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WEST MIDLANDS POLICE

Force Policy Document

POLICY TITLE:

Victim Right to Review

POLICY REFERENCE NO:

CJ/

Executive Summary

Victim Right to Review (VRR) is the name of the scheme whereby a victim may request a review of a decision not to prosecute a suspect on certain grounds.

The right of a victim to request such a review was considered in the case of R v Killick and is set out in Article 11 of the EU Directive on Victims (EU Directive), which came into effect in November 2015.

This policy builds on national guidance to provide clarity as to how VRR will be implemented in West Midlands Police.

Code of Ethics

West Midlands Police is committed to ensuring that the Code of Ethics is not simply another piece of paper, poster or laminate, but is at the heart of every policy, procedure, decision and action in policing.

The Code of Ethics is about self-awareness, ensuring that everyone in policing feels able to always do the right thing and is confident to challenge colleagues irrespective of their rank, role or position

Every single person working in West Midlands Police is expected to adopt and adhere to the principles and standards set out in the Code.

The main purpose of the Code of Ethics is to be a guide to "good" policing, not something to punish "poor" policing.

The Code describes nine principles and ten standards of behaviour that sets and defines the exemplary standards expected of everyone who works in policing.

Please see http://www.college.police.uk/docs/Code_of_Ethics.pdf for further details.

The policy contained in this document seeks to build upon the overarching principles within the Code to further support people in the organization to do the right thing.

****Any enquiries in relation to this policy should be made be made directly with that of the policy contact / department shown below.**

Intended Policy Audience

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This policy is aimed at all police officers and Police Staff

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Supporting Documents, Policy

- National Policing Guidelines on Police Victim Right to Review 2015
- Police and Criminal Evidence Act 1984
- Antisocial Behaviour, Crime and Policing At 2014

Please Note.

PRINTED VERSIONS SHOULD NOT BE RELIED UPON. THE MOST UPTO DATE VERSION OF ANY POLICY OR DIRECTIVE CAN BE FOUND ON THE EQUIP DATABASE ON THE INTRANET.

Force Diversity Vision Statement and Values

“Eliminate unlawful discrimination, harassment and victimisation. Advance equality of opportunity and foster good relations by embedding a culture of equality and respect that puts all of our communities, officers and staff at the heart of everything we do. Working together as one we will strive to make a difference to our service delivery by mainstreaming our organisational values”

“All members of the public and communities we serve, all police officers, special constables and police staff members shall receive equal and fair treatment regardless of, age, disability, sex, race, gender

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reassignment, religion/belief, sexual orientation, marriage/civil partnership and pregnancy/maternity. If you consider this policy could be improved for any of these groups please raise with the author of the policy without delay.”

Table of Contents

- 1. Introduction**
- 2. Background**
- 3. The Principles of Police VRR**
- 4. Qualifying Cases**
- 5. Who can apply under the scheme?**
- 6. Victims Entitled to an Enhanced Service**
- 7. Conducting the Review**
- 8. Time Limits**
- 9. The Outcome of the Review**
- 10. Reviews, Complaints and Operational Learning**
- 11. Performance Monitoring**

ACRONYMS

VRR Victim's Right to Review

CPS Crown Prosecution Service

PACE Police and Criminal Evidence Act 1984

1. INTRODUCTION

- 1.1 This guidance sets out the principles and parameters for the West Midlands Police Victim Right to Review (VRR) scheme
- 1.2 National guidance published by NPCC acknowledges that the differing force structures across the country do not allow for a universal approach. However, it is important that a level of consistency is maintained nationally to ensure that the process is clear, accessible and fair for all victims.
- 1.3 This guidance sets out the framework for the WMP VRR scheme.

When is a case eligible for Victim's Right to Review?

Investigation conducted into criminal offence (*as defined by National Crime Recording Standards*) where a **suspect is identified and interviewed under PACE conditions.**

Decision made not to charge suspect.

Has the suspect been given an out of court disposal (e.g. Com Res/caution?)

YES

Not eligible for VRR

No

Have any other suspects in the case been charged/given an out of court disposal?

YES

Not eligible for VRR

No

Did complainant withdraw complaint prior to disposal decision being made?

