



Attorney General's Guidance

Victims' right to review a decision not to prosecute

Introduction

- 1) Victims of crimes in Jersey are entitled to apply to the Attorney General for a review of a decision not to prosecute. This guidance explains how this scheme operates and who is entitled to seek a review. Decisions are taken either by a legal adviser or a Centenier acting on behalf of the Attorney General.

Victims of Crime

- 2) A person is entitled to a review as a "victim of a crime" if they are someone who has suffered harm including physical, mental, or emotional harm or economic loss directly caused by an alleged criminal offence. This includes family members of a person whose death was directly caused by a criminal offence. If the victim is a person lacking capacity owing to age or disability then, in most circumstances, any review should be made by that person's parent or carer.

Time period available to seek a review

- 3) The request for a review must be made in writing within three months of the victim having been informed of the decision not to prosecute. Requests for a review will be granted unless the application is vexatious or relates to a review that is already being carried out.
- 4) An applicant for review needs only to provide sufficient details to allow the case to be identified for review. These should include:
 - a) the applicant's name, address, contact details (including an email address where possible);
 - b) any legal representative whom the applicant for review wishes to have communicate with the Attorney General;
 - c) brief details of the alleged offence;
 - d) any circumstances that the applicant would like the Attorney General to consider when carrying out the review, for example any new information; and
 - e) any other relevant information that the applicant thinks is important.
- 5) If an applicant has difficulty in completing an application form then they should contact enquiries@lawofficers.je
- 6) Applications for review should be sent by email to VRR@lawofficers.je or by post to the Attorney General, Law Officers' Department, Morier House, St Helier, JE1 1DD.

Decisions

- 7) The right to request a review under the VRR scheme arises where on behalf of the Attorney General, a legal adviser or a Centenier:
 - a) makes a final decision not to bring proceedings (ie, at the pre-charge stage);
 - b) discontinues or withdraws all charges involving the victim, thereby entirely ending all proceedings relating to them;
 - c) asks the Court to leave all charges in the proceedings to 'lie on the file'; or
 - d) where a Centenier makes the decision at a Parish Hall Enquiry not to charge, any appeal should be made in writing to the Attorney General.

- 8) Decisions that are not eligible for VRR include:
 - a) where the legal adviser or a Centenier has not made a decision that has the effect of being final at the pre-charge stage;
 - b) where the police or other investigator exercises their independent discretion not to investigate or not to investigate a case further (whether in consultation with the Law Officers' Department or not) and the Law Officers' Department has not been requested or has been unable to make a final decision to charge. Requests for review of such decisions should instead be addressed to the Chief of Police at the States of Jersey Police;
 - c) where charges are brought in respect of some (but not all) allegations made or against some (but not all) possible suspects;
 - d) where a single charge or charges are terminated but another charge or charges relating to that victim continue;
 - e) where proceedings against one (or more) defendants are terminated but proceedings (relating to that victim) against other defendants continue;
 - f) where a single charge or charges are substantially altered but proceedings involving that victim continue;
 - g) cases where some (but not all) charges are left to lie on the file;
 - h) cases which are concluded by way of Parish Hall Enquiry (this includes decisions to deal with a case involving a young offender which is referred to a Parish Hall); or
 - i) cases where the victim requests that proceedings be stopped or withdraws support for the prosecution and a decision is therefore taken not to charge/to terminate proceedings. If a victim does not attend Court to give evidence when required and without providing reasonable notice and a prosecution can no longer proceed, this can be inferred as withdrawing support for the prosecution unless there are exceptional circumstances.

The conduct of the review

- 9) The review will usually be of a decision of a Centenier not to charge a suspect. Frequently that charging decision will have been made on legal advice given by a lawyer in the Criminal Division of the Law Officers' Department, although this will not always be the case.

- 10) The review will be conducted by a lawyer who has had no prior involvement in the case. The review will be conducted by a lawyer who is of the same or greater seniority than the lawyer (if any) who advised in relation to the original decision.
- 11) In the event that the decision was made by the Attorney General then the review will be conducted by the Solicitor General and vice versa. The Solicitor General and the Attorney General are independent Crown Officers.
- 12) If no new evidence or information is provided, then the review will be completed, and the applicant notified of the outcome within eight weeks of the application for review. If any new evidence is provided, then the process may take longer. The applicant will be updated as to the progress of the review if it takes longer than twelve weeks.

The completion of the review

- 13) At the end of the process the reviewing lawyer will write to the applicant setting out their decision and the reasons for that decision. If the reviewing lawyer decides the decision not to prosecute or to take no further action was wrong then the applicant will be told whether the case will now be prosecuted and, if not, why not. If the prosecution is pursued, then Court proceedings will be initiated as soon as possible. There may be some instances where the reviewing lawyer may meet the applicant before a firm decision is made or to discuss the outcome of the review.
- 14) All decisions to prosecute will be taken in accordance with the Code on the decision to prosecute – a link to which is:
<https://www.gov.je/government/nonexeclegal/lawofficers/pages/decisionprosecute.aspx>
- 15) It is to be noted that the review process does not apply to decisions to prosecute. Once a case is prosecuted then the outcome of such a prosecution is a matter for the Court.

Potential review outcomes

- 16) Following a review under the scheme, qualifying decisions not to charge, to discontinue, and to withdraw can be instituted or reinstated. There are two review outcomes:

- a) **A new decision:** when the earlier decision is overturned –

Occasionally there are cases where the Attorney General will overturn a decision not to prosecute. These cases include:

- i) cases where a further review of the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- ii) cases which are stopped so that further anticipated evidence, which is likely to become available in the fairly near future, can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;

- iii) cases which are not prosecuted or are stopped because of a lack of evidence but where more significant evidence is discovered later; and
 - iv) cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.
- b) **Uphold Previous Decision:** the original decision not to prosecute is upheld, and the victim notified and provided with an explanation.
- 17) Some decisions cannot be instituted or reinstated, such as where a decision to 'offer no evidence' has been made. This is because such decisions are final, and proceedings cannot be reinstated; again, redress in these circumstances is limited to an explanation.
- 18) It is important to note that although such cases cannot be instituted or reinstated, the quality and thoroughness of the review undertaken will be no less than a review undertaken for any other case. The important issue being addressed in these cases is whether the original qualifying decision was wrong.

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