



Service Prosecuting Authority
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VICTIM'S RIGHT TO REVIEW - POLICY

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Introduction

1. This guidance sets out how victims can seek a review of certain decisions, defined as qualifying decisions, taken by the Service Prosecuting Authority (SPA); it is separate to the Commanding Officers' Victim Right of Review Scheme¹.
2. The SPA Victims Right to Review (VRR) scheme gives effect to the principles laid down by the Court of Appeal in R v Killick [2011] EWCA Crim 1608 and in Article 11 of EU Directive 2012/29/EU² which came into effect on 16 November 2015. The VRR scheme applies in all qualifying decisions made on or after 5 June 2013.

Who can apply under the scheme?

3. Where a qualifying decision has been made, any victim is entitled to seek a review of that decision under this scheme.
4. A victim is defined in the Armed Forces Code of Practice for Victims of Crime as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was caused directly by a criminal offence.³ This includes a close relative of a person whose death was directly caused by a criminal offence and who has suffered harm as a result of that person's death.
5. Any victim as defined is entitled to request a review of a qualifying decision without discrimination of any kind. Where the victim is under the age of 18, the victim and their parent or guardian are entitled to request a review of a qualifying decision. Where the victim is incapacitated as a result of disability, the victim or their close relatives are entitled to nominate a family spokesperson to exercise the right of review and receive services under this scheme.

Qualifying Decisions

6. A qualifying decision is one where the SPA has made a decision to:

¹ See Annex F to JSP 839 dated 11 Nov 15

² EU Directive establishing minimum standards on the rights, support and protection of victims of crime.

³ Criminal offence means a Service Offence (within the meaning of section 50 of the Armed Forces Act 2006)

- not to direct the bringing of any charge for any service offence
- discontinue all charges thereby ending all proceedings
- offer no evidence in all proceedings
- leave all charges in the proceedings to “lie on file”⁴
- make a direction barring further proceedings.

7. The following cases **do not** fall within the scope of the SPA VRR:

- Cases where the qualifying decision was made prior to 5 June 2013.
- Cases where the Service Police exercise their independent discretion not to investigate or not to investigate a case further (whether in consultation with the SPA or not).
- Cases which have not been referred to the SPA by either a Service Police Force or a Commanding Officer.
- Cases where charges are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects;
- Cases where a single charge or charges are terminated but another charge or related charges continue.
- Cases where proceedings against one (or more) defendants are terminated but related proceedings against other defendants continue.
- Cases where a single charge or charges are substantially altered but proceedings continue.
- Cases where some charges are left to lie on file.
- Cases which have been referred by the SPA to the relevant Commanding Officer, such that she or he will have initial powers in the case (including the power to charge)⁵
- Cases where a victim has requested that proceedings be stopped or has withdrawn support for the prosecution and a decision is therefore taken not to charge/to terminate proceedings.

⁴ This is the term used in circumstances where the SPA makes a decision not to proceed and requests that the charges be allowed “to lie on the file” marked ‘not to be proceeded with without the leave of this Court or the Court Martial Appeal Court’)

⁵ s119 Armed Forces Act 2006

How can victims exercise the right to review under the scheme?

8. Victims will be notified of any qualifying decision and, briefly, the reasons for that decision. The notification will indicate that the victim is eligible to seek a review under the VRR scheme and to whom they should direct their request.

9. If the victim wishes to exercise their right of review, the only action they need take is to notify the SPA of their request for review. The request should be emailed to the following email address: SPA-External@mod.gov.uk.

Time Limits for requesting a review

10. A request for a review should ordinarily be made within **five** working days from the date of the communication of the decision. However, the SPA will consider requests for review **up to three months** from the communication of the qualifying decision.

SPA actions on receipt of a VRR

11. All requests for a review of the qualifying decision will be passed in the first instance (and as soon as practicable after the request has been received) to the Deputy Director Service Prosecutions (DDSP) or to an officer appointed by him or the DSP. A lawyer (“the reviewing lawyer”), who has had no previous involvement in the case, will be appointed to conduct the review.

12. The review will comprise a reconsideration of the evidence and the public (including the Service) interest; the reviewing lawyer will approach the case afresh to determine whether the original decision was right or wrong applying the principles set out below.

Reconsidering a prosecution decision - principles

15. SPA prosecutors will be guided in their decision making by the CPS policy headed “Reconsidering a Prosecution Decision”.⁶

Outcome of the review

16. The outcome of the review process should be communicated to the victim in every case within the time limits set out below. If the original decision is not upheld then the available remedy depends on the nature of the qualifying decision. 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. The same applies in cases where the qualifying decision was ‘to discontinue’ all proceedings or to leave all proceedings to ‘lie on file’.

17. However, there is no such remedy available in cases where the qualifying decision was ‘to offer no evidence’, or a direction barring further proceedings. 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.

⁶ <https://www.cps.gov.uk/legal-guidance/reconsidering-prosecution-decision>

18. If proceedings are to be (re) commenced following review, the defendant will be advised. Defendants will 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.

Time limits for responding to a review

19. The SPA 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).

20. 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 SPA will notify the victim accordingly. Regular updates will be provided as to the progress of the review.

Complaints about services provided to victims

23. Victims who wish to complain about services provided are entitled to bring a complaint within three months of the event from which the complaint arises; a complaint does not amount to a review and will not lead to a qualifying decision being reviewed.

Captain Royal Navy
Acting Deputy Director of Service Prosecutions