

Criminal Enforcement Policy

How we use our criminal enforcement powers to hold relevant people to account for serious failures in regulated services.

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Contents

└ **Introduction**

└ **Criminal enforcement pathway**

└ **Criminal proceedings**

└ **Annex 1 - Victims' Right to Review**

Introduction

This guidance supplements the ‘**Securing improvement and Enforcement policy** (<https://www.careinspectorate.wales/securing-improvement-and-enforcement-policy-html>)’ which explains how we use our civil and criminal enforcement powers if services are not providing good quality care or are not meeting the requirements of the law.

This guidance explains how we use our criminal enforcement powers to hold relevant people to account for serious failures in regulated services, or for operating services which are not registered and should be.

CIW may take criminal enforcement action in response to breaches of certain regulations, and sections of the Regulation and Inspection of Social Care (Wales) Act 2016 (‘the Act’) and the Children and Families (Wales) Measure 2010 (‘the Measure’). A summary list of legislative and regulatory offences is set out on **our website** (<https://www.careinspectorate.wales/providing-a-care-service/how-we-enforce>).

Criminal enforcement action is taken against any registered provider and/or designated responsible individual (depending on the relevant legislation), or a person/provider carrying on a regulated activity without being registered to do so. Criminal enforcement action is also taken against any person who obstructs us in the course of an inspection and against registered or unregistered persons where they have made a false or misleading statement in any application to us.

All investigations of criminal offences are carried out having regard to the **Criminal Procedure and Investigations Act 1996 (CPIA)** (<https://www.legislation.gov.uk/ukpga/1996/25/contents>) (External link), **Police and Criminal Evidence Act 1984 (PACE) principles and Codes of Practice** (<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>) (External link) and the **Work-related Deaths: A protocol for liaison (England and Wales) - WRDP1** (<https://www.careinspectorate.wales/providing-a-care-service/how-we-enforce>).

Glossary of terms:

CFM

The Children and Families (Wales) Measure 2010 is the legislation under which providers of child minding and day care services are registered.

IEP

Improvement and Enforcement Panel.

IEB

Improvement and Enforcement Board.

RISCA

The Regulation and Inspection of Social Care (Wales) Act 2016 is the legislation under which providers of adults and children's social care are registered.

WRDP

Work-Related Death Protocol.

Improvement and Enforcement Panel (IEP)

The purpose of the Improvement and Enforcement Panel will be to:

- consider the non-compliance or concerns identified in relation to a registered provider and/or designated responsible individual (depending on the relevant legislation)
- consider if there are any safeguarding risks that have not yet been adequately addressed
- consider concerns in relation to services operating without registration
- review the evidence base underpinning the non-compliance or concerns and provide instructions on any further evidence required
- make a determination on the recommended civil or criminal enforcement action required to improve the quality and safety of those using the service(s)
- assess whether possible wider criminality might exist which requires consultation with or referral to other regulators and agencies including CQC, the police or HM Area Coroner
- consider the communication strategy required for any enforcement action determined to be taken forward
- consider whether a holding press statement should be drafted on an if asked basis
- consider what provision might be necessary under the Victims Code of Practice and The Witness Charter

MoJ Victims Code 2020 ([publishing.service.gov.uk](https://assets.publishing.service.gov.uk/media/60620279d3bf7f5ceaca0d89/victims-code-2020.pdf))
(<https://assets.publishing.service.gov.uk/media/60620279d3bf7f5ceaca0d89/victims-code-2020.pdf>) (External link)

The Witness Charter ([publishing.service.gov.uk](https://assets.publishing.service.gov.uk/media/5a7c6c4340f0b62aff6c190c/witness-charter-nov13.pdf))
(<https://assets.publishing.service.gov.uk/media/5a7c6c4340f0b62aff6c190c/witness-charter-nov13.pdf>) (External link)

General Information About The Coroner's Service | South Wales Central Coroner's Service (<https://www.southwalescentralcoroner.co.uk/En/GeneralInformationabouttheCoronersService/GeneralInformationAboutTheCoronersService.aspx>) (External link)

Improvement and Enforcement Board (IEB)

The purpose of the Improvement and Enforcement Board will be to:

- quality assure and provide oversight for those decisions made at Improvement and Enforcement Panel
- consider criminal enforcement action recommendations made at Improvement and Enforcement Panel
- provide oversight and decision making where criminal enforcement action is recommended
- consider Improvement and Enforcement Panel recommendations where provider level concerns exist
- provide oversight and decision making where there are provider level concerns

Full IEB Terms of reference are set out within Annex B of CIWs **Securing Improvement and Enforcement Policy (<https://www.careinspectorate.wales/securing-improvement-and-enforcement-policy-html>)**

1. Criminal enforcement pathway

1.1. How we make decisions

Stage 1: Initial review

An initial review may be an appropriate course of action where we become aware of incidents or events that may constitute an offence under the legislation. The initial review allows us to establish the facts and consider if we have reasonable grounds to suspect an offence has been committed, together with any public interest factors. The decision to undertake an Initial Review is made at Improvement and Enforcement Panel, notwithstanding that obligations to comply with **CPIA (Disclosure (<https://www.cps.gov.uk/legal-guidance/disclosure-manual-chapter-1-introduction>))** (External link) will have already commenced, thus ensuring that any 'relevant material' is secured in a durable or retrievable format.