YES

Not eligible for VRR

No

Has suspect been charged/given a disposal for an offence other than the one originally recorded?

YES

Not eligible for VRR

No

Did CPS make decision not to charge?

YES

Eligible for CPS VRR

No

Eligible for WMP VRR.

A victim may request a review of their case where a decision is made not to take any action against a suspect who has been interviewed under caution.

The VRR generally applies where WMP decide that the matter should not be charged, or not referred to CPS, on the grounds of public interest; or insufficient evidence.

There are certain exemptions, as shown to the right.

2. BACKGROUND

- 2.1 VRR relates to a right for a victim to ask for a review of a **decision not to prosecute a suspect**.
- 2.2 The right of a victim to request such a review was considered in the case of R v Killick and is set out in Article 11 of the EU Directive on Victims (EU Directive), which comes into effect in November 2015.¹
- 2.3 In R v Killick, the Court of Appeal considered an abuse of process claim, amongst other matters, following the conviction of a man for sexual assault offences. A decision had originally been made by the Crown Prosecution Service (CPS) in June 2007 not to prosecute the offender but this was overturned by the Court in December 2009, following a complaint by one of the victims. In the ruling the Judges confirmed an earlier decision that interested persons have a right to seek a judicial review of decisions not to prosecute and noted that it was therefore, 'disproportionate for a public authority not to have a system of review without recourse to court proceedings'. They also drew a clear distinction between a 'complaint about service' and a 'review' and asked the CPS, 'to consider whether the way in which the right of a victim to seek a review cannot be made the subject of a clearer procedure and guidance with time limits'.²
- 2.4 As a response, the CPS launched a national pilot VRR scheme in June 2013 to allow victims to ask for a review of CPS decisions not to prosecute. In July 2014 the CPS confirmed their adoption of VRR and issued national guidance.³
- 2.5 Article 11 of the EU Directive provides that, 'Member States shall ensure that victims...have the right to a review of a decision not to prosecute', and the Directive makes clear that this includes decisions made by, 'law enforcement authorities such as police officers'.
- 2.6 The EU Directive provides the legal imperative to develop a police VRR system but it is anticipated that facilitating reviews of police decisions not to prosecute will also improve victim satisfaction and public confidence in the service, and it accords with the policing principles of openness, fairness and accountability, as set out in the Code of Ethics.

3. THE PRINCIPLES OF THE VRR SCHEME

- 3.1 NPCC has noted that police VRR schemes should adhere to the following principles:
- I. All forces should have a VRR scheme, effective from 1 April 2015.

¹ R v Christopher Killick [2011] EWCA Crim 1608 (R v Killick). Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

² R v Killick, para. 57.

³ http://www.cps.gov.uk/publications/docs/vrr_guidance_2014.pdf

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- II. The scheme should apply to qualifying cases as set out in paragraphs 4.1-4.6.
- III. The scheme should be available to all victims as defined in paragraphs 5.1-5.7.
- IV. All victims should be notified of their right to ask for a review at the point they are informed of the decision not to prosecute. However, reviews will not ordinarily take place until the investigation has concluded (see paragraphs 5.3-5.4).
- V. All forces shall ensure that their VRR scheme is clearly explained and easily accessible for victims.
- VI. Reviews should be conducted by an officer at least one rank higher than the decision maker or by an equivalent staff member, such as a Senior Evidence Review Officer. Within WMP, it has been determined that the reviewing officer will be the Crime Manager for the geographical area on which the crime was investigated. Where appropriate, the Crime Manager may elect to delegate the review to an Inspector, provided that they were not originally involved in the investigation, and provided that the decision not to prosecute was made by an officer not above the rank of sergeant.

