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Will victims have a right to review a CPS decision not to charge? Aug 2012

Background

- Recent [statements](#) made by the Director of Public Prosecutions (DPP) concerning a right of victims to challenge decisions by the Crown Prosecution Service (CPS) stem from the Court of Appeal ruling in the case of [R v Killick](#).
- The court found that the availability of judicial review as the sole means of seeking a review of a CPS decision not to prosecute was insufficient (arguably these comments are *obiter*, but may influence future CPS policy).
- Victims, as an interested party – alongside the defendant and the state – have a right to submit a complaint to the CPS following a decision not to prosecute.

The case

- Killick, the defendant, was accused in 2006 of sexually assaulting three disabled men dating back to 1996; Killick was also disabled. In 2007 the CPS decided not to prosecute. A complaint was submitted and in 2009 the decision was re-evaluated and it was deemed appropriate to prosecute. Killick sought judicial review of this decision as he had been advised by the police, prior to 2009, that he would not be prosecuted. His legal representatives claimed that the decision to prosecute was an abuse of process. The court held that it was not, as he had not relied upon the decision not to prosecute to his detriment.

The Ruling

- During the hearing the CPS suggested that while victims had a right to submit a complaint, this was distinct from any right to request a review of the decision, which they did not have (para 49 of the [ruling](#)). The CPS suggested a complaint is related to the service provided by prosecutors.
- The Court did not appreciate this argument and failed to see how the submission of a complaint would be anything other than an attempt to seek review of the CPS decision.
- At present a complaint is likely to give rise to a review of the decision by the CPS, while a threat of judicial review will give rise to a re-review of the decision (paras 46 – 47).
- While the CPS will act upon an initial complaint, it is understood that victims may seek judicial review of a CPS decision not to prosecute. The court believed that there should be the substantive availability of review without the need to seek judicial ruling on the issue (para 48).
- The court recognised that this right was 'in essence' the same as that expressed in Article 10 of the [draft EU Directive on establishing minimum standards on the rights, support and protection of victims of crime](#).

The future

- The CPS is currently consulting on changes to the Code. While the scope of the right to have a 'no charge' decision reviewed has yet to be defined, it has been suggested that it will not be limited to cases where there has been a death. Where there has been a death, families of the deceased will be able to request a review.