The purpose of an initial review is to establish if there are reasonable grounds to suspect that the following threshold is met:

1. an offence contained within RISCA or the CFM has been committed; or
2. a failure in care/regulatory breach has occurred **and** such failure results in:
 - a. avoidable harm (whether of a physical or psychological nature) to an individual
 - b. an individual being **exposed to a significant risk of such harm occurring**
 - c. in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned; **and**
3. one of the following factors applies:
 - a. The gravity of the incident, taken together with the seriousness of any actual or potential harm or the general record and approach of the provider, mean that not holding the provider to account could undermine public confidence in regulation or in that sector of providers.
 - b. There has been disregard for the requirements on a registered person.
 - c. There have been repeated or multiple breaches, which give rise to significant risk, or persistent and significant poor compliance.
 - d. The service is breaching fundamentals of care, namely that it has been carried on significantly below the standards that are required for compliance with regulations and is giving rise to significant risk.

An Initial Review may not be required in circumstances where the Improvement and Enforcement Board is satisfied that sufficient information and/or evidence exists to justify proceeding straight to a criminal investigation. Where an Improvement and Enforcement Panel is satisfied there is sufficient information and/or evidence to reasonably suspect that an offence has been committed and one of the factors listed in point 3 applies, a recommendation is made to the Improvement and Enforcement Board for a criminal investigation to be commenced.

The Improvement and Enforcement Panel, in consultation with CIWs Criminal Investigation Specialist (CIS), will consider whether any **Golden Hour** (<https://www.college.police.uk/app/investigation/investigation-process#golden-hour-eaaa6299-ad83-4e0d-9e3c-00be51961cdd>) (External link) type investigative opportunities remain outstanding and direct that, where appropriate, they be prioritised and resourced in order to secure and preserve best evidence, so as to avoid its permanent loss, or future unavailability.

Stage 2: Criminal investigation

The decision to undertake a criminal investigation

The decision to undertake a criminal investigation will only be made by the Improvement and Enforcement Board, following a recommendation made by the Improvement and Enforcement Panel and having regard to the referral report prepared by the relevant inspector.

In the case of registered services the Improvement and Enforcement Board will consider if the following threshold is met:

1. an offence contained within RISCA or the CFM has been committed; or
2. a failure in care/regulatory breach has occurred **and** such failure results in:
 - a. avoidable harm (whether of a physical or psychological nature) to an individual
 - b. an individual being exposed to a significant risk of such harm occurring
 - c. in a case of theft, misuse or misappropriation of money or property, any loss by an individual of the money or property concerned.

In the case of services operating without registration the Improvement and Enforcement Board will consider if the following threshold is met:

- a. people using the service have suffered harm (serious impact on a person's life, health or well-being), or
- b. there is previous similar conduct, or
- c. the person/provider has shown a clear disregard for the requirement to register, or
- d. the person/provider has intentionally provided false or misleading information to the public or CIW.

In all cases, the Improvement and Enforcement Board will consider the following additional factors:

- a. the gravity of the incident, taken together with the seriousness of any actual or potential harm
- b. there has been disregard for the requirements on a registered person
- c. there have been repeated or multiple breaches, which give rise to significant risk, or persistent and significant poor compliance
- d. the service is breaching fundamentals of care, namely that it has been carried on significantly below the standards that are required for compliance with regulations and is giving rise to significant risk
- e. any wider public interest considerations

The Improvement and Enforcement Board will always consider whether it is in the **public interest** (<https://gov.wales/sites/default/files/publications/2018-11/welsh-government-prosecution-code.pdf>) (External link) to pursue a criminal

investigation. To properly address this issue CIW investigators will seek to identify and highlight relevant matters from the outset so that appropriate outcomes are determined.

Decisions to refer matters to legal services for prosecution

In cases where the Improvement and Enforcement Board are satisfied both the evidential and public interest tests are met (having regard to the **Welsh Government Prosecution Code** (<https://www.gov.wales/prosecution-code>) (External link)), a recommendation will be made to the Deputy Chief Inspector (DCI) to refer the matter to legal services for prosecution.