Where the officer who made the decision not to prosecute was of the rank of chief inspector or above, then an officer of at least one rank superior should conduct the review.
- VII. The reviewing officer should consider the case afresh rather than assessing the validity of the original decision making process.
- VIII. In order to overturn a decision not to prosecute the reviewing officer must be satisfied that:
 - a) in cases requiring the authority of the CPS to charge, the earlier decision not to refer the case to the CPS was wrong (see paragraphs 7.7-7.8), based on an erroneous assessment as to whether the full code test had been met; or
 - b) in cases where the police have the authority to charge, that the earlier decision not to prosecute was wrong in applying the evidential or public interest stages of the appropriate test (normally Full Code, but on occasions, the Threshold Test); and in both cases
 - c) for the maintenance of public confidence in the criminal justice system, the decision must be reversed.
- IX. There will be only one review of a case under the WMP VRR. Victims seeking to challenge the outcome of a review would normally need to apply for a judicial review of the decision (see paragraph 10.4).
- X. WMP VRR requests should be dealt with in a timely manner, in particular where cases are subject to the 6 month statutory limitation on proceedings (see paragraphs 8.1-8.5). Wherever possible, an

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application for review should be completed within 28 days of receipt of the application. Where the statute of limitations time-period will expire before the end of that 28 day period, then the review should be completed as soon as reasonably practicable.

- XI. The scheme should allow victims to request a review within 3 months of them being notified of the case being filed (see paragraph 8.2).
- XII. Review decisions should ordinarily be confirmed in writing (see paragraph 9.2).

4. QUALIFYING CASES

- 4.1 The WMP VRR will only apply to National Crime Recording Standard (NCRS) offences.
- 4.2 The WMP VRR will only apply to cases in which a suspect has been identified and interviewed under caution, either following an arrest or by voluntary arrangement. An 'interview' in this context relates to situations where a suspect has an allegation put to them in some detail (as opposed to limited questioning that might take place in the immediate aftermath of an incident, for instance during a stop and search, or otherwise at the scene of a crime).
- 4.3 The right of a victim to request a review arises where the police:
 - make a decision not to bring proceedings in cases where the police have authority to charge; or
 - make a decision that the case does not meet the appropriate test (normally, the Full Code Test: but occasionally, the Threshold test) for referral to the CPS for a charging decision.
- 4.4 WMP VRR will only apply to decisions taken under paragraph 4.3 that were made on or after 1 April 2015. The scheme does not apply retrospectively to decisions taken before that date.⁴
- 4.5 The following cases **DO NOT** fall within the scope of police VRR:
 - i. cases where no suspect has been identified and interviewed, for instance investigations that are filed 'at source';
 - ii. cases where charges are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects;
 - iii. cases where a charge is brought that relates to the matter complained about by the victim but the offence charged differs from the crime that was recorded (for instance, the suspect is charged with common assault but an offence of actual bodily harm has been recorded);
 - iv. cases which are concluded by way of out of court disposal⁵, and

⁴ If the allegation relates to child sexual abuse and is excluded from police VRR as the decision was made prior to 1 April 2015 the case may be suitable for review via a National Child Sexual Abuse Panel and the victim should be advised accordingly. Guidance on the panel process can be found in the ACPO National Child Sexual Abuse Review Panel Guidelines for Police Forces and the Crown Prosecution Service (CPS), March 2013, amended June 2014.

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- v. cases where the victim retracts their complaint or refuses to co-operate with the investigation and a decision is therefore taken not to charge/not to refer the case to the CPS for a charging decision.

It should be noted that VRR specifically relates to decisions *not to prosecute* and does not cover crime recording decisions or decisions not to continue with enquiries.

5. WHO CAN APPLY UNDER THE SCHEME?

5.1 Any victim in a qualifying case where a decision is made not to prosecute, as per paragraph 4.3, is entitled to seek a review of that decision.

5.2 A victim is defined as per The Code of Practice for Victims of Crime 2013 (Victims' Code):

'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was **directly** caused by criminal conduct'.

This includes:

- close relatives of a person whose death was directly caused by criminal conduct;
- parents or guardians where the main victim is a child or youth under 18;
- police officers who are victims of crime;
- family spokespersons of victims with a disability or who are so badly injured that they cannot communicate; and
- businesses, providing they give a named point of contact.

5.3 All victims should be notified of their right to ask for a review at the point they are informed of the decision not to prosecute. However reviews will not ordinarily be conducted until the conclusion of the investigation. This is to cater for situations where no further action is taken against one or more suspects but the case remains open and actively investigated. This further investigation may result in another suspect(s) being prosecuted and thereby put the case outside the scope of qualifying cases.

