifying decision is communicated to the victim in accordance with the time limits set out in the Victims' Code.
46. Victims wishing to exercise the VRR should (normally) do so within 7 calendar days from the date of the communication of the decision in order to ensure a prompt review. However, the VRR scheme can be exercised for up to three months after the communication of the decision to the victim.
47. Any action taken to provide a local resolution will be completed within 14 calendar days of notification by the victim that s/he wishes to exercise the VRR.
48. Where a further explanation of the decision is provided, victims will be asked to confirm, within 14 days, whether they are satisfied with the explanation given or whether they would like to proceed with their request for a review. Cases where no additional explanation is required will be sent directly to the Appeals and Review Unit and the victim need take no action at this stage.
49. The CPS will, wherever possible, complete the review and communicate the decision to the victim within an overall timeframe of 42 calendar days (ie 6 weeks from receipt of the request from the victim).
50. Where the case is particularly complex or sensitive, it is likely that it will not be possible to provide a VRR decision within the usual time limits. The CPS will notify the victim accordingly. In addition, regular updates will be provided as to the progress of the review, although these will not be more frequent than every 28 calendar days thereafter, until a final VRR decision is made.

51. Where a case is due to become statute-barred before the VRR period expires, we will endeavour to expedite the VRR process and provide a decision within the statutory time period.
52. In cases where the review indicates that the original decision was wrong but further proceedings relating to the allegation have become statute-barred, the local office or CPSD must offer an explanation about this for inclusion in the communication to the victim and consider whether an apology is necessary.
53. Where a case has been received in the Appeals and Review Unit, but becomes statute-barred before the conclusion of the review, it will similarly provide an explanation and consider if an apology should be given on behalf of the Service.

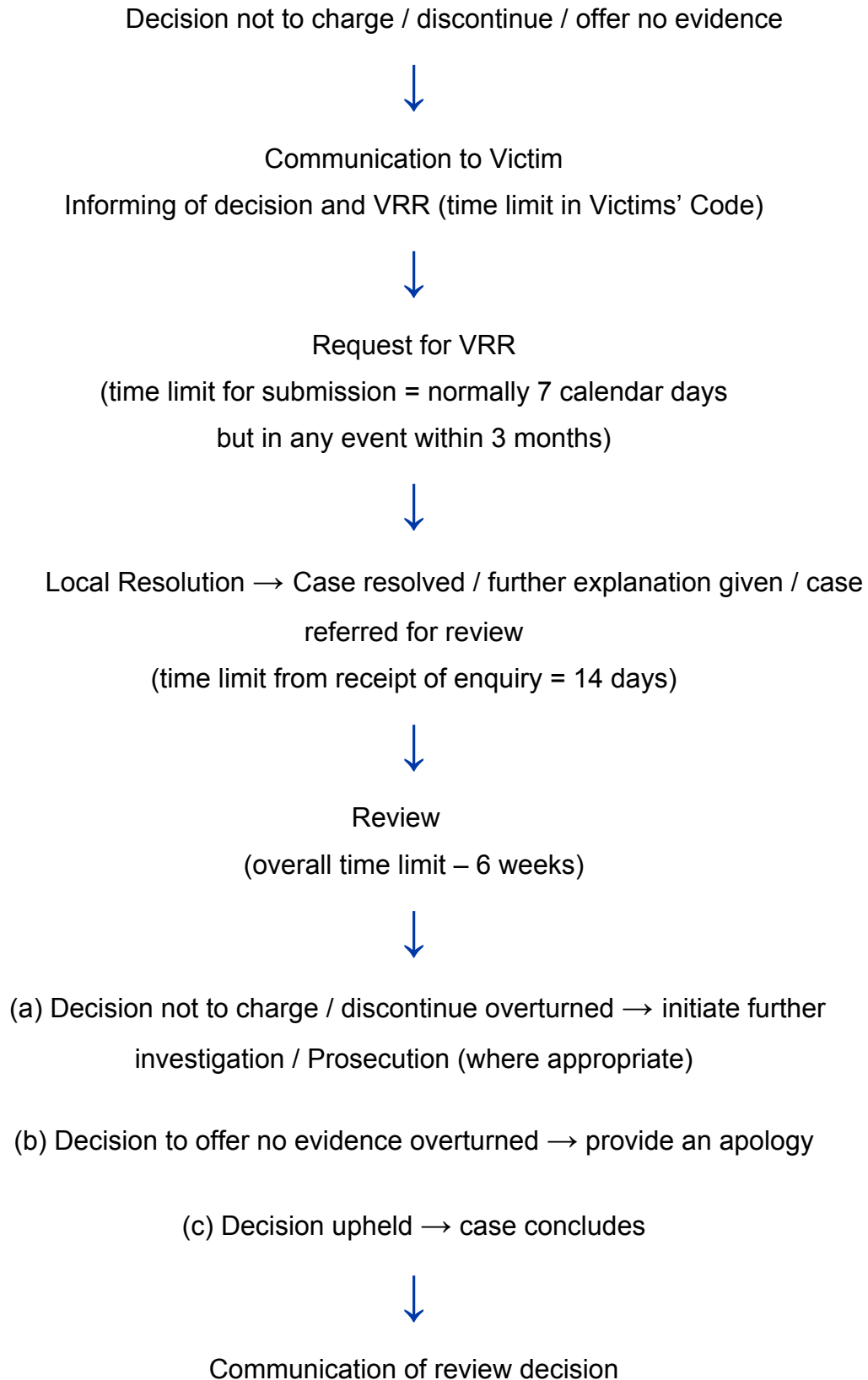
4. Do you consider that the proposed time limits are appropriate?

