



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

CROWN OFFICE & PROCURATOR FISCAL SERVICE

LORD ADVOCATE'S RULES: REVIEW OF A DECISION NOT TO PROSECUTE – SECTION 4 OF THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014

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Introduction

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's prosecution service. We receive reports of alleged crimes from the Police and other agencies such as the Health and Safety Executive, the Television Licensing Authority, local authorities, and many others. We then take decisions, based on the evidence available, and in the public interest, on whether to prosecute.

If you are the victim of a crime, we understand the impact this can have for you, your family and your way of life. That's why you have a right to ask us for **information** about the decision made in your case, **to have a say** in what happens, and to ask us to **review** some decisions not to prosecute when the decisions can be changed.

What is the Victims' Right to Review?

If you are the victim in a case reported to us, you have a right to ask us to review a decision **not to take action** in the first place or **to stop or discontinue** a case after a case has started in court.

We can only review decisions that are taken by us and cannot review decisions made by the court. We will only review cases under this policy where the decision could be changed. Where the decision cannot be changed a request for a review will be dealt with under our [Complaints and Feedback policy](#).

A victim can ask for the review of a decision made on or after **1 July 2015** not to prosecute a case reported to us.

This will apply to decisions:

- to take **no action** in a criminal case reported by Police Scotland or other reporting agency; and
- to **stop or discontinue** a case once court proceedings have been started. Prosecutions start when a complaint or Petition has been served on the accused

Some decisions are not included in the right to review. These are:

- where **a court has made a decision** in a case including where a case ends because a judge has decided during a trial that there is not enough evidence to continue; and where a judge or jury have acquitted the accused by delivering a verdict of either "not guilty" or "not proven"
- where **a charge is stopped** or discontinued but another substantial and significant charge with the same victim continues
- where **a charge changes** but court proceedings for other substantial and significant charges with the same victim continue
- where **a plea** has been accepted by us
- where a case has been dealt with by the use of a **Direct Measure** such as a warning letter or fiscal fine, without court proceedings; or where the case has been referred to the **Children's Reporter** to deal with

In some situations, we may not review a case where the victim has indicated a wish that no action is taken or that a prosecution is stopped.

On some occasions, we may have told the accused or their solicitor that the accused will not be prosecuted for a particular matter. If that is the case, we cannot prosecute the accused for that matter and so the decision cannot be reviewed.

You can **contact us on** 01389 739 557 to find out more about such decisions and get an explanation. If you are unhappy about these decisions, you may still be able to make a complaint through our [Complaints and Feedback policy](#) about a decision made by us.

Who can apply for a review?

A victim of a crime reported to us by the Police or other specialist reporting agency can apply for a review of a decision by us not to prosecute or to stop a prosecution.

A victim is defined as someone who has suffered harm, including physical, mental or emotional harm or economic loss directly caused by a criminal offence. This includes family members of a person whose death was directly caused by a criminal offence, and who have suffered harm as a result of that person's death.

Businesses, companies and other organisations which are victims of a crime are also included under this policy.

If the victim asking for a review is a child under 12 years old, the application should be made by a parent or carer. If the victim is aged between 12 and 18, they can apply for a review themselves if they wish or can make an application through a parent or carer. Any victim over 18 years old should generally make the application themselves.

When should I apply for a review?

Please tell us as quickly as possible, normally within **one month** of the date you learn the decision from us. Delay in asking for a review can affect what action we can take if a different decision is made by us following the review.

You have the right to get information about your case. If you have not heard anything about your case three months after reporting it to the police, you can contact us on 01389 739 557 to get information

How do I ask for a review?

Sometimes you may simply wish to **know why** a decision was made before you ask us for a review

In some cases our Victim Information and Advice (VIA) service may already have been in contact with you about your case. If so, please get in touch with them for further information.

If VIA have not previously been in touch, you can contact our Enquiry Point on 01389 739 557 to get more information.

If you are still not satisfied with the decision once you have been given the reason, you can ask for a review.

More information about how we make decisions can be found in our [Prosecution Code](#)

We need sufficient information to allow the correct case to be identified and reviewed. Your application for review should be made using our [website form](#). Assistance will be provided if required to complete the form. This should include the following information:

- The full name, address and date of birth of the victim
- The name of the accused, if known, or the date and place where the crime took place and the nature of the crime
- The police or our reference number, if you have it (this is normally found on the top right hand side of any letter sent by us)
- Anything else you would like us to take into account when we are carrying out the review. For example, any new information you have, the impact this incident had on you including any physical or financial consequences etc.

Applications for review will be dealt with by COPFS Response and Information Unit (RIU). The application for review should be emailed to RIU@copfs.gsi.gov.uk with the subject "Right to Review"; or sent by post to:

"Right to Review"
Response and Information Unit
Crown Office
25 Chamber Street
Edinburgh
EH1 1LA

If you have any difficulty in completing the application form, you can get help and advice from Victim Support Scotland by calling them on 0345 603 9213 or visiting their website - www.victimsupportsco.org.uk

You can also contact us on 01389 739 557 or visit your [local Procurator Fiscal's Office](#) and you will be able to get help and advice in completing the form. You can find your nearest office using 'Find a local COPFS office' search function on the main page of our website.

What happens in a review?

The Reviewer will be a lawyer who was not involved in the original decision. They will consider the case papers which may include: a Police Report, statements from witnesses, productions such as medical reports and other reports, and other documents.

The Reviewer will consider the available papers and obtain any further information which is required in order to make the decision.

The Reviewer will consider if the decision not to prosecute the case was **reasonable** having regard to all the circumstances and in line with our [Prosecution Code](#) and our prosecution policies.

Once the review is complete, the Reviewer will **write to you** to explain their decision. This letter will tell you:

- Which documents were considered in the review
- Whether any of our prosecution policies were considered during the review (some of these policies are confidential and so the full details may not be made available)
- Whether any previous court decisions were considered during the review (in some cases a court will have made a decision about a similar matter and that case may be taken into account by the reviewer when reaching a decision)
- The decision made by the reviewer and the reasons for that decision. You will be given as much detail as it is possible for us to give you

How long will the review take?

In many cases, you will be told the review decision within **20 working days** of your application for a review.

However some cases are very complex and a review may take longer than 20 working days to complete. In those cases, we will write to you within 20 working days advising you of how long the review will take and when a decision is likely to be available.

What happens next?

If the Reviewer decides that the case should have been prosecuted, or that the prosecution should not have been stopped, you will be advised whether the case will now be prosecuted. **If a prosecution is still an option, we will start court proceedings as soon as possible.**

There may be some cases where we will ask to meet with you to discuss the options before a final decision about prosecution is taken or to discuss the outcome of a review.

In some cases, a prosecution may no longer be possible. This may be for legal reasons such as where time limits set down in law apply to a case, or where, due to the passage of time, we consider the court may regard it as unfair to start another prosecution.

If the Reviewer upholds the original decision not to prosecute as reasonable, or that the decision was not reasonable but that a prosecution is no longer possible, then there is no further right of review or appeal.

If you are unhappy about the Review itself you can still make a [complaint](#) about the handling of the review within six months of you being told about the decision.

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25 Chambers Street
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Telephone: 01389 739 557

Calls can be made through RNID Tynetalk.
Please prefix our telephone number with 18001

Deaf sign language users should text on
07825 280346, specifying if you would prefer
your reply by sms, text or email.

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