Where a victim indicates that they will challenge any decision not to prosecute, consideration should be given to securing material that the victim indicates will form the basis of a future request for a review. This will particularly apply in situations where evidence such as CCTV footage it is liable to be lost or destroyed before the conclusion of the investigation. If there is a likely to be a significant period of time between the decision to take no further action and the concluding of the investigation consideration may also need to be given for conducting the review at an earlier stage, as very lengthy delays could strengthen a subsequent abuse of process argument made by the suspect.

5.4 Victims should be reminded of their right to review at the point they are notified that the case is being filed, if the case still remains within the scope for a review to be conducted. A record that the victim has been made aware of their right to ask for a

⁵ Out of Court Disposals should be taken to be the Home Office/Ministry of Justice recognised disposal methods at the time of review request. The range of current out of court disposals is set out in the Ministry of Justice Quick Reference Guide for Out of Court Disposals, July 2014, <https://www.justice.gov.uk/downloads/oocd/quick-reference-guides-oocd.pdf>

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review should be made on the investigation log. The notification itself does not necessarily need to be made in writing, but the particular format in which the notification was delivered should be recorded. It is important that victims are provided with sufficient information to decide whether to request a review of a decision.

- 5.5 VRR is specifically intended to allow a victim to have an avenue to appeal a decision not to prosecute. It is not intended to allow others, such as campaigning groups, to direct reviews of cases that relate to their area of interest and such requests should be declined.
- 5.6 It is acknowledged that vulnerable victims or members of marginalised communities might ask an individual to act on their behalf, such as a solicitor or an MP. Where this occurs, the reviewing officer should obtain written confirmation, where appropriate, that the person in question has the authority of the victim to act on their behalf.

6. VICTIMS ENTITLED TO AN ENHANCED SERVICE

- 6.1 The Victims' Code identifies three categories of victim who are entitled to receive an enhanced service: vulnerable or intimidated victims, victims of the most serious crime and victims who are persistently targeted.
- 6.2 Where a victim is entitled to an enhanced service, officers should ensure that they are given an appropriate level of support to enable them to make an informed decision regarding their right to ask for a review. This might involve ensuring that relevant victim support agencies are engaged in helping the victim with their decision regarding VRR.
- 6.3** Reviews requested by a victim who is entitled to an enhanced service should be expedited, where possible, as the effect of the crime and of uncertainty regarding the outcome of the investigation are likely to have an increased impact on them. **It is therefore expected that any review for an enhanced service victim will be carried out within 21 days, where possible.**

7. CONDUCTING THE REVIEW

- 7.1 Reviews should be conducted by an officer at least one rank higher than the decision maker or an equivalent staff member, such as a Senior Evidence Review Officer. In general, it is expected that the review will be conducted by the Crime Manager responsible for the LPU or department which investigated the crime.

It may be necessary on some occasions for the Crime Manager to devolve this responsibility to an Inspector: however, that inspector should be independent from the original investigation and decision not to prosecute. It will not be appropriate for the Crime Manager to devolve the review where an Inspector or above has made, or been consulted upon, the decision not to prosecute.

Where the decision not to prosecute was made by an officer of a rank equal to or above that of the Crime Manager, then the review should be conducted by an officer of at least one rank above.

- 7.2 The reviewing officer should not have been involved in making the original decision and should be independent of the investigation.

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7.3 In cases requiring a level of specialist knowledge, such as certain Public Protection and financial investigations, the reviewing officer should have relevant experience/qualifications in the field.

7.4 The reviewing officer must approach the case afresh, considering the lines of enquiry originally pursued and the evidence obtained to reach their own conclusion regarding whether:

- A prosecution should be brought
- The matter should be referred to the CPS,
- Further enquires are necessary
- No further action should be taken.

This assessment will be based on the Full Code Test. There is no requirement to reinvestigate the offence unless a conclusion is reached that the original decision was wrong.

7.5 The reviewing officer's decision takes precedence over the original decision.

7.6 The reviewing officer should not assess whether the original decision was justified based on the process that was taken to reach it.