Alternative outcomes from a criminal investigation can be found at paragraph 1.4 of this policy.

The Deputy Chief Inspector (DCI) will be responsible for making a recommendation to Legal Services to consider prosecution, having considered the CIW Criminal Investigation Report.

Stage 3: Criminal prosecution

Once a recommendation to proceed to a criminal prosecution has been received by Legal Services, the decision to prosecute will be made by Legal Services and the Counsel General, in line with the **Welsh Government Prosecution Code** (<https://www.gov.wales/prosecution-code>)(External link).

1.2 Initial reviews

The remit and timescale of an initial review should be determined at the Improvement and Enforcement Panel and is usually confined to examining relevant records in relation to the incident(s) or event(s) concerned. An initial review should not take longer than 4-6 weeks to complete. Those subject to an initial review will not always be informed it is taking place. A communication strategy will be agreed at the Improvement and Enforcement Panel.

Those subject to an Initial Review will not always be informed it is taking place. A communication strategy will be agreed at the Improvement and Enforcement Panel. This may include liaising with relevant partner agencies to enhance safeguarding, to secure any necessary external evidence, or to request external resources and expertise.

The inspector undertaking the Initial Review, having also liaised with and been supported by CIWs CIS, will report their findings to the Improvement and Enforcement Panel. Where there is sufficient information / evidence for us to reasonably suspect an offence has

been committed, the Improvement and Enforcement Panel, having also considered any public interest factors, will make a recommendation to the Improvement and Enforcement Board for a criminal investigation to be undertaken.

1.3 Criminal investigations

All investigations of criminal offences are carried out having regard to the **Criminal Procedure and Investigations Act 1996 (CPIA)** (http://www.legislation.gov.uk/ukpga/1996/25/pdfs/ukpga_19960025_en.pdf) (External link), **Police and Criminal Evidence Act 1984 (PACE) principles and Codes of Practice** (<https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>), (External link) and where applicable, the **Work-related Deaths: A protocol for liaison (England and Wales)** (<https://www.hse.gov.uk/pubns/wrdp1.pdf>) (External link).

The Improvement and Enforcement Board determine the remit, proposed timescale and scheduled reviews of a criminal investigation.

Where we are undertaking criminal investigations of registered services, an enforcement inspector and/or CIWs CIS will work jointly to undertake the investigation. In cases where we are investigating a service suspected of operating without registration, an enforcement inspector and/or the CIS will undertake the investigation. A Legal Services advisor will provide advice and guidance throughout.

Criminal Investigation Planning and Review meetings will take place as required throughout the investigation but no greater than eight weeks apart.

Those under investigation will usually be informed that a criminal investigation has been commenced and the general nature of what is being investigated. However, there may be infrequent circumstances in which this is not possible or appropriate. Decisions in respect of communications are agreed at the Improvement and Enforcement Board.

Under the **Victims Code** (<https://assets.publishing.service.gov.uk/media/60620279d3bf7f5ceaca0d89/victims-code-2020.pdf>) and **Witness Charter** (<https://assets.publishing.service.gov.uk/media/5a7c6c4340f0b62aff6c190c/witness-charter-nov13.pdf>) relevant persons and/or their nearest relative (including next of kin) connected with the service under criminal investigation will be informed at the commencement of an investigation. Victims and/or family members will receive regular updates, be consulted where appropriate, and their views will be considered as part of the investigation and decision-making process.

1.4 Outcomes of an investigation

Once a criminal investigation is completed, a CIW criminal investigation report is presented to the IEB, with a recommended outcome. The available outcomes of a criminal investigation are:

- decision not to proceed to criminal prosecution
- a provider meeting
- referral to another regulatory body
- recommendation to issue a Fixed Penalty Notice (FPN) where appropriate
- recommendation to Deputy Chief Inspector to refer to legal services for prosecution

CIW will seek to inform victims and/or relevant family members connected with the service within five working days of the outcome of the investigation.

Decision not to proceed to criminal prosecution

In the event that the evidential and public interest test is not met the investigation will cease. Careful consideration will need to be given in relation to whether the CIW Criminal Investigation report will be provided to the suspect, or any interested third parties which will include key outcomes of the investigation. CIW will inform victims and/or relevant family members connected with the service within five working days of the outcome of the investigation and advise of their right to review.

Annex 1 details the Victims Right to Review (VRR) process which is applicable where CIW make the decision not to proceed with a criminal prosecution.

Provider meeting

A provider meeting may be an appropriate course of action if it appears that there is evidence to suspect that an offence had been committed or that a failure in care/regulatory breach had occurred, but the **public interest test had not been met**. Such a meeting might be appropriate where the overall case circumstances are not suitable for either criminal or civil resolution, but the main purpose of improving the service remains the priority.

