

# VICTIM RIGHT TO REVIEW (VRR)

## 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 November 2015.

NPCC acknowledges that the differing force structures across the country do not allow for a universal approach .

This policy builds on national guidance to set out the principles and parameters and provide clarity as to how VRR will be implemented in West Midlands Police (WMP)

## Authorised Professional Practice (APP):

(\*delete as appropriate)

- This policy has been checked against APP. West Midlands Police has adopted the APP provisions, with supplementary information contained herein, which reflects local practice and the needs of the communities served by West Midlands Police.

Those provisions are shown in the links below and can be accessed via the home page of the APP website

APP Content

## Policy Statements:

- It is important that a level of consistency is maintained nationally to ensure that the process is clear, accessible and fair for all victims.
- Requests to review decisions not to prosecute should not be considered as 'complaints' against the police.
- To enable WMP to demonstrate transparency around VRR, the initial application to review will be sent to CJS who will collate and document the following details:
  - The reason the victim has requested the review
  - Who the review has been allocated to
  - The outcome of the review
  - Any learning identified throughout the review
  - The time taken to conduct the review
- CJS will disseminate the request to the relevant NPU for the review to be conducted.

## PRINCIPLES

- NPCC has noted that police VRR schemes should adhere to the following principles, some of these are further explained in subsequent sections of this policy:
  1. **All forces should have a VRR scheme, effective from 1 April 2015.**
  2. **The scheme should apply to qualifying cases as set out in Qualifying Cases section.**
  3. **The scheme should be available to all victims as defined in Who Can Apply section.**
  4. **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.**
  5. **All forces shall ensure that their VRR scheme is clearly explained and easily accessible for victims.**
  6. **Reviews should be conducted by an officer at least one rank higher than the decision maker. Within WMP it has been determined that the reviewing officer will be the Chief Inspector for the functional area in which the crime was investigated.**
    - Where appropriate, the Chief Inspector may elect to delegate the review to an Inspector, provided 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.
    - If the officer who made the decision not to prosecute was a Chief Inspector or above, then an officer of at least one rank above them should conduct the review.
  7. **The reviewing officer should consider the case afresh rather than assessing the validity of the original decision making process.**
  8. **In order to overturn a decision not to prosecute the reviewing officer must be satisfied that:**
    - In cases requiring the authority of the CPS to charge, the earlier decision not to refer the case to the CPS was wrong based on an erroneous assessment as to whether the full code test had been met or;
    - 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 (usually Full Code but on occasions the Threshold Test); and in both cases
    - For the maintenance of public confidence in the criminal justice system, the decision must be reversed.
  9. **Unlike the CPS VRR Scheme, there will only be one review of a case under the WMP VRR. Victims seeking to challenge the outcome of a review would normally need to apply to the High Court for a judicial review of the decision**
  10. **WMP VRR request should be dealt with in a timely manner, in particular where cases are subject to the 6 month statutory limitation on proceedings see Time Limits section.**
  11. **Where possible an application for review should be completed and the decision communicated within 28 days of receipt of the application. Where the statute of limitations time period will expire before the end of the 28 day period, the review should be completed as soon as practicable.**
  12. **The scheme should allow victims to request a review within 3 months of them being notified of the case being filed as this is the period during which they can request a judicial review.**
    - **Forces should consider retaining case material for at least the 3 month period open for review requests.**
  13. **Requests made after the 3 month period will be dealt with at the discretion of the relevant Chief Inspector.**
  14. **Review decisions should ordinarily be confirmed in writing to a victim.**

## QUALIFYING CASES

- The WMP VRR will only apply to National Crime Recording Standards (NCRS) offences.
- WMP VRR will only apply to decisions that were made on or after 1 April 2015 – the scheme does not retrospectively apply to decisions before this date.
- The WMP VRR will only apply to cases in which a suspect has been identified, the suspect has an allegation put to them in some detail and is interviewed under caution, either following an arrest or by voluntary arrangement.
- The WMP VRR applies where police:
  - make a decision not to bring proceedings in cases where the police have authority to charge
  - make a decision that the case does not meet the appropriate test (normally the Full Code Test or occasionally the Threshold Test) for referral to the CPS for a charging decision.
- The following cases **DO NOT** fall within the scope of police VRR:
  - Cases where no suspect has been identified and interviewed, for example investigations that are filed 'at source'.
  - 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 charge is brought that relates to the matter complained about by the victim but the offence charged differs from the crime that was recorded (E.g. the suspect is charged with common assault but an offence of actual bodily harm has been recorded.)
  - Cases which are concluded by way of an out of court disposal
  - 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 CPS for a charging decision.
- WMP VRR does not cover crime recording decisions or decisions not to continue with enquiries.

