



## **Force Policy**

**Document title: Victim's Right to Review**

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***This Force policy is suitable for public disclosure under the  
Freedom of Information Act 2000***

This document sets out principles to help guide decision making and in some parts may be quite prescriptive. However, it is vital that officers and staff have the freedom to innovate, exercise discretion and take risk based decisions centred on the needs of the victim and the merits of each case.

There may be occasions when a member of staff is considered to have acted outside of the content of this document but if they have done so with honesty, integrity and professionalism, to make the best decision for the community we serve, they will be trusted and supported. On the occasions when this is the case, the rationale for it must be properly recorded.

***This document should be read in conjunction with the Force Policy Statement.***

## Introduction

Victim's Right to Review (VRR) is a process whereby a victim of crime can ask for a review of a CPS decision not to prosecute. This has been in place nationally since 2014.

As a result of Article 11 of the EU Directive on Victims (EU Directive) which comes into force on 16<sup>th</sup> November 2015, there is a legal imperative for the police to have a VRR Scheme (Police VRR) for cases where the police have made a decision not to prosecute rather than the CPS.

It is anticipated that facilitating reviews of police decisions not to prosecute will also improve victim satisfaction and public confidence in the service, and it accords with the policing principles of openness, fairness and accountability, as set out in the Code of Ethics

## Local procedures

### The Principles of VRR

Police VRR schemes should adhere to the following principles: -

- i. The VRR scheme will be effective from the 1<sup>st</sup> April 2015;
- ii. The scheme should apply to qualifying cases as set out in section 5.2, Qualifying Cases;
- iii. The scheme should be available to all victims as defined in section 5.3, Who can apply for a review?
- iv. All victims should be notified of their right to ask for a review at the point they are informed of the decision not to prosecute. However, reviews will not ordinarily take place until the investigation has concluded (see section 5.3);
- v. The VRR scheme will be clearly explained and easily accessible for victims;
- vi. Reviews will be conducted by a Chief Inspector or above (see section 5.5 Conducting a review);
- vii. The reviewing officer should consider the case afresh rather than assessing the validity of the original decision making process;
- viii. In order to overturn a decision not to prosecute the reviewing officer must be satisfied that: -
  - a) In cases requiring the authority of the CPS to charge, the earlier decision not to refer the case to the CPS was wrong (see section 5.5) in assessing whether the appropriate Test<sup>1</sup> had been met; or
  - b) In cases where the police have the authority to charge, that the earlier decision not to prosecute was wrong in applying the evidential or public interest stages of the Full Code Test; and in both cases;
  - c) For the maintenance of public confidence in the Criminal Justice System (CJS), the decision must be reversed.

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<sup>1</sup> The appropriate test will normally be the 'Full Code Test' unless unless the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged. For further details see '*The Director's Guidance on Charging 2013 – fifth edition*' [http://www.cps.gov.uk/publications/directors\\_guidance/dpp\\_guidance\\_5.html#a08](http://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html#a08)

- ix. There will be a single review of the evidence with no further appeal (see section 5.7 The outcome of the review);
- x. Police VRR requests should be dealt with in a timely manner, in particular where cases are subject to the 6 month statutory limitation on proceedings (see section 5.6 Time Limits);
- xi. The scheme allows victims to request a review within 3 months of them being notified of the case being filed (see section 5.6 Time Limits);
- xii. Review decisions should ordinarily be confirmed in writing (see section 5.7 The outcome of the review).

## Qualifying Cases

Police VRR will only apply to National Crime Recording Standard (NCRS) offences.

Police VRR will only apply to cases in which a suspect has been identified and interviewed under caution, either following an arrest or by voluntary arrangement. An 'interview' in this context relates to a PACE interview where a suspect has an allegation put to them in some detail as opposed to limited questioning that might take place in the immediate aftermath of an incident, for instance during a stop and search.

The right of a victim to request a review arises where the police: -

- Make a decision not to bring proceedings in cases where the police have authority to charge; or
- Make a decision that the case does not meet the appropriate Test for referral to the CPS for a charging decision.

Police VRR will only apply to decisions that were made on or after 1 April 2015. The scheme does not apply retrospectively to decisions taken before that date.<sup>2</sup>

The following cases **DO NOT** fall within the scope of Police VRR: -

- i. Cases where no suspect has been identified and interviewed, for instance investigations that are filed 'at source';
- ii. Cases where charges are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects;
- iii. Cases where a charge is brought that relates to the matter complained about by the victim but the offence charged differs from the crime that was recorded; for instance the suspect is charged with common assault but an offence of actual bodily harm has been recorded;
- iv. Cases which are concluded by way of out of court disposal<sup>3</sup>; and
- v. Cases where the victim retracts their complaint or refuses to co-operate with the investigation and a decision is therefore taken not to charge/not to refer the case to the CPS for a charging decision.

