

VRR Response Pro Forma

When responding it would be helpful if you would complete the contact details below.

Please fill out your name and address or that of your organisation if relevant.

You may withhold these details if you wish but we will be unable to include you in future consultation exercises.

Contact details:

Response completed by (name)	Carla Ferstman
Name of organisation (if appropriate)	The REDRESS Trust
Position in organisation (if appropriate)	Director
Address	87 Vauxhall Walk London SE11 5HJ
Contact telephone number	0207 793 1777
Contact email address	Carla@redress.org Copy to kevin@redress.org and tara@redress.org
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Please answer the consultation questions in the boxes below.

1. Do you agree the guidance is clear in respect of which decisions fall within the scope of the scheme?

The Redress Trust (REDRESS) is an international human rights non-governmental organisation (NGO) based in London, with a mandate to assist survivors of torture and related international crimes to seek justice and reparation. REDRESS was a founding member of the CPS War Crimes Community Involvement Panel in 2009, and was involved in consultation in the preparation of the CPS War Crimes / Crimes Against Humanity Referral Guidelines (“the Referral Guidelines”), finalised in 2011.

Section A of the Referral Guidelines makes clear that an Initial Scoping Exercise is to be conducted by the SO15 War Crimes Team of the London Metropolitan Police (SO15) to make an informed decision whether or not to conduct an investigation into complaints related to crimes under international law. As detailed in Section A, this Initial Scoping Exercise is of considerable complexity, and it is quite likely that it will frequently involve closer cooperation and consultation between the police service and the CPS than the usual practice for the investigation of other alleged crimes. This close consultation is a natural consequence of the complexity of international criminal law and of the exercise of extraterritorial jurisdiction. REDRESS commends the efforts made by both the CPS and SO15 to cooperate from an early stage of proceedings, in order to ensure that decisions to investigate complaints of crimes under international law are taken effectively and incorporate all available expertise.

In this context, our primary concern relates to Paragraph 12(i) of the Guidance, which provides that “cases where the police exercise their independent discretion not to investigate or not to investigate a case further (whether in consultation with the CPS or not) where a full file of evidence has not been provided with a view to the CPS taking a formal prosecution decision” do not fall within the scope of the Victims’ Right to Review Scheme (VRR).

Notwithstanding this Guidance, REDRESS suggests that when there has been considerable consultation between the CPS and police services, even if a “full file of evidence has not been provided with a view to the CPS taking a formal prosecution decision”, and the police have decided not to proceed with an investigation, the CPS may wish to consider the appropriateness of providing for a right to review for victims.

There are three primary reasons why the CPS may find it appropriate to exercise its discretion to provide a right to review for victims in these circumstances.

Firstly, victims of alleged crimes under international law are likely to be disproportionately affected and disadvantaged by their exclusion from the VRR scheme, when compared to victims of other types of crime. This is particularly because a large majority of complaints regarding crimes under international law do not result in the submission of a full file of evidence to the CPS for prosecution. This means that, correspondingly, a large majority of the victims of these alleged crimes will be left without the ability to request a review of the decision not to prosecute, despite the fact that the CPS has potentially already played a significant role in their case.

This exclusion would significantly limit their ability to access justice, participate in proceedings and exercise their right to an effective remedy, principles which are enshrined in the EU Directive 2012/29/EU on Minimum Standards on the Rights, Support and Protection of Victims of Crime (“the Directive”) as well as Articles 2, 3 and 13 of the European Convention on Human Rights and Fundamental Freedoms, as well as other international standards which apply to the UK.

Secondly, in circumstances such as those described above where there has already been considerable cooperation and consultation between the Special Crime and Counter Terrorism Division (SCCTD) of the CPS – the staff of which have considerable expertise in this area of law – and SO15, the CPS may well be in a position, where it has available sufficient information and evidence related to the complaint, to carry out a review of the decision not to prosecute.

Thirdly, Recital 43 of the Directive provides that the right to review for all victims of crime shall be understood as referring to “decisions taken by prosecutors and investigative judges or **law enforcement authorities such as police officers**” (emphasis added). Although Section 3.13 of the Referral Guidelines requires SO15 to “inform victims / witnesses in accordance with the Victims’ Charter” if an investigation is not possible, this is distinct from a right to *review* and cannot be considered to fulfil the criteria set out in Article 11 of the Directive and by the Court of Appeal in *R v Killick*, which case provided that a victim should not be obliged to have recourse to judicial review in order to review decisions not to prosecute (as cited at Paragraph 9 of the Guidance).