Where CIW find that there is evidence to believe that an offence has been committed or that a failure in care/regulatory breach has occurred this should be stated in the CIW Criminal Investigation Report. Prior to a provider meeting taking place, an appropriately redacted key summary version of the report should be sent to the provider.

The provider meeting will be the opportunity for the provider to comment on the content of the report summary and CIW's conclusions. Following this meeting, a letter will be sent to the provider highlighting CIW's findings and outlining any recommendations. These areas are likely to be considered at any future inspection.

The Improvement and Enforcement Board will consider whether the CIW Criminal Investigation report can be shared with other interested third parties on a case-by-case basis and with the benefit of legal advice.

Referral to another regulatory body

During the course of an investigation, evidence may come to light which requires a referral to another regulatory body or public agency, such as:

The Nursing and Midwifery Council (<https://www.nmc.org.uk/concerns-nurses-midwives/make-a-referral/>) (External link), **Social Care Wales (<https://socialcare.wales/>)** (External link), Police, **HM Revenue & Customs, (<https://www.gov.uk/government/organisations/hm-revenue-customs>)** **Disclosure and Barring service (<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>)** (External link) or the **General Medical Council (<https://www.gmc-uk.org/concerns/raise-a-concern-about-a-doctor>)** (External link). Additionally, CIW may engage with the responsible HM Area Coroner, and/or another investigative agency under the WRDP in the case of a death linked to the investigation – **Work-related Deaths: A protocol for liaison (England and Wales). (<https://www.hse.gov.uk/pubns/wrdp1.pdf>)** (External link).

Recommendation to issue a Fixed Penalty Notice where appropriate

In cases where both the **evidential (<https://gov.wales/sites/default/files/publications/2018-11/welsh-government-prosecution-code.pdf>)** (External link) and **public interest (<https://gov.wales/sites/default/files/publications/2018-11/welsh-government-prosecution-code.pdf>)** (External link) tests are met, together with the existence of specific legal provision for some offences, CIWs Enforcement Board may recommend that a FPN be issued where appropriate. Any decision to offer a FPN will be made by CIW's IEB with a legal advisor in attendance. Where this outcome is being considered Legal Services will require sight of the report for Board at least 5 working days prior to the Board meeting so that they have sufficient time to consider the evidential and public interest tests and raise any potential legal issues or risks with the inspector prior to the Board meeting.

The prescribed offences for which a penalty notice can be issued and the amount of penalty for each offence is set out in Schedule 1 to **The Regulated Services (Penalty Notices) (Wales) Regulations 2019** (<https://www.legislation.gov.uk/wsi/2019/887/made>) (External link).

Prosecution proceedings, which includes cases where a person refuses to discharge their liability under a FPN, may only be sanctioned by the Counsel General (via Legal Services).

Recommendation to Deputy Chief Inspector to refer to legal services for prosecution

In cases where both the **evidential** (<https://gov.wales/sites/default/files/publications/2018-11/welsh-government-prosecution-code.pdf>) (External link) and **public interest** (<https://gov.wales/sites/default/files/publications/2018-11/welsh-government-prosecution-code.pdf>) (External link) tests are met (having regard to the Welsh Government Prosecution Code), a recommendation will be made to the Deputy Chief Inspector (DCI) to refer the matter to Legal Services for prosecution.

1.5 Referring investigations to legal services

Following any IEB decision recommending prosecution, the matter will then pass to the DCI who will review the IEB decision and evidence, and where satisfied, will refer the matter to Legal Services for prosecution.

Once a recommendation to proceed to a criminal prosecution has been received by legal services, the decision will be made in line with the **Welsh Government Prosecution Code** (<https://www.gov.wales/prosecution-code>) (External link). This involves a two-stage test - the sufficient evidence stage and the public interest stage.

There must be sufficient evidence to provide a realistic prospect of conviction. Deciding whether there is sufficient evidence involves Legal Services considering whether the evidence is admissible, reliable and credible. Where it is considered that sufficient evidence does exist, it must also be in the public interest to proceed to prosecution. Factors to consider when deciding public interest include the seriousness of the offence, the overall circumstances and background of the offence, and the circumstances of the victim or their next of kin.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. Where the evidential test is met, consideration must then be given to the public interest test.

1.6 Outcomes of a referral to legal services

Legal services may make the following decisions:

- prosecution of some or all of the offences
- administration of a simple caution
- not to pursue criminal proceedings

Prosecution of some or all of the offences - The decision to proceed with a prosecution is made by the Director of Legal Services having consulted the Counsel General. This decision is made in accordance with the Welsh Government's Prosecution Code.

