

## Office of Rail and Road (ORR) - Victim's Right to Review (VRR) Guidance – January 2020

### 1. Purpose

- 1.1 The purpose of this guidance is to set out the entitlements of victims of crime in relation to ORR decisions not to prosecute and the procedure to be followed to give effect to these rights.
- 1.2 This guidance only applies to prosecution decisions taken on or after 5 June 2013 and is not retrospective in its application, however this document can be referred to in relation to decisions taken before this date.

### 2. Background

- 2.1 On 29 June 2011, the Court of Appeal gave a decision in R v Christopher Killick (Killick.) The judgment considered the rights of victims of crime to seek a review of a decision not to prosecute, concluding that:
  - Victims of crime have the right to seek a review of a decision not to prosecute;
  - That this right to review should not require victims to seek review only through court proceedings;
  - That the right to review should be made subject to a clear procedure and guidance with time limits.
- 2.2 The European Union Directive establishing minimum standards on the rights, support and protection of victims of crime<sup>1</sup> (the Directive) was adopted in 2012 for full implementation in Member States by November 2015.

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<sup>1</sup> [Directive 2012/29/EU](#)

- 2.3 Article 11 of the Directive provides that a victim has the right to seek a review of a decision not to prosecute and that they must be notified and given sufficient information about this right so they can make an informed decision.
- 2.4 As of October 2015, ORR has been included as an authority that must provide services to victims of crime, including a VRR scheme, in the Ministry of Justice's Victims' Code.<sup>2</sup>
- 2.5 In light of the above developments, ORR has produced this VRR guidance to give effect to the principles in Killick, the Directive and the victim's code. This guidance is based upon the CPS's VRR scheme, but has been adapted to suit the different powers and operations of ORR.

### 3. Meaning of "Victim"

3.1 The Directive defines a victim as follows:

*"(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*

*(ii) family members of a person whose was directly caused by a criminal offence and who have suffered harm as a result of that person's death."*

3.2 For ORR this could include, for example, persons who have been injured due to the fault of a company who have committed an offence under the Health and Safety at Work etc. Act 1974 (HSWA.)

3.3 Also included in the definition of a victim are:

- Parents and guardians where the main victim is a child or youth under 18; and
- Businesses, providing they give a named point of contact.

### 4. Qualifying decisions

4.1 The CPS' VRR scheme only applies to their decisions not to prosecute, and does not apply to the decisions made by the police. However, ORR's HM Inspectorate of Railways is given the power by HSWA to conduct their own hearings in the Magistrates' Courts. Therefore, all prosecution decisions are made initially by an

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<sup>2</sup> [The Victim's Code](#)

independent Principal Inspector. Where appropriate, the prosecution decision will then be referred to ORR's prosecuting lawyers. As such, ORR's VRR scheme will apply to decisions made by its Principal Inspectors and prosecuting lawyers.

4.2 A right to request a review will arise where a Principal Inspector and/or a prosecuting lawyer:

- Make a decision not to prosecute (i.e. at the post-investigation stage);
- Decides to discontinue all charges involving the victim, thereby ending all proceedings relating to them;
- Offer no evidence in all proceedings involving the victim; or
- Decides to leave all charges in the proceedings to "lie on file."

4.3 Cases do **not** fall within the scope of ORR's VRR scheme where:

- the qualifying decision was made prior to 5 June 2013;
- ORR has exercised its discretion not to investigate, or not to investigate any further, an incident and the decision has not been referred to a Principal Inspector or prosecuting lawyer for formal approval;
- Charges are brought in respect of some, but not all, allegations or possible suspects;
- A single charge or charges are discontinued, but another charge or charges relating to the victim remain;
- Proceedings against one (or more) defendant(s) are discontinued but proceedings against another defendant(s), which relate to the victim, continue;
- A single charge, or charges, is substantially altered but the proceedings relating to the victim continue;
- Some, but not all, charges are left to lie on the file;
- The victim requests that proceedings be stopped or withdraws support for the prosecution and a decision is therefore taken not to charge/continue with proceedings.

4.4 Cases which do not come under the definition of a qualified decision will be dealt with through our normal complaints [process](#).

## 5. How can victims exercise their right to review?

- 5.1 Victims will be provided with sufficient information about the VRR scheme when a qualifying decision is made, and the process involved should they wish to make a request for review. This will be done in writing by the lead inspector when the prosecution decision is communicated.
- 5.2 The information will include the following:
- The decision that has been made;
  - Brief reasons for the decision, e.g. whether it was on evidential or public interest grounds;
  - How to find out more information about the decision;
  - Details of the VRR scheme and timescales;
  - Where appropriate, details on any time bars affecting timescales (i.e. where the offence involved is summary only.)
- 5.3 A victim who wishes to have a qualifying decision reviewed will just need to communicate this wish to ORR.
- 5.4 Victims will be informed that they have 14 days in which to make the request for a review. However, a request can be made up to three months after communication of the decision. Any requests received after the three month period will only be allowed in exceptional circumstances, taking into account the facts of the individual case.

## 6. What is the process for reviewing a decision?

- 6.1 Once a victim has notified ORR of their request for a review, the matter will be allocated by one of the Central Investigation Prosecution Team within 5 working days. The person who will conduct the review will depend upon who made the qualifying decision, as follows:

<b>Qualifying decision maker</b>	<b>Reviewer</b>
Principal Inspector	Another Principal Inspector not involved in the original decision
Prosecuting lawyer	Another Principal Inspector and lawyer not involved in the original decision

- 6.2 The reviewer will look again at the decision taken, the investigation report and all of the available evidence and will conduct a fresh and independent review of case. This will be done within 15 working days, however in instances where the case is particularly complex or involves vast amounts of material, this deadline can be extended to 30 working days. Any extended period needed for a review, along with the reasons why, will be communicated to the victim.
- 6.3 In certain circumstances, for example where cases are very complex or at the request of the victim, we may instruct outside counsel to provide a review of the evidence. The decision on whether to instruct outside counsel will be done on a case by case basis.
- 6.4 A review may result in the decision being overturned. If this is the case, then appropriate action will be taken to put that decision into effect, i.e. instigating proceedings at the Magistrates' Court.
- 6.5 A review may result in the original decision being upheld. In such instances the reviewer will look at the original explanation that the victim received to see if it was sufficient. The reviewer will communicate his decision to the victim and the reasons, providing any further explanation and/or information which could assist the victim in understanding the decision that has been made.
- 6.6 ORR will aim to communicate its decision within 5 working days after completion of the review.
- 6.7 In instances where the offence in question is time barred (i.e. summary only offences,) any review will be expedited accordingly. If the time bar has already expired when a review is received, then this will be communicated to the victim, however a review will still take place.
- 6.8 Suspects or defendants will not be informed of a victim's request for a review under this scheme, unless following a review a decision is overturned. Suspects and defendants will however be informed in general terms about this VRR scheme and that a decision not to prosecute may subsequently be overturned.



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