## WHO CAN APPLY UNDER THE SCHEME?

- Any victim in a qualifying case where a decision is made not to prosecute is entitled to seek a review of that decision.
- It is acknowledged that vulnerable victims or members of marginalised communities might ask an individual to act on their behalf such as an MP or solicitor.
- Where an individual as stated above acts on behalf of a victim, written authority/confirmation should be obtained by the reviewing officer from the victim that the person has authority to act on their behalf.
- VRR 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.

### VICTIMS ENTITLED TO AN ENHANCED SERVICE

- 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
  - Victims who are persistently targeted
- Officers should ensure they are given an appropriate level of support to enable them to make an informed decision ensuring where necessary the relevant victim support agencies are engaged to help the victim make their decision around VRR.
- **It is expected that any review for an enhanced service victim will be carried out within 21 days, where possible,** as the effect of the crime and uncertainty regarding the VRR outcome are likely to have an increased impact on them.

### CONDUCTING THE REVIEW

- Reviews will not ordinarily be conducted until the conclusion of an investigation. This allows for situations where:
  - NFA is taken against one or more suspects but the case remains open and actively investigated
  - The further investigation may result in another suspect(s) being prosecuted and therefore making the case no longer qualifying for VRR.
- If there is likely to be a significant period of time between the decision to NFA and concluding the investigation consideration may need to be given to conduct the review at an earlier stage as very lengthy delays could strengthen a subsequent abuse of process argument made by the suspect.
- The reviewing officer should not have been involved in or consulted upon in making the original decision and should be independent of the investigation.
- In cases requiring specialist knowledge i.e. Public Protection the reviewing officer should have relevant experience/qualifications in the field.
- 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 CPS
  - Further enquiries are necessary
  - No further action should be taken
- The 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.
- The reviewing officer's decision takes precedence over the original decision.

- The reviewing officer should not assess whether the original decision was justified based on the process that was taken to reach it.
- In cases where it is determined that further enquiries are needed, consideration must be given as to whether the reviewing officer or another supervisor are best placed to manage their completion.
- If following completion of further enquiries, no further action is still the proposed outcome the matter should be referred back to the reviewing officer for determination.
- It is possible that a police decision not to prosecute is overturned and the matter referred to CPS for a charging decision.
- The CPS could decide to take NFA and the victim would 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.
- The CPS guidance 'Reconsidering a Prosecution Decision' is given to their prosecutors which may assist reviewing officers.

#### TIME LIMITS

- A victims request for review should be acknowledged within 10 working days.
- It may not be possible to provide a VRR decision in the usual time frames for particularly complex or sensitive cases. In such cases the reviewing officer should notify the victim accordingly and provide regular updates on the progress of the review.
- Where a case is due to become statute-barred every effort should be made to expedite the review, particularly where CPS will ultimately be required to make the charging decision and early liaison should be made with CPS in such cases.

#### OUTCOME OF THE REVIEW

- There are six potential outcomes of a review:
  - The original decision to take no further action is upheld
  - The original decision is overturned and proceedings are commenced against the suspect i.e. they are charged/summonsed
  - The original decision is overturned and the suspect is dealt with by the way of an out of court disposal.
  - The original decision is overturned and the case is referred to the CPS for a charging decision.
  - It is determined that further enquiries need to be completed before the reviewing officer can make their decision.
  - The original decision is overturned but the case is statute-barred and proceedings cannot be instigated.
- An outcome to overturn a decision not to prosecute must be grounded in principle that the original decision was wrong as per principle 8. 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.
- Factors that may lead to the determination that the original decision was 'wrong' are set out below and should be included in the rationale for the outcome:
  - An unreasonable decision to disregard compelling evidence
  - A significant misrepresentation of the evidence
  - A failure to consider or an unreasonable decision to ignore relevant policy
  - An incorrect application of the law
- The outcome of the review and clear rationale for the reviewing officer's decision should be recorded in writing. This is important should the decision be challenged through judicial review.
- 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.
- Review decisions should be confirmed in writing to the victim 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.
- If proceedings are to be commenced following review the suspect should be advised but should not be made aware of the victim's request for review.
- 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, apologise to the victim.

### **RESPONSIBILITIES OF INITIAL INVESTIGATING OFFICERS**

- The Officer in the Case (OIC) will have certain responsibilities where they are investigating a case which concludes with no further action being taken:
  - 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.
  - If the 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.
  - The material as stated above particularly applies where evidence is liable to be lost or destroyed before the conclusion of the investigation i.e. CCTV footage.
  - The OIC must explain the decision not to prosecute to the offender and must clarify whether the decision was made on the grounds of evidential sufficiency or public interest.
  - In eligible cases for review, the OIC should explain to any suspects that are released NFA that they may be subject to further investigation if new evidence comes to light or if a review application is received in the relevant timescales.

