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ONR Victims Right to Review Scheme			
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## 1 INTRODUCTION

### 1.1 Purpose

ONR's Victims' Right to Review Scheme (VRR) follows obligations found in the Code for Crown Prosecutors.<sup>(1)</sup> These obligations are relevant to *England and Wales* only. The obligations provide for victims' rights in cases where ONR decides either not to prosecute or to terminate prosecution proceedings. Under VRR, the victim can apply for a review of ONR's decision. The Scheme is overseen by the ONR Policy Team, as part of the Contact ONR process. The Investigation Resource Group (IRG) provides advice and guidance on the Scheme.

### 1.2 Scope & Applicability

ONR's VRR, based on the Crown Prosecution Service (CPS) VRR Scheme<sup>(2)</sup>, applies to all circumstances *in England and Wales* where, following an investigation ONR makes a decision not to pursue a prosecution and where there was a victim (as defined below). It can also apply to circumstances *in England and Wales* where ONR effectively terminates prosecution proceedings.

In Scotland, an equivalent scheme is managed by The Crown Office Procurator Fiscal Service (COPFS), since it makes the decision on whether or not to prosecute, or to terminate proceedings<sup>(3)</sup>. Where requests are made to review ONR prosecution recommendation decisions in Scotland, ONR should follow the steps outlined in ONR-PER-IN-006, ONR Decision Review and Appeals Process<sup>(4)</sup>.

This instruction is relevant to the work of all those who have a role in activities described in ONR's Process for Conducting Investigations (ONR-ENF-GD-005)<sup>(5)</sup>, members of the Policy and Communications Directorate, and ONR senior management.

### 1.3 Definitions

The definition of a victim, for the purposes of the ONR VRR, is: 'A person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence'.<sup>(6)</sup>

The definition includes:

- close relatives of a person whose death was directly caused by alleged criminal conduct;
- parents or guardians where the main victim is a child or youth under 18;
- 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.

## **2 GUIDANCE**

### **2.1 Background**

In 2011, the Court of Appeal delivered its judgment in the case of *Killick (R v Christopher Killick [2011] EWCA Crim 1608)* <sup>(7)</sup>.

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 Crown Prosecution Service (CPS) decision not to prosecute and concluded in clear terms that:

- Victims have a right to seek a review in such circumstances
- Victims 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.

Related to this, a European Union Directive, establishing minimum standards on the rights, support and protection of victims of crime <sup>(8)</sup> was adopted in 2012, for full implementation in Member States by November 2015. 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.

As a result of both the *Killick* case and the Directive, the CPS launched a scheme <sup>(1)</sup> in June 2013 which gave effect in England and Wales to the principles set out in *Killick* determined in the UK jurisdiction, and the requirements of Article 11 of the Directive. The Scheme was subject to public consultation before it was implemented.

ONR's VRR is based upon the CPS Scheme. It should be read in conjunction with the Ministry of Justice (MOJ) Code of Practice for Victims of Crime <sup>(6)</sup>.

A Right to Review was introduced into Scots Law by Section 4 of the Victim and Witnesses (Scotland) Act 2014. The Lord Advocate produced rules in June 2015 <sup>(9)</sup>. These rules are similar to those applied by CPS in England and Wales. As noted above, in Scotland a Scheme equivalent to the CPS Scheme is managed by the Crown Office Procurator Fiscal Service (COPFS) <sup>(2)</sup>. Any requests made to review ONR prosecution recommendation decisions in Scotland should be progressed in accordance with the ONR Decision Review and Appeals Process. <sup>(4)</sup>

### **2.2 ONR Victim Right to Review (VRR) Scheme.**

Under the ONR VRR victims can seek a review of decisions not to charge, to discontinue or otherwise terminate all proceedings in the circumstances described below.

### **2.3 Qualifying decisions**

Under this scheme a victim can seek a review of the following ONR decisions:

- Not to bring proceedings in cases where ONR inspectors have the authority to institute them
- To terminate charges thereby ending all proceedings
- To offer no evidence in all proceedings

## **2.4 Non-qualifying decisions**

The following do not fall within the scope of the Scheme (they fall outside the scope of the MOJ Code, and also the Directive):

- The qualifying decision was made prior to November 2015
- Where ONR has exercised its independent discretion not to investigate, or not to investigate any further, and the decision not to proceed has not been referred to an Approval Officer.
- Charges are brought in respect of some, but not all, allegations or against some possible suspects;
- A single charge or charges are terminated but another charge or charges related to that victim continue;
- Proceedings against one (or more) defendant(s) are terminated but proceedings (related to that victim) against other defendants continue;
- A single charge, or charges, are substantially altered but proceedings involving that victim continue;
- Cases where the victim requests that proceedings be stopped or withdraw support for the prosecution and a decision is therefore taken not to charge/to terminate proceedings.
- Cases which are brought to an end in circumstances where the prosecution may have a right of appeal or where a decision is made not to oppose an application to dismiss charges pursuant to Rule 9.16 of the Criminal Procedure Rules 2019

Cases which do not fall within the above definition of a qualifying decision will be dealt with through the ONR Decision Review and Appeals Process <sup>(4)</sup>.