7.7 A determination to overturn a decision not to prosecute must be grounded in the principle that the original decision was 'wrong' as per paragraph 3.1, Principle VIII. This is to ensure that such decisions have a legal foundation that will withstand challenge. The CPS rely on section 10 of The Code of Practice for Crown Prosecutors for this authority and police VRR will look to follow the same principles.

7.8 Factors that might be regarded as leading to a determination that the original decision was 'wrong' include:

- An unreasonable decision to disregard compelling evidence;
- A significant misinterpretation of the evidence;
- A failure to consider, or an unreasonable decision to ignore, relevant policy;
- An incorrect application of the law.

7.9 The outcome of the review and the rationale for the reviewing officer's decision should be recorded in writing. The rationale should clearly set out why the original decision was wrong, considering the factors in paragraph 7.8. If the decision is upheld, then this also should be recorded. A clear rationale is important if the reviewer's decision is subsequently challenged through judicial review.

7.10 The CPS provide guidance entitled, 'Reconsidering a Prosecution Decision', to their prosecutors which may be of assistance for police reviewing officers. This guidance is available at:

[http://www.cps.gov.uk/legal/p to r/reconsidering a prosecution decision/](http://www.cps.gov.uk/legal/p%20to%20r/reconsidering%20a%20prosecution%20decision/)

8. TIME LIMITS

- 8.1 When a victim requests a review of a decision it should be acknowledged within 10 working days.
- 8.2 Victims should be allowed to request a review within 3 months of being notified of the case being filed, as this is the period during which they can request a judicial review. Requests made after this period will be dealt with at the discretion of the relevant Crime Manager. Forces should consider retaining case material for at least the 3 month period open for review requests.
- 8.3 Forces should, wherever possible, complete the review and communicate the decision to the victim within an overall timeframe of 28 days
- 8.4 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 reviewing officer should notify the victim accordingly and provide regular updates on the progress of the review.
- 8.5 Where a case is due to become statute-barred every effort should be made to expedite the review, particularly where the CPS will ultimately be required to make the charging decision, and early liaison should be made with CPS in such cases.

9. OUTCOME OF THE REVIEW

- 9.1 There are six potential outcomes of a review:
 - i. the original decision to take no further action is upheld;
 - ii. the original decision is overturned and proceedings are commenced against the suspect, i.e. they are charged/summonsed;
 - iii. the original decision is overturned and the suspect is dealt with by way of an out of court disposal;
 - iv. the original decision is overturned and the case is referred to the CPS for a charging decision;
 - v. it is determined that further enquiries need to be completed before the reviewing officer can make their decision;
 - vi. the original decision is overturned but the case is statute-barred and proceedings cannot be instigated.
- 9.2 The method of communicating the outcome of a review with a victim may be determined on a case by case basis but review decisions should be confirmed in writing, unless the circumstances of the case make it inappropriate to do so or the victim has stated that they do not wish to receive written communication.
- 9.3 If proceedings are to be commenced following review, the suspect should be advised. Suspects should 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.
- 9.4 It is important that suspects are given clear information if they are informed of a decision to take no further action against them, making them aware that proceedings may still be initiated in light of fresh evidence or a review of the decision. This is vital

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to prevent abuse of process arguments precluding the instigation of proceedings following a review.

- 9.5 In cases where it is determined that further enquiries are needed (paragraph 9.1, point V), consideration should be given as to whether the reviewing officer or another supervisor is best placed to manage their completion. If following completion of the further enquiries, no further action is still the proposed outcome the matter should be brought back to the reviewing officer for determination.
- 9.6 In cases which are statute-barred but where the reviewing officer believes that the original determination was wrong, the only option available is to offer an explanation and, where appropriate, an apology to the victim.
- 9.7 The CPS VRR scheme uses a two tier model of local review followed by an escalation to a central national review team if the victim remains dissatisfied following the initial review. WMP will provide only one opportunity for review cases where the decision not to prosecute/refer to CPS was a police decision. This reflects the differing case-load handled by WMP.
- 9.8 A victim who remains dissatisfied with the outcome of the WMP review and wishes to pursue the matter further can apply to the High Court for a judicial review.
- 9.9 It is possible that a victim could appeal a police decision not to prosecute resulting in that decision being overturned and the matter being referred to the CPS for a charging decision. The CPS could then decide to take no further action and the victim would then be entitled to ask for a review of the CPS decision under the CPS VRR scheme and ultimately to refer the matter for a judicial review.