Simple caution ensures there is a formal record of an offence when a provider and/or designated responsible individual has made a clear admission of guilt, but is not prosecuted. A person retains the right to decline the offer of a simple caution even where guilt has been admitted and their refusal may result in prosecution. The views of the victim, their nearest relative, or their next of kin should be considered before the final decision to administer a caution is made.

Not to pursue criminal proceedings but consider an alternative approach, e.g. our civil enforcement actions (for CIW registered services or Registered Individuals only); and/or referral to another regulatory body such as Social Care Wales.

The **Welsh Government Prosecution Code** (<https://www.gov.wales/prosecution-code>) (External link) contains more detailed guidance for prosecutors in determining these outcomes.

2. Criminal proceedings

2.1 The defendant

The defendant is the person charged with a criminal offence who is called to court in answer to a summons.

In respect of registered services for which the offence relates to a failure to comply with a regulatory requirement, the defendant will be one or more of the registered persons. This might be the registered provider, manager (registered with Social Care Wales) and/or the designated responsible individual (RI). Please refer to **section 53** (<https://www.legislation.gov.uk/anaw/2016/2/section/53/enacted>) (External link) of the Act and **section 50** (<https://www.legislation.gov.uk/mwa/2010/1/section/50>) (External link) of the Measure for further details.

Where prosecution of a manager is a possibility the investigation will need to have established the level of responsibility and degree of governance that role held. For example, did the managers duties involve strategic level responsibilities or did it tend towards day-to-day pragmatic managerial matters. Where appropriate, the principles set out in the case of *R v Boal [1992] QB 591* will assist in determining the potential culpability of a manager.

In the case of the registered provider who is an individual, this will be straightforward.

Where the registered provider is an organisation, a prosecution is brought in the name of that organisation and the summons is served on;

- in the case of a company, the director or secretary of that company (this may or may not be the responsible individual)
- in the case of a local authority, the chief executive of that local authority
- in the case of daycare and the registration by an unincorporated association, a member of that association

When an offence is committed by a registered person who is part of a body corporate, unincorporated association or partnership, there may be circumstances where CIW wishes to proceed also against an individual within that organisation or association as a result of their part in the commission of that offence.

Prosecutions may be brought against persons for providing unregistered regulated services, or against individuals who are alleged to have intentionally obstructed inspectors in the carrying out of their statutory duties. In such cases, it will be important to factor this into the investigative and evidence gathering process.

A person who aids, abets, counsels or procures the commission of an offence by another person has the same criminal liability as that other person. There may be circumstances where CIW consider this may apply in which case, again, it will be important to plan for this as a part of the investigation and evidence gathering process.

2.2 Timescales for proceedings

In accordance with

- Section 55(2) of the Regulation and Inspection of Social Care (Wales) Act 2016 and
- Section 49 of the Children and Families (Wales) Measure 2010

*Summary proceedings for offences under either the Act or the Measure, or regulations made under them, must be brought within 12 months from the date on which evidence, sufficient in the opinion of the prosecutor to warrant the proceedings comes to the prosecutor's knowledge.

*Summary proceedings – refers to less serious cases which are suitable for resolution within the Magistrates Court system and their sentencing limitations.

There is no time limit for commencing proceedings for **an indictable offence (including an either way offence)**. Indictable offences are among the more serious criminal offences that can only be heard by a jury sitting in the Crown Court.

An either way offence is an offence that can be heard in either the Magistrates' or Crown Court. The accused may elect to have their case dealt with summarily in the magistrates' court (providing that court agrees it has sufficient sentencing powers), or on indictment (trial by jury) in the Crown Court.

In respect of applicable time limitations, CIW is aware that any criminal investigation it conducts may be required to demonstrate that it was managed and conducted in a timely manner having regard to complexity, scale of the investigation, together with available investigative resources.

Please see **Annex 1** which details the Victims Right to Review (VRR) process. The right to request a review arises where CIW:

- makes the decision not to continue with a criminal investigation (i.e. at any point after a criminal investigation is commenced); or
- decides not to recommend the investigation to legal services for consideration for prosecution;

Annex 1 - Victims' Right to Review

Introduction

This guidance sets out how victims, their nearest relative, or next of kin can give effect to their right to seek a review of certain decisions taken by the Care Inspectorate Wales (CIW) and should be read in conjunction with CIW's Criminal Enforcement Policy.

The Victims' Right to Review scheme applies in all qualifying cases from 5 June 2013.

The scheme is not retrospective in its application and will only be applied to cases in which the qualifying decision is made on or after 5 June 2013.

