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VICTIMS' RIGHT TO REVIEW POLICY

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Introduction

1. This policy 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 from the Commanding Officers' Victim Right of Review Scheme¹.
2. The SPA's Victims Right to Review (VRR) Policy 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 Policy applies to 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 through 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.

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)

Qualifying Decisions

6. The right to request a review under this policy arises where the SPA:
- makes a final decision not to bring any charge for any service offence relating to the victim;
 - discontinues all charges relating to the victim, pursuant to s.125(d) Armed Forces Act 2006 (AFA 06), thereby ending all proceedings relating to them;
 - has offered no evidence in respect of all charges relating to the victim, in accordance with Rule 58 of the Armed Forces (Court Martial) Rules 2009 (AF(CM)R 09);
 - has consented to an order by the judge advocate to leave all charges in the proceedings that relate to the victim to 'lie on the file'⁴ in accordance with Rule 57 AF(CM)R 09;
 - has made a direction pursuant to s.127 AFA 06 barring further proceedings on all charges relating to the victim.

These are known as 'qualifying decisions' which, subject to this Policy, have the effect of being final.

7. The following cases **do not** fall within the scope of the SPA VRR Policy:
- cases where the qualifying decision was made prior to 5 June 2013;
 - cases where the SPA has not made a decision that has the effect of being final at the pre-charge stage;
 - 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 otherwise);
 - cases which have not been referred to the SPA by either a Service Police Force or a Commanding Officer;
 - cases where charges relating to the victim 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 relating to the victim are terminated but another charge or charges that are also related to the victim continue;

⁴ This is the term used in circumstances where the SPA makes a decision not to proceed and requests that the charge(s) 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'

- cases where proceedings against one (or more) defendants are terminated but proceedings against other defendants relating to the victim continue;
- cases where a single charge or charges are substantially altered but proceedings relating to the victim continue.
- cases where some (but not all) charges relating to the victim are left to lie on file;
- cases relating to the victim 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 relating to the victim.

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

8. Victims will be notified of any qualifying decision and whether the decision was made on evidential or public (including the Service) interest or other grounds. There may be limits to the level of detail that can be provided at this stage so as not to prejudice any future proceedings that may follow the decision being overturned. The notification will indicate that the victim is eligible to seek a review under the VRR Policy 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. Requests made more than three months after the qualifying decision was communicated are unlikely to be accepted unless there are exceptional circumstances. Whilst not an exhaustive list, exceptional circumstances may include when a victim has not been notified of their right to review, or has been given materially incorrect information about the timeframes.

11. Separate arrangements are in place for decisions made before 5 June 2013 in relation to allegations of child sexual abuse. In such cases, the Child Sexual Abuse Review Panel⁶ looks again at cases where a person has made previous allegations of being a victim of a sexual offence when they were under the age of 18, and the police or SPA decided that no action should be taken at the time. If

⁵ [s119 Armed Forces Act 2006](#)

⁶ [Child Sexual Abuse Review Panel | The Crown Prosecution Service \(cps.gov.uk\)](#)

the decision in relation to allegations of child sexual abuse was taken on or after 5 June 2013, a review can be requested under the VRR scheme.

SPA actions on receipt of a VRR

12. 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 Director of Service Prosecution (DSP). A lawyer (“the reviewing lawyer”), who has had no previous involvement in the case, will be appointed to conduct the review.

13. The review will comprise a reconsideration of the evidential stage and the public (including the Service) interest stage of the Full Code Test. The reviewing lawyer will approach the case afresh to determine whether the original decision was right or wrong applying the principles set out below. Where the decision is considered to be wrong then, where appropriate, the reviewing lawyer will consider whether a prosecution should be brought to maintain public confidence in the Service Justice System.

Reconsidering a prosecution decision - principles

14. SPA prosecutors will be guided in their decision making by the CPS policy headed “Reconsidering a Prosecution Decision”.⁷

Outcome of the review

15. 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’. In respect of a qualifying decision where charges are ordered to lie on the file, it is highly unlikely that a court will grant leave to reinstitute proceedings unless there has been a significant change in circumstances.

16. However, there is no such remedy available in cases where the qualifying decision is that the SPA has offered no evidence in all proceedings relating to the victim, or has made a direction barring further proceedings on all charges relating to the victim. 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.

⁷ <https://www.cps.gov.uk/legal-guidance/reconsidering-prosecution-decision>

17. If proceedings are to be commenced or recommenced following review, the defendant will be informed. In order to preserve the confidentiality for a victim, 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

18. 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).

19. 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

20. 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. See the SPA Complaints Policy⁸ for further information.

⁸<https://www.gov.uk/guidance/service-prosecuting-authority>