

Crown Office and Procurator Fiscal Service

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Policy & Engagement



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Dear Sandy

COPFS Policy on dealing with reluctant complainers in rape cases

I refer to previous discussions when I advised that we were reviewing our policy on how to approach cases where a complainer in a serious sexual offence case becomes reluctant.

I am very grateful to you for attending the confidential round table consultation discussion we hosted in relation to this at the Prosecution College on 30 August 2017 and for your input to the discussions.

As explained at that meeting, in terms of our current policy and approach, where a complainer of rape or other serious sexual offending becomes reluctant, COPFS will explore the reasons for not proceeding and will seek to re-engage them, ensuring they have sufficient information about available support and other relevant factors. While each case is considered individually on its own merits and circumstances, in practice the approach has developed that the complainer's views are effectively determinative in the decision of whether or not to prosecute, with cases almost never proceeding in the face of reluctance.

As explained, we were reviewing our policy as we had concerns for a number of reasons but principally whether our current approach takes proper account of risk and safety considerations for the complainer or other members of the public, who the State has an obligation to protect. In particular, case law over a number of years from the European Court of Human Rights in Strasbourg indicates that a prosecution service which treats disengagement as a reason for not persisting with a prosecution, without considering all relevant factors, may be vulnerable if the accused goes on to commit further serious offences.



We also recognise that there are significant challenges for complainers in giving evidence in cases of serious sexual offending and domestic abuse given the nature of the abuse, the risk posed by the accused, the vulnerabilities of complainers and the current criminal justice process, which is far from perfect.

In reviewing our policy and approach, we have taken account of practices in other jurisdictions, relevant ECHR case law, feedback from you and other key stakeholders, views of our specialist prosecutors, case preparers and VIA staff within our National Sexual Crime Unit (NSCU) and High Court Sexual Offences Unit, the findings of the recent Inspectorate of Prosecution Review of Sexual Crime and have also reviewed a number of cases involving reluctant complainers.

Having carefully considered information from all these sources, the Law Officers have decided that our policy and approach needs to be revised and re-balanced and new policy guidance has been prepared, which will operate from 12th March 2018.

The revised policy makes clear that:-

- (i) The decision as to whether or not a case will be prosecuted is one to be taken by the Crown in the public interest;
- (ii) The attitude and views of the complainer will always be a very significant factor in the decision; and
- (iii) Prosecutors will require to weigh up carefully all relevant factors bearing on the decision, including factors relating to the complainer, the nature of the offending behaviour, risk posed to the complainer and other members of the public and other factors. This will often involve an assessment of the relative risks of prosecuting and not prosecuting.

Reasons for reluctance will continue to be explored with complainers and all reasonable steps will be taken to re-engage reluctant complainers.

As part of this, our revised policy recognises that keeping a complainer engaged and supported throughout the criminal justice process will often require input from a range of other agencies. It is important for COPFS to work effectively and collaboratively with other agencies in order to provide the best service to the complainer, which should in turn improve the prospects of keeping the complainer engaged during the process.

In practice, this means that where we suspect a complainer has been pressurised, intimidated, threatened or frightened into withdrawing co-operation, we will instruct the police to investigate whether any other offences have taken place. If the complainer has safety fears, we will also alert the police and ask them to consider how any identified risks or safety fears might be addressed.

In relation to other agencies, where a complainer is receiving ongoing assistance from a support or advocacy service, COPFS may contact the agency to ask them, in addition to any direct contact COPFS has with the complainer, to explore the reasons for reluctance with the complainer and also to consider what practical steps could be taken by the agency or others to address the complainer's concerns and allay their fears. Where the complainer is not currently receiving support from another organisation, COPFS will explore with the complainer whether they wish to be referred to an appropriate support organisation and, if so, VIA could assist in facilitating this.

The revised policy does not represent a fundamental shift but is more of a re-balancing of our approach. Every case will be carefully assessed and considered on its own merits and circumstances having regard to all the relevant factors and there will continue to be cases where it is appropriate that no action or further action is taken on the basis of reluctance of the complainer. Where a decision is taken to proceed with a case and the reluctant complainer will be required as a witness, this will be communicated and explained to the complainer in an appropriate manner, taking account of the bespoke Victim Strategy in place for that complainer in High Court cases, and, in other cases, any other information around communication needs and preferences.

I hope this information about our revised policy provides some reassurance of the approach to be taken. We greatly appreciate the input you provided during the review process and will welcome any ongoing feedback provided after the revised policy is implemented, including in relation to any individual cases to which the revised policy is being applied.

Yours sincerely

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