An enhanced service

54. The Victims' Code sets out enhanced entitlements for victims in the following groups because they are more likely to require enhanced support and services through the criminal justice process:
- Victims of the most serious crime;
 - Persistently target victims; and
 - Vulnerable and intimidated victims.
55. Victims who are entitled to an enhanced service under the Victims' Code will be offered the opportunity to discuss the outcome of the review with a CPS prosecutor.

5. Are there any other issues you think should be considered and addressed in the guidance?

Annex A – VRR flow chart



Annex B – The Consultation Response

The purpose of this consultation is to seek a range of views on the interim Victims' Right to Review policy.

We welcome your comments by **5 September 2013**

Questions for consultation

We have identified five questions on which we would particularly invite comment.

If you are replying by email, we should be grateful if you would not attach any other documents except the completed response document. There are limits on the size of documents that we are able to accept and any completed response document which has an attachment runs the risk of not being delivered. If you wish to send an attachment to us, please email us separately at VRR.consultation@cps.gsi.gov.uk

If you use a special software programme to read the interim policy and you find that you have difficulty in reading it, please get in touch with the team whose contact details are set out in the How to Respond section.

If you would like to return your replies to the questions at the back of the Consultation Document by post, please download the guidance in PDF format, alternatively you can read the guidance on the CPS website.

How to respond

Both written and electronic responses to the consultation are acceptable, although we would prefer electronic replies on the completed pro-forma.

Please be aware that if you complete and return this document by email, you will be responding over the open internet. If you would prefer, please complete and return the PDF version to the postal address given below.

Please include your name, organisation (if applicable), postal address and email address.

Closing date for responses: **5 September 2013**

Responses can be sent by post to:

Victims Right to Review Consultation Team
Public Accountability and Inclusion Directorate
Crown Prosecution Service
9th Floor, Rose Court
2 Southwark Bridge
London, SE1 9HS

or by email to: VRR.consultation@cps.gsi.gov.uk

Alternative formats

If you require a copy of the interim guidance in any other format, for example, audio or large print, please contact the Consultation Team.

Next steps

We will consider every individual response received. A summary of the consultation responses will be published on the CPS website in accordance with the Government's guidelines.

Responses: Confidentially and disclaimer

The information you send us may be passed to colleagues within the CPS, the Government or related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information legislation including the Freedom of Information Act 2000 (FOIA).

If you want the information you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could briefly explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will

take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the CPS.

Please ensure your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The CPS will process your personal data in accordance with the Data Protection Act 1998 – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Government consultation principles

The key consultation principles are:

- Departments will follow a range of timescales rather than defaulting to a 12 week period, particularly where extensive engagement has occurred before;
- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected.

The complete consultation principles are available from the [Cabinet Office](#) website.

Response Pro Forma

When responding it would be helpful if you would complete the contact details below.

Please fill out your name and address or that of your organisation if relevant.

You may withhold these details if you wish but we will be unable to include you in future consultation exercises.

Contact details:

Response completed by (name)	
Name of organisation (if appropriate)	
Position in organisation (if appropriate)	
Address	
Contact telephone number	
Contact email address	
Date	

Please answer the consultation questions in the boxes below.

1. Do you agree the guidance is clear in respect of which decisions fall within the scope of the scheme?

2. Do you agree that the guidance clearly sets out how victims can exercise their right to review?

3. Do you agree that the guidance clearly sets out the basis of the victims' right to review, reflecting existing principles for reconsidering a prosecution decision?

4. Do you consider that the proposed time limits are appropriate?

5. Are there any other issues you think should be considered and addressed in the guidance?

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