- It is vital to advise the above to prevent abuse of process arguments precluding the instigation of proceedings following a review.
- 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 and notified of their right to ask for a review and the format the notification was delivered by (notifications do not necessarily need to be made in writing to the victim) should be made on the investigation log.
- The OIC must explain to the victim that they have the right to challenge this decision within 3 months.
- If the 3 month period exceeds the deadline for statute of limitations 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 the case is eligible for VRR the OIC must ensure that all relevant property and evidence is retained for three months from the time 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 officers has completed their review.

## BIOMETRICS

- In a case where the decision to take NFA is overturned, there is a legal requirement to re-take any samples (fingerprint/DNA) that have been taken previously but destroyed as a result of the original decision to take NFA.
- Paragraph 86 of Schedule 11 of Anti-Social Behaviour, Crime and Policing Act 2014 allows 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.
- Sections 61(5A), Sections 61 (5B) and Sections 61 (5C) of PACE are applied as appropriate in relation to the re-taking of finger prints.
- Sections 63 (3ZA), 63 (3A) and 63 (3AA) of PACE are applied as appropriate in relation to the re-taking of non-intimate samples.
- The amendments to PACE, coupled with the provisions of Schedule 2A allow for a subject's fingerprints and DNA to be re-taken in cases where suspects have been arrested and released without charge (NFA)
- In most VRR cases sections 61(5B) for taking fingerprints and sections 63 (3A) for taking DNA will be utilised.
- 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 for VRR cases that the criteria will exist for the suspect to be further arrested, therefore, Section 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.
- **Resampling 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/caution (PND). PACE samples should be obtained not voluntary samples.**
- Ordinarily if a subject voluntarily attends (VA) a police station, is interviewed and a decision made at that time that NFA is to be taken, they will not have previously provided DNA/Fingerprints.
- 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.
- 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.

#### VRR & PNC

- The National PNC Names Group (PNG) has advised the following process in cases where VRR has resulted in the outcome of a case being other than the original NFA:
  - 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 PNC.
  - Any biometric information taken at the time of this new arrest or in connection with the resumption of the case should be recorded within this new AS entry.
  - The original AS number and the fact the case has been resumed under VRR should be recorded in the AS text field of the new 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 recorded and the fact the case has been resumed under VRR.
  - The details of the VRR AS entry will be updated as the case progresses through the criminal justice process in keeping with normal procedures.
- In cases of voluntary attendance, ordinarily a PNC AS entry will not have been created if the outcome of the interview was NFA.
- If an entry has been created then the original AS entry should be resulted and a new AS entry created at the point when the person is informed that they will be reported.

#### ORGANISATIONAL LEARNING

- 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.



- Where lessons can be learned from the outcome of VRR, the reviewing officer should note these on the review papers.
- Where such learning is identified, the relevant Chief Inspector should share the information with counterparts at Crime Managers Meetings in order that steps can be identified to ensure that future instances are avoided.
- The Chief Inspector 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.

## COMPLAINTS

- An expression of dissatisfaction by the victim in relation to a VRR 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.
- 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.

### Definitions/Acronyms:

**AS** – Arrest/Summons Entry on PNC  
**CJS** – Criminal Justice Services  
**CPS** – Crown Prosecution Service  
**EU** – European Union  
**NFA** – No Further Action  
**NPU** – Neighbourhood Policing Unit  
**OIC** – Officer in the Case  
**PACE** – Police and criminal Evidence Act 1984  
**PNC** – Police National Computer  
**PND** – Police National Database  
**VA** - Voluntary Attendance  
**VRR** – Victims Right to Review  
**WMP** – West Midlands Police

**Victim** (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
- Businesses, providing they give a named point of contact

**Procedural Guidance Documents List:**

**WMP VRR Framework**

**Publication Instructions:**

(\*delete as appropriate)

- Suitable for publication to public

**Policy Ref: CJS/02**

**Version: 1.0**

**Date: 10/03/2020**

**Review Date: 10/03/2022**

**Policy Author:** [REDACTED]

**Policy Contact:** [REDACTED]

*Any enquiries in relation to this policy should be made directly with the policy contact shown above.*

**Force Executive Approval:**



**CHIEF CONSTABLE**

**Monitoring and Review**



| Version | Date Reviewed | No change / Minor Changes / Major Changes ( <i>detail</i> )       | Amended / Agreed by | New review date |
|---------|---------------|-------------------------------------------------------------------|---------------------|-----------------|
| 1.0     | 21/03/2023    | Changes to policy ref to reflect department and portfolio changes | [REDACTED]          | 28/03/2023      |
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