10. BIOMETRICS and PNC

- 10.1. In the case where the decision to take no further action is overturned, then there will be a legal requirement to re-take any samples (Fingerprints/DNA) that have been taken previously, but subsequently destroyed as a result of the original decision to take no further action.
- 10.2. Paragraph 86 of Schedule 11 of Anti-Social Behaviour, Crime and Policing Act 2014 amends Schedule 2A of PACE to allow the police to require an individual to attend a police station for the samples to be re-taken within 6 months from the date that the investigation is resumed.

Fingerprints

- 10.3. The following sections of PACE (as amended) are to be applied as appropriate in relation to the re-taking of fingerprints:

61(5A) The fingerprints of a person may be taken without the appropriate consent if (before or after the coming into force of this subsection) he has been arrested for a recordable offence and released and -

- (a) in the case of a person who is on bail, he has not had his fingerprints taken in the course of the investigation of the offence by the police; or
(b) in any case, he has had his fingerprints taken in the course of that investigation but

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- (i) subsection (3A)(a) or (b) above applies⁶, or
- (ii) subsection (5C) below applies.

(Note - see time limits in [Schedule 2A](#) - 6 months)

61(5B) The fingerprints of a person not detained at a police station may be taken without the appropriate consent if (before or after the coming into force of this subsection) he has been charged with a recordable offence or informed that he will be reported for such an offence and -

- (a) He has not had his fingerprints taken in the course of the investigation of the offence by the police; or
- (b) He has had his fingerprints taken in the course of that investigation but:

- (i) subsection (3A)(a) or (b) above applies, or
- (ii) subsection (5C) below applies.

(Note - see time limits in [Schedule 2A](#) - 6 months)

61(5C) This subsection applies where -

- (a) the investigation was discontinued but subsequently resumed, and
- (b) before the resumption of the investigation the fingerprints were destroyed pursuant to section 63D(3) below.

Non-intimate samples

10.4. The following sections of PACE (as amended) are to be applied as appropriate in relation to the re-taking of non-intimate samples:

63(3ZA) A non-intimate sample may be taken from a person without the appropriate consent if (before or after the coming into force of this subsection) he has been arrested for a recordable offence and released and -

- (a) In the case of a person who is on bail, he has not had a non-intimate sample of the same type and from the same part of the body taken from him in the course of the investigation of the offence by the police; or
- (b) In any case, he has had a non-intimate sample taken from him in the course of that investigation but -

- (i) It was not suitable for the same means of analysis, or
- (ii) It proved insufficient, or
- (iii) Subsection (3AA) below applies;

63(3A) A non-intimate sample may be taken from a person (whether or not he is in police detention or held in custody by the police on the authority of a court) without the appropriate consent if he has been charged with a recordable offence or informed that he will be reported for such an offence and -

⁶ 61(3A) Where a person mentioned in paragraph (a) of subsection (3) or subsection (4) has already had his fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of [sufficient](#) quality to allow satisfactory [analysis](#), comparison or matching (whether in the case in question or generally).

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- (a) He has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police; or
- (b) He has had a non-intimate sample taken from him in the course of that investigation but -

- (i) It was not suitable for the same means of analysis, or
- (ii) It proved insufficient; or
- (iii) Subsection (3AA) below applies;

63(3AA) This subsection applies where the investigation was discontinued but subsequently resumed, and before the resumption of the investigation -

- (a) Any DNA profile derived from the sample was destroyed pursuant to section 63D(3) below, and
- (b) The sample itself was destroyed pursuant to section 63R(4), (5) or (12) below.

Application of the legislation

10.5. Release without charge.

The amendments to PACE, as set out in red above, coupled with the provisions of Schedule 2A, allow for a subject's fingerprints and DNA to be re-taken in cases where the suspect has been arrested and released without charge (NFA).

