



VICTIM'S RIGHT TO REVIEW - POLICY

Issued: Jul 19

Date of Review: Jul 21

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 Scheme¹⁵⁰.
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/EU¹⁵¹ 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 offence¹⁵². 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:
 - not to direct the bringing of any charge for any service offence

¹⁵⁰ See Annex F to JSP 839 dated 11 Nov 15.

¹⁵¹ EU Directive establishing minimum standards on the rights, support and protection of victims of crime.

¹⁵² Criminal offence means a Service Offence (within the meaning of section 50 of the Armed Forces Act 2006)

- discontinue all charges thereby ending all proceedings
- offer no evidence in all proceedings
- leave all charges in the proceedings to “lie on file”¹⁵³
- 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)¹⁵⁴
- 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.

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.

¹⁵³ 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’)

¹⁵⁴ s119 Armed Forces Act 2006

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.

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. The DDSP will either conduct the review himself or appoint another lawyer (“the reviewing lawyer”), who has had no previous involvement in the case, 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

13. It is an important principle that people should be able to rely on decisions taken by the SPA 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, in order to maintain confidence in the Service Justice System, the SPA 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.

14. In order to overturn a decision not to prosecute, the reviewing lawyer must be satisfied:

- a. 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
- b. that for the maintenance of public confidence, the decision must be reversed.

15. SPA prosecutors will be guided in their decision making by the CPS policy headed “Reconsidering a Prosecution Decision”¹⁵⁵.

Outcome of the review

16. The outcome of the review process will 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’.

¹⁵⁵ <https://www.cps.gov.uk/legal-guidance/reconsidering-prosecution-decision>

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.

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, although these will not be more frequent than every 20 working days thereafter, until a final decision is made.

An enhanced service

21. The Armed Forces Code of Practice for Victims of Crime¹⁵⁶ sets out enhanced entitlements for certain victims. 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.

22. The following are entitled to an enhanced service:

- **Victims of the most serious crime** – a close relative bereaved by a criminal offence, a victim of domestic violence, hate crime terrorism, sexual offences, human trafficking, attempted murder, kidnap, false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent.
- **Persistently targeted victims** – those who have been targeted repeatedly as a direct victim of crime over a period of time, particularly if they have been deliberately targeted or they are a victim of a sustained campaign of harassment or stalking.
- **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 also considered

¹⁵⁶ at Part 2 Chapter 1

intimidated if the quality of their evidence will be affected because of fear or distress about testifying in court.

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 arises¹⁵⁷; a complaint does not amount to a review and will not lead to a qualifying decision being reviewed.

Deputy Director of Service Prosecutions

¹⁵⁷ see Guidance on the Handling of Complaints against the SPA