## **2.5 The Process**

Appendix 1 shows a flowchart that describes the VRR Scheme process.

Where a decision is made not to prosecute or proceedings are effectively terminated, ONR will notify the victim. Notification to a victim should normally occur within three weeks of an ONR decision being made. The notification will be made by the lead investigator. The notification will be in sufficient detail that the victim can make an informed decision on whether they wish to request a review.

Normally, the victim should request a review within three months of the ONR decision. To request a review the victim needs to contact the ONR Policy team via the Contact ONR process described on the ONR website. Proceeding with a request made outside the three-month period is at the discretion of the Executive Director of Operations (EDO) and would require good reasons justifying, for example, the delay in making the request.

When ONR receives a request for review, the decision will be reviewed by an Approval Officer who was not involved with the previous decision (the Reviewing Approval Officer). The Reviewing Approval Officer will be appointed by the Chair of the Investigation Resource Group (IRG). At the same time, a report will be made to the EDO; this report will be updated later following the outcome of the review.

At the conclusion of the review ONR will ensure that the victim is provided with a clear and detailed written explanation of the outcome of the review and the decision, using the template found at Appendix 2, unless the victim has requested differently. The response will be sent by the Chair of IRG, using information provided by the Reviewing Approval Officer.

## **2.6 Outcomes of reviews**

There are four potential outcomes of a review:

- The original decision to take no further action is upheld
- The original decision is overturned, and proceedings are started against the suspect(s)
- We decide to make further enquiries before the Reviewing Approval Officer can make a decision
- The original decision is overturned but the case's statute of limitations has run out so ONR cannot start proceedings

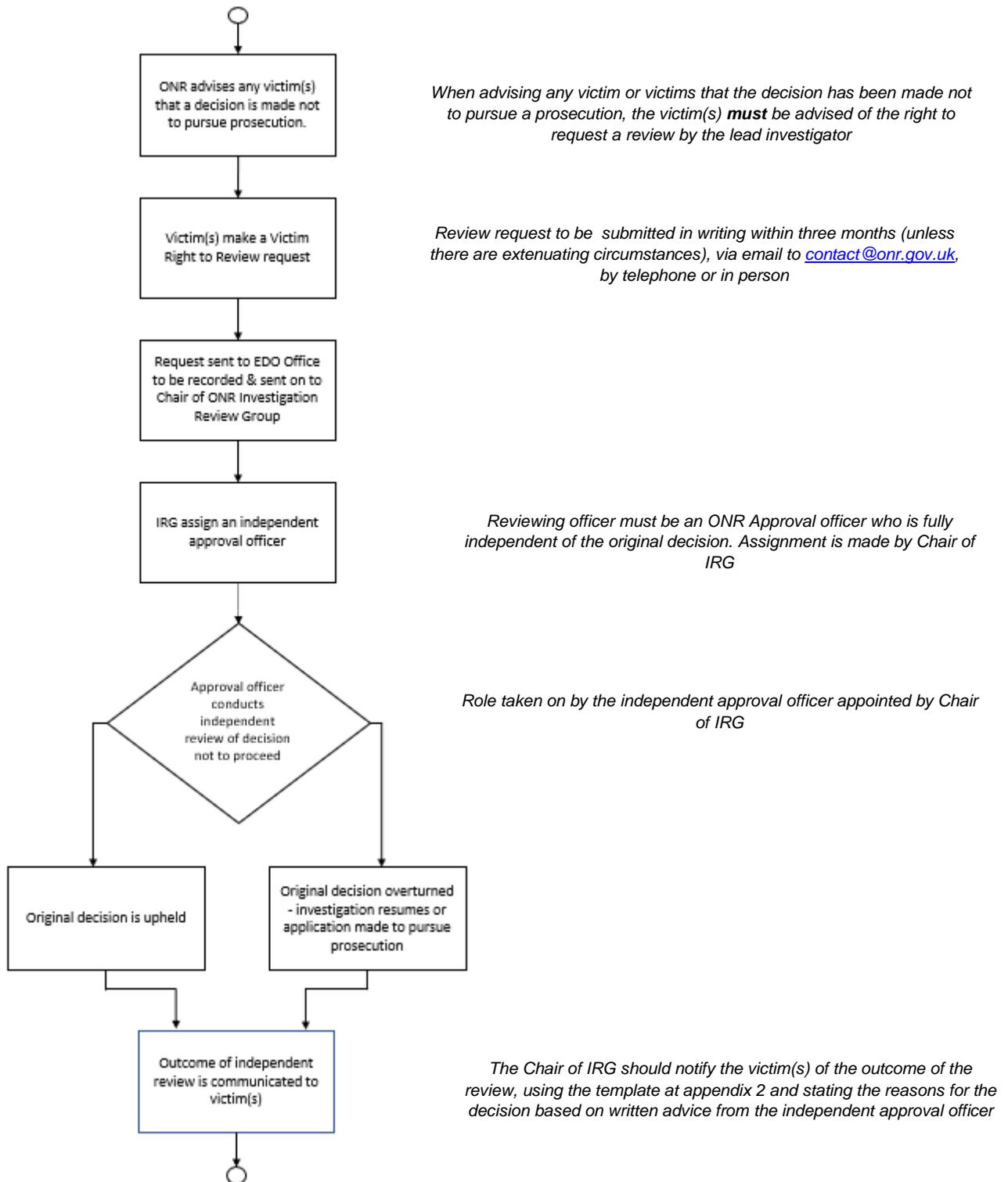
In responding to the victim, the Chair of IRG should advise that if they are dissatisfied with the outcome of the ONR review they can contact the Parliamentary and Health Service Ombudsman via their local MP. Information about the Ombudsman is found at <https://www.ombudsman.org.uk/>.