In most cases the provisions of 61(5B), for the taking of fingerprints post charge/reporting, and 63(3A), for the taking of DNA post charge/reporting, will be utilised in VRR cases. Sections 61 (5A) and 63 (3ZA) would only have relevance if the fingerprints/DNA were required for an investigative reason pre-charge/reporting.

It is unlikely in any VRR scenario that the criteria will exist for the suspect to be further arrested and, therefore, Schedule 2A should be relied on in cases where the suspect does not make themselves available to attend a police station in order for their samples to be taken.

Note that re-sampling is not necessary if the suspect's DNA profile taken in England and Wales is already shown as retained as a result of a previous conviction or caution (PND). PACE samples should be obtained; not voluntary samples.

10.6. Voluntary Attendance.

Ordinarily, subjects who are interviewed at a police station following voluntary attendance (VA) will not previously have provided their DNA and fingerprints if the decision made at the time was that no further action was to be taken against them. They will not have been arrested and therefore the VRR decision will not require DNA and fingerprints to be re-taken as none were taken in the first instance.

In such cases, following VRR, the subject's DNA and fingerprints can be taken under sections 61 (5B) and 63 (3A) once the subject has been informed that they are to be reported for the original offence. This procedure is no different to if they had been reported as a result of the original charging decision.

If their biometric information was lawfully taken in the course of the initial investigation and deleted as a consequence of an NFA decision, it should, if necessary, be re-taken under the same sections.

11. Updating the PNC Record

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- 11.1. The National PNC Names Group (PNG) has advised that forces should adopt the following process in cases where the VRR has resulted in the outcome of the case being other than the original No Further Action (NFA);
- Where the VRR concludes that the subject is now to be arrested/summonsed etc., a new arrest/summons (AS) entry should be created to record the resumption of the case on the PNC. Any biometric information taken at the time of this new arrest or in connect with the resumption of the case should be recorded within this new AS entry.
 - The original AS number and the fact that the case has resumed under VRR should be recorded in the AS text field of the new AS entry.
 - The original NFA Disposal text should be amended to record that the case has resumed under VRR.
 - The original AS entry should have the new AS number and the fact the case has resumed under VRR recorded within its AS text field.
 - The details of the VRR arrest/summons entry will be updated as the case progresses through the criminal justice process in keeping with normal procedures.
- 11.2. As stated in the Voluntary Attendance section above, ordinarily a PNC AS entry will not have been created in respect of a VA if the outcome of the VA interview was NFA. If however an AS entry had been created, then the original AS entry should be resulted as described above (NFA etc) and a new AS entry should be created at the point where a person is informed that they will be reported.

12. REVIEWS COMPLAINTS AND OPERATIONAL LEARNING

- 12.1. Reviews of decisions not to prosecute should not be considered as 'complaints' against the police. For this reason, applications for review will not be directed in the first instance to Professional Standards. Instead, Criminal Justice Services (CJS) will assume responsibility for receiving applications, collating relevant details of the application and then disseminating to LPU colleagues for the review to be conducted. Crime Managers will be responsible for communicating the results of their review to the victims, and also returning the findings of completed reviews to CJS.
- 12.2. If a review of an investigation reveals issues of misconduct or under-performance then these should be dealt with in the normal manner, but the purpose of a review is not to apportion blame.
- 12.3. Where lessons can be learned from the outcome of a VRR request, the reviewing officer should note these on the review papers. Where such learning is identified, the relevant Crime Manager should share the information with counterparts at Crime Manager Meetings in order that steps can be identified to ensure that future instances are avoided. The Crime Manager should also raise any learning points with the original decision maker and other officers in the case, where appropriate. The observations will also be recorded by CJS as part of their overall administrative role.
- 12.4. An expression of dissatisfaction by the victim in relation to a review decision should not automatically be treated as a complaint under the Police Reform Act. The appropriate way for a victim to challenge the reviewing officer's decision is by way of judicial review. As such, allegations made solely about the decision itself may be regarded as an abuse of process therefore not recorded or be subject of disapplication.
- 12.5. Complaints made regarding the reviewing officer but not specifically about the decision itself, such as alleged incivility, should be dealt with in the usual manner

13. PERFORMANCE MONITORING

13.1. In order that WMP can demonstrate transparency around the VRR, the initial application to review will be directed to CJS, who will document relevant details about the case including:

- the reason for which the victim requests the review;
- to whom the review was allocated;
- the outcome of the review;
- any learning identified throughout the review
- the time taken to conduct the review.