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<sup>2</sup> If the allegation relates to child sexual abuse and is excluded from police VRR as the decision was made prior to 1 April 2015 the case may be suitable for review via a National Child Sexual Abuse Panel and the victim should be advised accordingly. Guidance on the panel process can be found in the ACPO National Child Sexual Abuse Review Panel Guidelines for Police Forces and the Crown Prosecution Service (CPS), March 2013, amended June 2014.

<sup>3</sup> Out of Court Disposals should be taken to be the Home Office/Ministry of Justice recognised disposal methods at the time of review request. The range of current out of court disposals is set out in the Ministry of Justice Quick Reference Guide for Out of Court Disposals, July 2014, <https://www.justice.gov.uk/downloads/oocd/quick-reference-guides-oocd.pdf>

It should be noted that VRR specifically relates to decisions not to prosecute and does not cover crime recording decisions or decisions not to continue with enquiries.

### **Who can apply for a review?**

Any victim in a qualifying case where a decision is made not to prosecute, is entitled to seek a review of that decision.

A victim is defined as per The Code of Practice for Victims of Crime 2013 (Victims' Code): 'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was **directly** caused by criminal conduct'.

This includes: -

- Close relatives of a person whose death was directly caused by criminal conduct;
- Parents or guardians where the main victim is under 18;
- Police Officers who are victims of crime;
- Family spokespersons of victims with a disability who are so badly injured that they cannot communicate; and
- Businesses, providing they give a named point of contact.

All victims should be notified of their right to ask for a review at the point they are informed of the decision not to prosecute. However reviews will not ordinarily be conducted until the conclusion of the investigation. This is to cater for situations where no further action is taken against one or more suspects but the case remains open and actively investigated. This further investigation may result in another suspect(s) being prosecuted and thereby put the case outside the scope of qualifying cases. Consideration may need to be given to securing material that the victim indicates will form the basis of a future request for a review, where appropriate; particularly if, like CCTV footage, it is liable to being lost or destroyed. If there is likely to be a significant period of time between the decision to take no further action and the concluding of the investigation consideration may also need to be given for conducting the review at an earlier stage, as very lengthy delays could strengthen a subsequent abuse of process argument made by the suspect.

Victims should be reminded of their right to review at the point they are notified that the case is being filed, if the case still remains within the scope for a review to be conducted.

The fact that the victim has been made aware of their right to ask for a review should be recorded on the investigation log/crime report. It is important that victims are provided with sufficient information to decide whether to request a review of a decision they should be provided with written information on VRR to victims, either as part of the notification or as part of other information provided during the course of the investigation.

VRR is specifically intended to allow a victim to have an avenue to appeal a decision not to prosecute. It is not intended to allow others, such as campaigning groups, to direct reviews of cases that relate to their area of interest and such requests should be declined.

It is acknowledged that a victim might ask an individual to act on their behalf, such as a solicitor or an MP. The appropriateness of acting on such requests must be considered on a case by case basis and written confirmation, where appropriate, should be obtained that the person in question has the authority of the victim to act on their behalf.

### **Victims entitled to an enhanced service**

The Victims' Code identifies three categories of victim who are entitled to receive an enhanced service; vulnerable or intimidated victims, victims of the most serious crime and victims who are persistently targeted.

Victims entitled to an enhanced service must be given an appropriate level of support to enable them to make an informed decision regarding their right to ask for a review. This might involve ensuring that relevant victim support agencies are engaged in helping the victim with their decision regarding VRR.

Reviews requested by a victim who is entitled to an enhanced service should be expedited, where possible, as the effect of the crime and of uncertainty regarding the outcome of the investigation are likely to have an increased impact on them.

### **Conducting the review**

The review will be conducted by a Chief Inspector unless the investigating officer is of Chief Inspector rank or above in which case the reviewing officer will be 1 rank higher than the investigating officer.

The reviewing officer should not have been involved in making the original decision and should be independent of the investigation.

In cases requiring a level of specialist knowledge, such as certain Public Protection and financial investigations, the reviewing officer should have relevant experience/qualifications in the field.

The reviewing officer must approach the case afresh and reach their own conclusion regarding whether a prosecution should be brought, whether the matter should be referred to the CPS, whether further enquiries are necessary or that no further action should be taken. Their decision will, in almost all cases, be made against the Full Code Test as, even if the original decision was made against the Threshold Test, it is highly unlikely that the conditions justifying use of the Threshold Test will exist by the time of the review.

The reviewing officer's decision takes precedence over the original decision.

The reviewing officer should not assess whether the original decision was justified based on the process that was taken to reach it.

A determination to overturn a decision not to prosecute must be grounded in the principle that the original decision was 'wrong' as per section 5.1, principle viii. This is to ensure that such decisions have a legal foundation that will withstand challenge. The CPS rely on section 10 of The Code of Practice for Crown Prosecutors for this authority and police VRR will look to follow the same principles.

Factors that might be regarded as leading to a determination that the original decision was 'wrong' include: -

- An unreasonable decision to disregard compelling evidence;
- A significant misinterpretation of the evidence;
- A failure to consider, or an unreasonable decision to ignore, relevant policy;
- An incorrect application of the law.