The CPS may therefore wish to exercise its discretion to provide a right to review in circumstances where it is in a position to do so, by virtue of its close involvement in the Initial Scoping Exercise, its possession of evidence and information related to the case, and its important role in assisting the police to assess the feasibility of investigations into complaints of crimes under international law.

This would greatly strengthen the enjoyment of victims’ rights to an effective remedy. This right has been repeatedly explained with respect to human rights abuses, particularly torture and cruel, inhuman or degrading treatment. It is well-established that an effective remedy for torture, for example, requires a thorough investigation capable of leading to the identification and

punishment of those responsible for any ill-treatment (for example, see *Ilhan v Turkey*, App. No. 22277/93, 27 June 2000 at para. 92), and there is developing recognition of a right to truth inherent in the right to an effective remedy (see the Joint Concurring Opinion of Judges Tulkens, Spielmann, Sicilianos and Keller in *El-Masri v the Former Yugoslav Republic of Macedonia*, *El-Masri v the Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 13 December 2012).

In all cases the complainant or victim must be afforded effective access to the investigatory procedure (See *Grigoryev v Russia*, App. No 22663/06, 23 October 2012, para. 66).

2. Do you agree that the guidance clearly sets out how victims can exercise their right to review?

(1) Eligible persons to apply for VRR

REDRESS has considered Paragraphs 14 – 16 of the Guidance which govern the question of “To whom does the VRR apply?” We commend the inclusion of family members of deceased victims, parents of child victims and family spokespersons of persons with disability as persons to whom the VRR applies. However, we note with concern that the Guidance is silent on the question of whether other persons or organisation may apply on behalf of victims to review decisions not to prosecute, and suggest this be considered.

This could include organisations such as REDRESS or other NGOs, victims’ associations or other civil society actors who often assist victims in filing complaints related to crimes under international law. This would help to mitigate practical difficulties which may be faced by victims who live outside the UK in applying for review. Given the nature of crimes under international law such as genocide, crimes against humanity, war crimes, torture and enforced disappearance, victims are frequently deceased, in detention or otherwise unavailable, and require the assistance of others to access justice.

We therefore suggest that the CPS may, under certain circumstances, consider applications to review filed by persons with a legal interest in the case, persons or organisations acting on behalf of victim(s), or civil society actors concerned with representing the public interest.

(For an overview of the ability of victims and others, including their representatives, to review decisions not to prosecute in various EU Member States, see REDRESS and FIDH, [Extra-territorial Jurisdiction in the European Union: A Study of the Laws and Practice in the 27 Member States of the European Union](#), at pp.44-45).

(2) Applications for VRR and the right to be understood

REDRESS welcomes the provisions of Paragraphs 17 – 19 on “How can victims exercise the VRR?”, particularly the commitment to providing sufficient information to enable victims to exercise their right to review. However, we reiterate that due to the specific nature of crimes under international law, complainants are often victims who originate from, or continue to reside in, different countries and who may have specific, individual requirements in terms of understanding information which is made available to them.

REDRESS reminds the CPS of Article 3 of the Directive, on the Right to Understand and to be Understood, which provides that:

“1. Member States shall take appropriate measures to assist victims to understand and to be understood **from the first contact and during any further necessary interaction** they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority;

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. **Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood;**

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be **accompanied by a person of their choice in the first contact** with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood” (emphasis added).

REDRESS considers that these requirements must include the provision of translation for information from the CPS, as appropriate to the needs of individual victims.

3. Do you agree that the guidance clearly sets out the basis of the victims' right to review, reflecting existing principles for reconsidering a prosecution decision?

Nothing to contribute

4. Do you consider that the proposed time limits are appropriate?

REDRESS has considered Paragraph 46 of the Guidance and commends the element of flexibility which the CPS has provided related to an extension of the time limits for victims wishing to exercise the VRR.

We hope that the CPS will continue to provide flexibility in any cases which arise in which special circumstances – for example, for victims resident abroad or in detention – would delay a victim's ability to apply for VRR beyond three months.

5. Are there any other issues you think should be considered and addressed in the guidance?

REDRESS has considered Paragraph 8 of the Guidance and commends the express intention on the part of the CPS to give effect to the right to review for victims of crime established in the Directive.

However, we note that victims' right to review is set out in Article 11 of the Directive, rather than Article 10 as stated. We imagine this is a mere misprint.

The CPS may also wish to include express reference to Recitals 43, 44 and 45 of the Directive, which further elaborate on the content and scope of the right to review.