### 3 REFERENCES

Table 1 - References

Doc. Ref. No.:	Title
1	<a href="#">CPS Code for Crown Prosecutors</a>
2	<a href="#">CPS Victims Right to Review</a>
3	<a href="#">COPFS Victims Right to review</a>
4	ONR-PER-IN-006, ONR Decision Review and Appeals Process
5	GD-ONR-ENF-GD005 – Process for Conducting Investigations
6	<a href="#">Code of Practice for Victims of Crime in England and Wales November 2020</a>
7	<a href="#">R v. Christopher Killick [2011] EWCA Crim 1608</a>
8	<a href="#">Directive 2012/29/EU - Rights, Supports and Protection of Victims of Crime</a>
9	<a href="#">Lord Advocate's Rules: Review of a decision not to prosecute - Section 4 of the Victims and Witnesses (Scotland) Act 2014</a>

#### 4 APPENDIX 1 – VICTIMS RIGHT TO REVIEW - FLOWCHART



**5 APPENDIX 2 – TEMPLATE RESPONSE TO VICTIM(S) FOLLOWING INDEPENDENT REVIEW [LETTER MUST BE REVIEWED BEFORE ISSUE BY POLICY AND COMMUNICATIONS TEAM FROM A MEDIA AND GENERAL CORRESPONDENCE PERSPECTIVE]**

[Victim name]

[insert contact details]

Date:

Dear [Insert name]

Office for Nuclear Regulation

Redgrave Court

Merton Road

Bootle

Merseyside

L20 7HS

Tel:

**Victims Right to Review Scheme – [title/ investigation number/summary]**

Thank you for requesting a review of ONR's investigation decision in accordance with the ONR's Victims Right to Review Scheme. I have enclosed a copy of our guidance in relation to the Scheme.

We understand this may be a difficult time and I hope that this letter provides clarity in relation to our decision.

Your request relates to [insert brief details of investigation in plain English, drawn from Part A of the relevant investigation report].

Following your request, [insert name of Reviewing Approval Officer] has carried out an independent review on behalf of ONR .

The outcome of our review is\*:

- the original decision to take no further action is upheld
- the original decision is overturned, and we have started proceedings against the suspect(s)
- we need to make further enquiries before the Reviewing Approval Officer can make a final decision
- the original decision is overturned but the case's statute of limitations has run out so ONR cannot start proceedings

\* Delete as appropriate

The reason(s) for coming to this decision are [insert detail in plain English as appropriate and with empathy as appropriate].

I hope that this letter has helped you understand the rationale for our decision. [Insert name of Reviewing Approval Officer] would be happy to receive your comments in relation to this review. Please let me know if you'd like to do so by [insert date] (within 10 working days of this letter).

If you are unhappy with how we have handled this review, you can contact the Parliamentary and Health Service Ombudsman, via your local Member of Parliament. Information about the Ombudsman is found at <https://www.ombudsman.org.uk/>.

Yours sincerely

**Chair, Investigation Resource Group  
Office for Nuclear Regulation**

\* Delete as appropriate