



VICTIMS' RIGHT TO REVIEW - INTERIM GUIDANCE

RESPONSE TO CONSULTATION ON BEHALF OF THE

CRIMINAL BAR ASSOCIATION

Introduction

The Criminal Bar Association (“CBA”) represents about 5,000 employed and self-employed members of the Bar who appear to prosecute and defend the most serious criminal cases across the whole of England and Wales. It is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts, ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained. .

Summary of response

The CBA recognises the need for an effective system for victims to seek a review of the identified decisions taken by the CPS. We also agree that the VRR is consistent with the balance between finality of CPS decisions and not allowing wrong decisions to stand.

In general terms we agree with the content of the Guidance save for where we have specifically identified below. However we feel the structure of the Guidance could be

clearer. In particular, it may be useful to summarise the procedure (as set out in the flow diagram at page 13) when providing guidance as to how victims should exercise their right of review (para.17-19).

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

1.1 We do not consider that para.12(i) is sufficiently clear, in particular the terms “a full file of evidence” and “with a view to”. A more practical definition may be: ‘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’.

1.2 The Guidance is unclear in relation to those cases where the prosecution offers no evidence on some but not all charges or leaves counts on the file not to be proceeded with without leave of the Crown Court or Court of Appeal. By way of example;

D is indicted with rape and a number of less serious sexual assaults upon A. He is also indicted in the same proceedings with sexual assaults on B and C. The prosecution accept pleas to a number of sexual assaults counts relating to A, B and C but apply to leave the rape allegation on the file on the usual terms.

1.3 From the Guidance, it appears that A does not have a right to a review of the decision not to prosecute the more serious rape allegation. Is that the intention of the scheme? This may be more problematic where there is a single victim and lesser counts are accepted meaning the difference between a non-custodial and a substantial prison sentence.

1.4 ‘Discontinuance’ in legal proceedings is a term of art which would not ordinarily cover the above example. Nor would it accurately fall within 12(ii). If the intention is that the victim would not have a right to a review in such a case then the Guidance

should make this clear. We are of the view that the victim should have a right of review in such circumstances.

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

2.1 We agree that the definition of a victim is clear (para.15-16).

2.2 The Guidance does not state the procedure that a victim must follow, simply that they “will be provided with sufficient information to enable them to decide whether, and how, to exercise the right to review” (para.17-18). The procedure is intertwined with the information in paragraphs 20-37. However we feel it may be more accessible and clear if the procedure and practical steps to be taken are set out at this stage.

2.3 We would invite consideration of the following as a substitute for paragraphs 17 & 18;

1. Victims will be notified in writing within (x days) of the prosecution decision. This notification will include the following information;
 - a. the nature of the decision – i.e. not to charge or to discontinue a charge(s);
 - b. whether the decision was on evidential or public interest grounds;
2. The notification will state whether or not the decision is a ‘qualifying decision’ and whether or not the victim has a right to seek a review of the decision.
3. If the decision is a ‘qualifying decision’ the notification 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.

4. A request for a review should ordinarily be made within (X) days of receipt of the notification of the decision and in any event within 3 months (further detail regarding time limits can be found at paragraph X). Details of the person to whom the request should be made will be included in the notification.
5. 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.

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?

3.1 Yes. However, in order to ensure there is no unrealistic expectation by a victim as to the likelihood of a decision being overturned, under para.32(iii) it should state "and that it is only in "rare" cases that they will be re-visited" as per the Legal Guidance on Reconsidering a Prosecution Decision.

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

4.1 We think that it would be appropriate to allow 14 days for victims to exercise the VRR and that 7 days is too short. The Guidance does not state how requests outside the three month period will be dealt with, namely whether they will be refused. The Guidance should make this clear.

4.2 We consider that paragraph 48 should state that victims should make the confirmation within 14 days *of receipt of the information*.

4.3 We accept that 42 calendar days or 6 weeks from receipt of the request is realistic. We agree that there are cases which may take longer and note that in R v Killick, the period of approximately three months within which Ms Levitt QC completed the review was deemed acceptable by the Court of Appeal.

4.4 We note that the Code of Practice for Victims of Crime places a shorter time frame upon the CPS to communicate with vulnerable or intimidated victims. We consider that there is obvious merit in prioritising such cases and the Guidance should expressly state that such cases will be prioritised.

4.5 Regarding paragraph 50, a further cause for delay may be ongoing proceedings concerning the defendant. Even if the original decision was flawed reinstating proceedings may not be in the public interest if the defendant is convicted and sentenced in respect of other matters. This should therefore be included as a reason for providing a VRR decision outside the usual time limits.

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

5.1 It may assist victims reading the Guidance if it is clarified who determines whether a victim meets the criteria for the enhanced service.

5.2 The Guidance could include in a further annex a pro forma VRR form to assist victims in providing the relevant information; this could also be sent with the notification letter.

5.3 The Guidance does not address whether and at what stage a defendant will be informed of such a review. This should be made clear in the guidance.

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