Background

On 29 June 2011, the Court of Appeal gave a decision in *R v Christopher Killick* [2011] EWCA Crim 1608 (*R v Killick*).

In the course of the judgment the Court considered in some detail the right of a victim of crime to seek a review of a CPS decision not to prosecute and concluded in clear terms that:

- a victim has a right to seek a review in such circumstances
- a victim should not have to seek recourse to judicial review
- the right to a review should be made the subject of a clearer procedure and guidance with time limits

The Victim's Right to Review scheme gives effect to the principles laid down in *Killick* and in Article 11 of the European Union Directive establishing minimum standards on the rights, support and protection of victims of crime.

The Victims' Right to Review (VRR) arises from the finality of the decision not to prosecute and is co-extensive with the right of a victim to seek judicial review of such a decision. Indeed, as stated by the Court of Appeal in *Killick*:

'... it has for some time been established that there is a right by an interested person to seek judicial review of the decision not to prosecute ...; it would therefore be disproportionate for a public authority not to have a system of review without recourse to court proceedings ... As a decision not to prosecute is in reality a final decision for the victim there must be a right to seek a review of such a decision.'

It is important to note that the "right" referred to in the context of the scheme is the right to request and trigger a review of the decision [and a right to be informed of the outcome of the review]. It is not a guarantee that proceedings will be (re) commenced.

Which decisions are subject to the scheme?

The right to request a review arises where CIW:

- i. makes the decision not to continue with a criminal investigation (i.e. at any point after a criminal investigation is commenced); or
- ii. decides not to recommend the investigation to Legal Services for consideration of whether there are grounds for prosecution;

These are known as '**qualifying decisions**'.

The following cases **DO NOT** fall within the scope of the VRR:

- i. cases where the qualifying decision was made prior to;
- ii. cases where proceedings are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects;
- iii. cases where a single allegation or allegations are terminated but another allegation or allegations relating to that victim do continue;
- iv. cases where proceedings against one (or more) defendants are terminated but proceedings (relating to that victim) against other defendants continue;
- v. cases where a single allegation or allegations are substantially altered but proceedings involving that victim continue;
- vi. cases where the victim requests that proceedings be stopped or withdraws support for the prosecution and a decision is therefore taken to terminate proceedings.

Concerns about legal decisions which do not fall within the scope of the VRR scheme and other complaints will be dealt with on a case-by-case basis. There is a six-month time limit for bringing a complaint under the Welsh Government Complaints policy in all but the most exceptional circumstances.

Who can apply under the scheme?

Any victim, where a qualifying decision has been made, is entitled to seek a review of that decision under the scheme.

A victim is defined in The Code of Practice for Victims of Crime (Victims' Code²), as follows:

*'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 they cannot communicate; and
- businesses, providing they give a named point of contact

It does not matter how old or young a person is in respect of those entitled to seek a review of a decision.

If someone wishes to submit a request for review on behalf of a victim and does not fall within one of the definitions listed above, written confirmation that they have the authority of the victim to act on their behalf must be provided.

How can victims exercise their right under the scheme?

Victims, their nearest relative, or next of kin will be notified of the decision not to bring proceedings/bring proceedings to an end. This notification will include the following information:

- a. the nature of the decision – i.e. not to proceed with the investigation or to discontinue proceedings;
- b. whether the decision was made on evidential or public interest grounds.

If the decision is a 'qualifying decision', the notification will confirm that the Victims, their nearest relative, or next of kin are eligible to seek a review under the scheme and will provide sufficient information to enable the victim or their next of kin to decide:

- a. whether or not they wish a review to take place; and
- b. if they do want a review of what steps they need to take.

The only action a victim, their nearest relative, or next of kin need to take is to notify CIW of their request for review. They will be provided with the contact details of the relevant inspector in order that they can make contact by their preferred means.

A request for a review should ordinarily be made within 10 working days of receipt of the notification of the decision. However, a request can be made up to three months after the communication of the decision to the victims, their nearest relative, or next of kin.

What CIW do with a request for a review

Independent review

Once the victims, their nearest relative, or next of kin have notified CIW of their request for review, the decision will be subject to an independent review by a person of the equivalent grade (or higher) to the person who made the qualifying decision.

This review will comprise a reconsideration of the evidence and the public interest i.e. the case will be approached afresh to determine whether the original decision was right or wrong.

The reviewer will only take account of information available at the time the qualifying decision was made. A victim, their nearest relative, or next of kin wishing to raise new evidence/information should do so with the investigating officer, not the reviewing inspector.