14. RESPONSIBILITIES OF INITIAL INVESTIGATING OFFICERS

14.1. Victims wishing to exercise their right to review have three months in which to make an application from the point at which they are informed of the decision to take no further action. The Officer in the Case will have certain responsibilities where they are investigating a case which concludes with no further action being taken.

- The OIC must explain the decision not to prosecute the offender, and must clarify whether the decision was made on the grounds of evidential sufficiency or public interest.
- The OIC must explain to the victim that they have the right to challenge this decision within three months (if the three month period will exceed the deadline for statute of limitations of proceedings, then the OIC should explain this and the need to lodge a review before that date).
- The victim must be provided with the postal and email address for submitting a review.
- Where a case is eligible for VRR, the OIC must ensure that all relevant property and evidence is retained for three months from the point at which the case is finalised. Where a review is requested, the OIC should not authorise the disposal/return/destruction of any evidence until such time that the reviewing officer has completed their review.
- Where a case is eligible for review, the OIC should explain to any suspect who is released NFA that they may be subject to further investigation if new evidence comes to light, or if a review application is received within the relevant timescales.

15. EQUALITY IMPACT ASSESSMENT (EQIA)

15.1. The Policy has been reviewed and drafted against all protected characteristics in accordance with the Public Sector Equality Duty embodied in the Equality Act 2010. The policy has therefore been Equality Impact Assessed to show how WMP has evidenced 'due regard' to the need to:

- Eliminate discrimination, harassment, and victimisation.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Supporting documentation in the form of an EQIA has been completed and is available for viewing in conjunction with this Policy.

16. HUMAN RIGHTS

16.1. This policy has been implemented and reviewed in accordance with that set out with the European Convention and principles provided by the Human Rights Act 1998. The application of this policy has no differential impact on any of the articles within the Act. However, failure as to its implementation would impact on the core duties and values of WMP (and its partners), to uphold the law and serve/protect all members of its community (and beyond) from harm

17. FREEDOM OF INFORMATION (FOI)

17.1. Public disclosure of this policy document is determined by the Force Policy Co-ordinator on agreement with its owner. Version 3.0 of this policy has been GPMS marked as 'Not protectively marked'

17.2. Public disclosure does not automatically apply to supporting Force policies, directives and associated guidance documents, and in all cases the necessary advice should be sought prior to disclosure to any one of these associated documents.

Which exemptions apply and to which section of the document?	Whole document	Section number
None		

18. TRAINING

Training in the use of Community Resolutions was delivered in 2009 when the new approach was rolled out force wide. This policy maintains the same overall approach. Training in the use of Community Resolutions will be incorporated into the training plan for the Community Justice approach.

Guidance in the operation of the VRR scheme and managing requests will be given to Chief Inspectors when requests are forwarded.

19. PROMOTION / DISTRIBUTION & MARKETING

This will also be in line with the new Community Justice approach.

20. REVIEW

- 20.1. The Policy business owner Central Justice Services maintain outright ownership of the policy and any other associated documents and in-turn delegate responsibility to the department/unit responsible for its continued monitoring.
- 20.2. The policy should be considered a 'living document' and subject to regular review to reflect upon any Force, Home Office/ACPO, legislative changes, good practice (learning the lessons) both locally and nationally, etc.
- 20.3. A formal review of the Policy document, including that of any other potential impacts i.e. EQIA, will be conducted by the date shown as indicated on the first page.
- 20.4. Any amendments to the Policy will be conducted and evidenced through the Force Policy Co-ordinator and set out within the version control template.
- 20.5. Feedback is always welcomed by that of the author/owner and/or Force Policy Co-ordinator as to the content and layout of the policy document and any potential improvements.

CHIEF CONSTABLE

16. VERSION HISTORY

Version	Date	Reason for Change	Amended/Agreed by.
version 1.1	Sept 2014	New Force Policy	
Version 1.2	September 2017	Biometric section added and review of content.	