

Claims against police and prosecuting authorities involving sexual abuse and rape

- Failure to investigate or prosecute
- Abuse by police officers (and other public officials) and the way they are treated by the criminal justice system

Remedies

- Complaints against the police
- Complaints against CPS
- Victims right of review
- Judicial review of decisions not to prosecute
- - Civil claims against the police arising from failure to investigate
- Criminal charges that may arise from abuse by police officers
- Civil claims against the police arising from misconduct by police officers

Complaints against the police

- Has a police officer failed to follow basic procedures of investigation? Behaved in an inappropriate manner? Exerted excessive force? –
- refer to the new Police Code of Ethics issued by the College of Policing - http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf
- <https://www.ipcc.gov.uk/complaints> - explains how to make complaint through local police force – complaints tend to be directed towards IPCC complaints procedure
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- Claims involving death and serious sexual may be investigated by the IPCC – website provides an archive of their independent investigation reports back to 2010
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- Local police investigations – local resolution
- Local investigation
- Or referred to IPCC
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- Local investigation – can appeal
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- If unhappy with the appeal outcome – Judicial review

Complaints against CPS

- http://www.cps.gov.uk/contact/feedback_and_complaints/complaints_guidance.html
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- Investigation
- Independent Assessor of Complaints
- Parliamentary and health Ombudsman

Victims right of review applies to decisions made post June 2013

- a decision not to bring proceedings (i.e. at the pre-charge stage);
 - discontinues (or withdraws in the Magistrates' Court) all charges involving the victim, thereby entirely ending all proceedings relating to them;
 - offers no evidence in all proceedings relating to the victim; or
 - asks the court to leave all charges in the proceedings to 'lie on file'
 - http://www.cps.gov.uk/publications/docs/vrr_guidance_2016.pdf
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- **or where the decision is made by the police** that the case does not meet the appropriate test for referral to the CPS for a charging decision
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- Each police force issues their own guidance
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- can result in referral to CPS or charging

Judicial review of decisions not to prosecute

[http://www.cps.gov.uk/legal/a to c/appeals judicial review of prosecution decisions/](http://www.cps.gov.uk/legal/a%20to%20c/appeals%20judicial%20review%20of%20prosecution%20decisions/)

- Grounds:
 - Failure to apply the law correctly
 - Failure to assess the evidence correctly:
 - Serious evidence supporting a prosecution has not been considered
 - Irrational appraisal of part of the evidence
 - Decision is Wednesbury unreasonable
 - no reasonable prosecutor could reach
 - Failure to apply policy correctly:
 - Refer to Code for Crown Prosecutors – must pass evidential test and public interest test
 - Unlawful policy
 - Decision arrived at as result of fraud
 - New/inconsistent judicial decisions – may lead to fresh review of the decision
 - Eg inquest verdict of unlawful killing
 - Civil claim

Code for Crown Prosecutors

- evidential test – whether there is sufficient evidence to provide a realistic prospect of conviction
 - can the evidence be used in court? (admissibility)
 - is evidence reliable
 - is evidence credible
- If evidential test passed – then go to
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- public interest test
 - how serious is the offence?
 - Culpability of victim
 - Circumstances of victim – more vulnerable more likely to prosecute
 - Age of suspect – if under 18 – younger less likely to prosecute
 - Impact on community
 - Prosecution proportionate
 - PII – where sources of info require protecting

Civil claims against the police arising from failure to investigate

- Police immune in negligence claims arising from investigation:
- Principle of immunity from suit established in
- Hill v. Chief Constable of West Yorkshire [1989] AC 53
- Most recently the principle was re-affirmed in
- Michael and others (Appellants) v. The Chief Constable of South Wales Police and another (Respondents) [2015] UKSC 2.
- However – as affirmed in Michael above this does not prevent a claim under the HRA

DSD and NBV v Commissioner of Police of the Metropolis

- Judgment on liability Green J:
 - Establishes the state has a positive duty to investigate crimes breaching the threshold of Article 3 ECHR
 - Not limited to act by state parties but also criminal acts of 3rd parties
- Judgment on quantum – HR damages - substantial
- **Court of Appeal:** Commissioner of Police of the Metropolis -v- DSD and NBV and Alio Koraou -v- Chief Constable of Greater Manchester Police [2015] EWCA CIV 646
 - Court drew distinction between common law and Human rights duty – the former to compensate for loss, the latter to secure minimum standards of human rights protection
 - Margin of appreciation – the more severe the violation of Art 3 the greater the duty of the state to conduct a proper criminal investigation
 - not all cases where there were clear failings of the investigation would result in a breach of Art 3
- Supreme Court to hear case – March 2017
 - The government have intervened – art 3 does not extend to non state actors OR limited to structural failures not individual operational failures