Reconsidering a qualifying decision

It is an important principle that people should be able to rely on decisions taken by CIW as being final and that such decisions should not ordinarily be revoked. However, we also recognise that a careful balance must be struck between providing certainty to the public in our decision making and not allowing wrong decisions to stand. It is right therefore, in order to maintain public confidence in CIW, we will sometimes have to look again at a decision and change it if it is found to be wrong. If a decision is found to be wrong, it may be necessary to commence or re-institute criminal investigation/proceedings.

The Victims' Right to Review scheme provides a victim, their nearest relative, or next of kin with a specifically designed process to exercise the right to review. The reviewer must conduct a re-review of the case afresh, and in order to overturn a qualifying decision they must be satisfied:

- a. the earlier decision was wrong in applying the evidential or public interest stages of the Code Test (as set out in the Prosecution Code for Assembly Counsel); and
- b. for the maintenance of public confidence, the decision must be reversed.

CIW inspectors will be guided in their decision making by the CPS guidance headed **"Reconsidering a Prosecution Decision" which is available via the Prosecution Policy and Guidance (legal guidance) section of the CPS website (<https://www.cps.gov.uk/legal-guidance/reconsidering-prosecution-decision>)** (External link).

Who will carry out the independent review?

The review will be carried out by a person of the equivalent grade (or higher) to the person who made the qualifying decision, who will not have been involved in the original decision.

Where legal advice has been provided, a different lawyer will be asked to advise the reviewer.

Outcome of the review

The outcome of the review process will be communicated to the victim, their nearest relative, or next of kin in every case within the time limits set out below.

The method of communication will depend on the circumstances of the victim, their nearest relative, or next of kin and the outcome of the review.

Where a victim, their nearest relative, or next of kin have given reasons for requesting a review, the issues raised will be addressed in the decision letter.

The available remedy depends on the nature of the qualifying decision.

In cases where the qualifying decision was not to continue with a criminal investigation then the investigation will be recommenced if the original decision is found, on review, to be wrong.

The same applies in cases where the qualifying decision was not to recommend the investigation to Legal Services for prosecution.

However, there is no such remedy available in cases which become statute barred after a qualifying decision has been made but before a review is requested or completed as it is not possible to bring/recommence proceedings in these circumstances. If this occurs CIW will provide an explanation to the victim, their nearest relative, or next of kin, and where it is right to do so, offer an apology.

Following the conclusion of the VRR process, there is no scope for any further review by CIW and accordingly, if the victim, their nearest relative, or next of kin remains dissatisfied with the decision, and wishes to challenge it further, then they should consider applying to the High Court for a judicial review.

There is likely to be an expectation, in any judicial review of a qualifying decision, that the right to review under this scheme will have been exercised before any such proceedings are commenced.

If the investigation/proceedings are to be (re) commenced following review, the suspect/defendant and/or their appointed legal representative will be advised. Suspects/defendants and/or their appointed legal representative 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.

Where lessons can be learned from the outcome of a VRR request, CIW will make the necessary changes to guidance, process or practice to reduce the likelihood of the situation arising again. In such cases, victims, their nearest relative, or next of kin will be notified of the changes proposed or steps taken.

Time limits

Qualifying decisions will be communicated to the victims, their nearest relative, or next of kin within 5 working days, in accordance with the time limits set out in the Victims' Code.

A request for a review should ordinarily be made within 5 working days of receipt of the notification of the decision. However, a request can be made up to three months after the communication of the decision to the victim, their nearest relative, or next of kin.

An early request from the victim, their nearest relative, or next of kin allows for a prompt review and, where appropriate, proceedings to be (re) commenced as quickly as possible. Conversely, a delayed request may increase the likelihood of the Court finding difficulty with any decision to (re) commence proceedings following the review. In some circumstances, it will not be possible to (re) commence [OBJ].

Where the law permits us to do so, we will consider requests for review for up to up three months from the communication of the qualifying decision.

Any delay beyond the three months will only be allowed in exceptional circumstances taking into account the facts of the individual case.

CIW will, wherever possible, complete the review and communicate the decision to the victim, their nearest relative, or next of kin within an overall timeframe of 30 working days (i.e. 6 weeks from receipt of the request).

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, CIW will notify the victim, their nearest relative, or next of kin accordingly. Regular updates will be provided as to the progress of the review, although these will not be more frequent than every 20 working days thereafter, until a final decision is made.