The outcome of the review and the rationale for the reviewing officer's decision should be recorded in writing. The rationale should clearly set out why the original decision was wrong. This is important if the decision is subsequently challenged through judicial review.

The CPS provide guidance entitled, 'Reconsidering a Prosecution Decision', to their prosecutors which may be of assistance for police reviewing officers. This guidance is available at:

<http://www.cps.gov.uk/legal/p to r/reconsidering a prosecution decision/>

## **Time Limits**

When a victim requests a review of a decision it should be acknowledged within 10 working days.

Victims should be allowed to request a review within 3 months of being notified of the case being filed, as this is the period during which they can request a judicial review. Requests made after this period can still be considered at the Reviewing Officer's discretion. Case material must be retained for at least the 3 month period open for review requests including key exhibits such as CCTV, weapons etc. Other items of property can be returned if it has been photographed in order to provide the necessary evidence should a review be successful.

Wherever possible the review should be completed and the decision communicated to the victim within an overall timeframe of 30 working days (i.e. 6 weeks from receipt of the request from the victim).

Where the case is particularly complex or sensitive, it may not be possible to provide a VRR decision within the usual time limits. In such cases, the victim should be notified accordingly and regular updates provided on the progress of the review.

Where a case is due to become statute-barred every effort should be made to expedite the review, particularly where the CPS will ultimately be required to make the charging decision, and early liaison should be made with the CPS in such cases.

## **The outcome of the review**

There are six potential outcomes of a review: -

- i. The original decision to take no further action is upheld;
- ii. The original decision is overturned and proceedings are commenced against the suspect, i.e. they are charged/summonsed;
- iii. The original decision is overturned and the suspect is dealt with by way of an out of court disposal;
- iv. The original decision is overturned and the case is referred to the CPS for a charging decision;
- v. It is determined that further enquires need to be completed before the reviewing officer can make their decision;
- vi. The original decision is overturned but the case is statute-barred and proceedings cannot be instigated.

The method of communicating the outcome of a review with a victim may be determined on a case by case basis but review decisions should be confirmed in writing, unless the circumstances of the case make it inappropriate to do so or the victim has stated that they do not wish to receive written communication.

If proceedings are to be commenced following review, the suspect should be advised. Suspects should not be made aware of the victim's request for a review during the review process or in cases where the original decision is upheld.

It is important that suspects are given clear information if they are informed of a decision not to prosecute, making them aware that proceedings may still be initiated in light of fresh evidence or a review of the decision. This is vital to prevent abuse of process arguments precluding the instigation of proceedings following a review. The phrase 'No Further Action' should not be used as this may lead to an abuse of process claim if there is a subsequent prosecution.

In cases where it is determined that further enquiries are needed (section 5.7, point v), consideration should be given as to whether the reviewing officer or another supervisor is best placed to manage their completion. If following completion of the further enquiries, no further action is still the proposed outcome the matter should be brought back to the reviewing officer for determination.

In cases which are statute-barred but where the reviewing officer believes that the original determination was wrong, the only option available is to offer an explanation and, where appropriate, an apology to the victim.

The CPS VRR scheme uses a two tier model of local review followed by an escalation to a central national review team if the victim remains dissatisfied following the initial review. As the police service does not have a similar national structure there will be a single review of the evidence.

A victim who remains dissatisfied with the outcome of the police review and wishes to pursue the matter further can apply to the High Court for a judicial review.

It is possible that a victim could appeal a police decision not to prosecute resulting in that decision being overturned and the matter being referred to the CPS for a charging decision. The CPS could then decide to take no further action and the victim would then be entitled to ask for a review of the CPS decision under the CPS VRR scheme and ultimately to refer the matter for judicial review.

### **Successful Reviews**

Following a successful review, information must be included to identify to the court/CPS that a review has taken place as follows:

Police Charge Decision: MG6 on prosecution file.

CPS Charging Decision: MG3 on charging request.

If biometric data (fingerprints and DNA) has been destroyed in between a decision not to charge and the successful review, new biometric data must be obtained. The power to do this is contained in PACE Section 61(5C) (in force from 13<sup>th</sup> May 2014) and Section 63. Schedule 2A imposes a 6 month time limit from the resumption of the investigation.

### **Reviews, Complaints and Operational Learning**

Reviews of decisions not to prosecute should not be considered as 'complaints' against the police.

If a review of an investigation reveals issues of misconduct or under-performance then these should be dealt with in the normal manner, but the purpose of a review is not to apportion blame.

Where lessons can be learned from the outcome of a VRR request, this will be referred to the Head of Criminal Justice to inform relevant parties and embed the learning more widely where appropriate.

An expression of dissatisfaction by the victim in relation to a review decision should not automatically be treated as a complaint under the Police Reform Act. The appropriate way for a victim to challenge the reviewing officer's decision is by way of judicial review. As such, allegations made solely about the decision itself may be regarded as an abuse of process therefore not recorded or be subject of disapplication.

Complaints made regarding the reviewing officer but not specifically about the decision itself, such as alleged incivility, should be dealt with in the usual manner.

