



## **Rights of Women response to CPS consultation on *Victims' Right to Review, Interim Guidance***

### **About Rights of Women**

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers<sup>1</sup>.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women is a charity that provides free legal advice to women and engages on a policy level in relation to access to justice and violence against women issues. We provide training on legal issues to statutory and third sector professionals, write legal publications designed to assist individual women, and those supporting them, through the law, and provide three legal advice lines offering legal advice to women on immigration and asylum issues, sexual and domestic violence and criminal law, and family law (including domestic violence, divorce and contact disputes). Our advice lines are staffed by qualified, practising, women solicitors and barristers.

We therefore have significant experience and understanding of supporting women, and young women, who have experienced sexual and domestic violence through the criminal justice system. Our legal officers (who are all qualified solicitors and barristers) train professionals from the third sector and local authorities, police and NHS on how to support women as victims in the criminal justice system. Our acclaimed publication *From Report to Court*, which explains the law and criminal justice system process to victims who have

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<sup>1</sup> For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesdays, Wednesdays and Thursdays 7.00pm-9.00pm and Fridays 12noon – 2.00pm). For advice on sexual violence and criminal law telephone 020 7251 8887 (lines open Tuesdays 11.00am-1.00pm). We also have a London only advice line for family and criminal law, please call 020 7608 1137 for further information. For advice on immigration and asylum law telephone 020 7490 7689 and leave a message (please note we currently operate a triage system for this service).

experienced sexual violence, was commissioned for its fourth edition last year by the Home Office, and copies were provided to every police force, rape crisis centre and Sexual Assault Referral Centre (SARC) in the country.

Specifically, our criminal law line (both national and London only) often provides advice to women who have received negative charging decisions in a case where they are the complainant. Inevitably these women (and their support workers) want to know what they can do and what their legal rights are after receiving such a decision. We are frequently also asked similar questions in the training we deliver. We are therefore well placed to be able to comment on this consultation.

## **General Comments**

We strongly welcome the concept of the victims' right to review. We have been aware that case reviews were being conducted on an ad hoc basis depending on the circumstances of the case (and the complaint of the victim) prior to this guidance, and we applaud the CPS for taking steps to ensure that a review is given to all victims *as of right* if they request one.

Whilst we welcome this development, we advise that a careful plan for promotion of the new procedure is implemented in each CPS area so that all CPS staff (and other criminal justice agencies) are aware of the review entitlement. This is particularly relevant in relation to the police and Witness Care Units, who will be predominantly responsible for explaining the right of review to a victim. Only a week ago, a caller rang our advice line and reported that her police contact told her there was no review procedure available after a negative charging decision by the CPS. Careful thought will also need to be given to victims who are not told the relevant information by police or WCU, and over 3 months pass before they become aware of their option to review. We would suggest that a time limit waiver or discretion be in place in these circumstances, to be considered on a case by case basis, as in a judicial review procedure time limit. As publicity of the review increases these types of cases will become less, but it would be overly optimistic to think they will not occur at all, even with the production of a standardised letter.

Whilst CPS decisions fall within this review procedure, we understand that police decisions to NFA before presenting to the CPS, based on the evidential part of the charging test, will not be covered by the right to review. Although we understand that police procedures are not necessarily something that the CPS can influence, we would ask, given that the court refers in *R v Killick* to "a public authority" making case decisions not to prosecute, that this is brought to the attention of ACPO and to the police force in each CPS area. This is important so that victims receive a consistent approach within the whole criminal justice procedure. It would be arguable that if the police are making case disposal decisions and cannot offer a right to review, then this would be manifestly unfair.

## **Consultation questions**

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

The guidance is clear enough in respect of which decisions fall within, and which without, the scope of the scheme. Please see our above general point about police decisions to NFA (and the level of our concern regarding this decision falling outside the scope of the scheme). Similarly, although we understand that the CPS is launching this scheme in part in response to *Killick* and that this case only refers to decisions not to prosecute as a whole, we would argue that consideration could be made to offer a more robust response to victim's enquiries about decisions affecting the victim where a case disposal was still achieved. Decisions where a case disposal was still achieved could still be potentially the subject of a legal review if the decision itself was made in an unfair or incorrect way. Therefore, although the CPS are not compelled to offer a review in this situation, it would be useful for victim relations if they offered some kind of further process/meeting/information aside from the standard complaints procedure.

Question 2: Do you agree that the guidance clearly sets out how victims can exercise their right of review?

The guidance does not produce a lot of detail at this point about how a victim can exercise the right to review, except that the victim will receive information on why the decision was made and the fact they can seek a review. The guidance simply says that additional evidence will be provided on the CPS website and in a booklet. This, alone, is not enough to clearly set out in the guidance how the victim can exercise their right of review. Detailed lists of who to contact and how to contact them should be provided, or at least links to the more detailed information held elsewhere. In an information publication it would also be useful to have a flowchart for members of the public, like the one provided in Annex A of this guidance, to set out the process of a review request. More detail should be included about who to contact in the flowchart.

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

We welcome the fact that a review must be a fresh look at the case (and that, as we understand it, no new evidence is required for this to happen), and we welcome that this review will be conducted by staff in specific roles, or senior roles, which means that best practice for case review can be more easily established.

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

- The fact that victims have an overall time limit of 3 months from the date of decision to ask for a review – but that the recommended request for review should take place within 7 days - should be made very clear in public facing guidance. It should be

highlighted in this and other guidance the reason for this recommendation i.e. so that the whole procedure can be expedited as quickly as possible and in any case before 3 months, so it potentially does not bar the victim from other legal options in respect of challenging the initial charging decision.

- Whilst we welcome the idea of an efficient process of review, we suggest that 14 days for the victim to state that they want to continue to the review after a further explanation of the decision has been provided is too short a time. If someone is on holiday, for example, or in hospital for a short period, 14 days may not give them enough time to respond, especially if correspondence is by post. The time limit could either be extended or discretion to waive the time limit implemented on a case by case basis.

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

See general comments above.

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