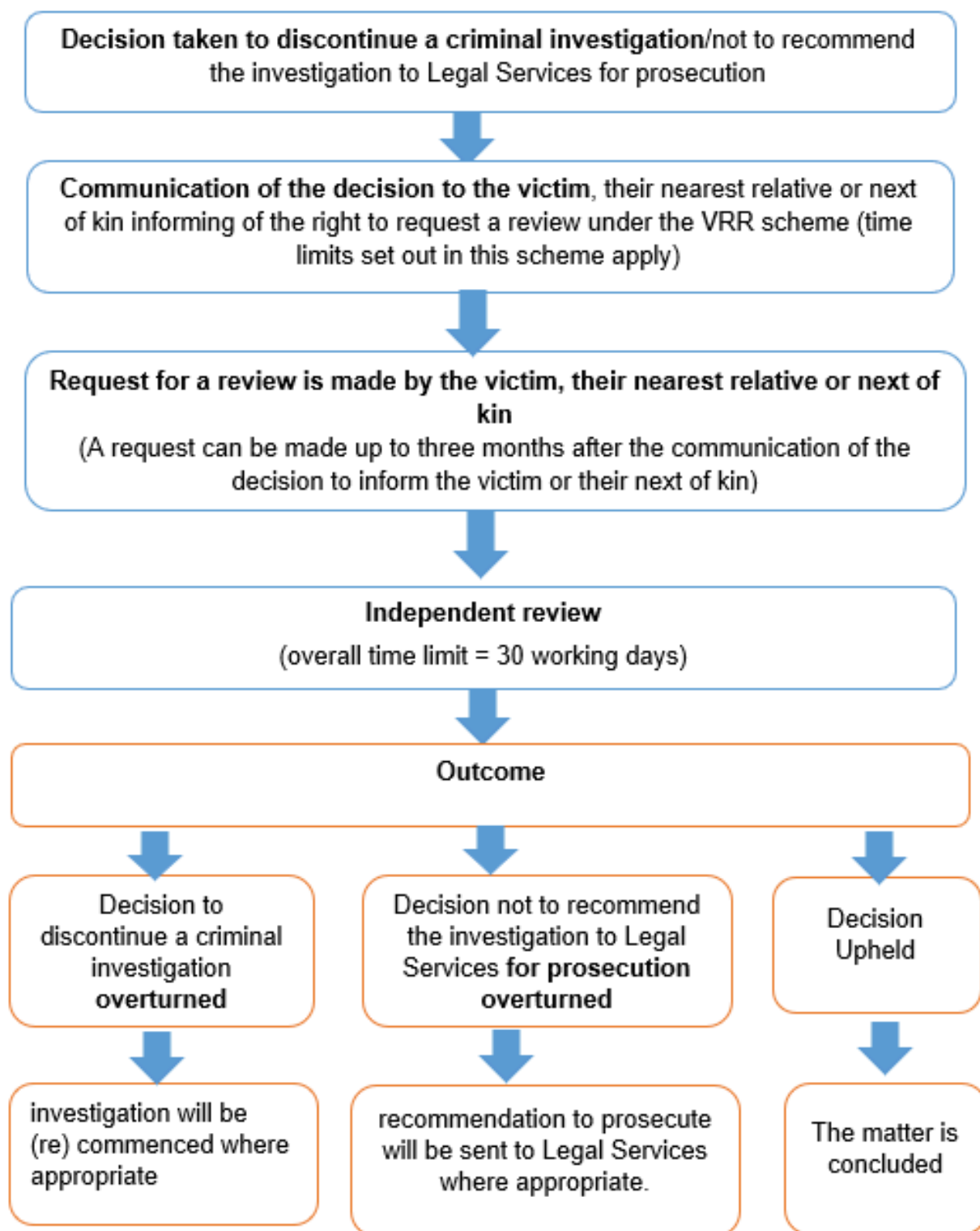
Where a case is due to become statute-barred before the VRR period expires, we will expedite the VRR process and provide a decision within the statutory time period. The date when the case will become statute barred will be identified and communicated to the victim, their nearest relative, or next of kin when the qualifying decision is communicated so that the position is clear.

Victims, their nearest relative, or next of kin will be offered the opportunity to discuss the outcome of the review. This will ensure that the victim or their next of kin fully understands the process and the decisions made and has an opportunity to ask any questions that s/he may have.


VRR process

1. decision taken to discontinue a criminal investigation/not to recommend the investigation to Legal Services for prosecution
2. communication of the decision to the victim informing them of the right to request a review under the VRR scheme (time limits set out in this scheme apply)
3. request for a review is made by the victim, their nearest relative or next of kin (A request can be made up to three months after the communication of the decision to inform the victim or their next of kin)
4. independent review (overall time limit = 30 working days)
5. outcome:

- (a) decision to discontinue a criminal investigation overturned → investigation will be (re)commenced where appropriate.
 - (b) decision not to recommend the investigation to legal services for prosecution overturned → recommendation to prosecute will be sent to Legal Services where appropriate.
 - (c) decision upheld → the matter is concluded
6. communication of review decision to the victim, their nearest relative or next of kin.



Communication of review decision to the victim, their nearest relative or next of kin.



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