RIGHT TO BE REVIEWED

PILOT TO POLICY

Amendment 49 to the Courts and Tribunals Bill

After Clause 15, insert the following new Clause—

"**Discontinuance of proceedings: victims' right to review**

In section 23A(2) of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial), for "indictment is preferred" substitute "start of the trial on indictment", as defined in section 22(11A) of this Act."

What we are seeking to achieve

The amendment will enable the CPS to discontinue proceedings in the Crown Court up until the trial bringing their opportunity to discontinue proceedings in the Crown Court in line with their opportunity to do so in the Magistrates Court. Importantly, this change would mean that proceedings could be ended at a later point and still reinstated where it is determined that the prosecution was ended in error.
For victims of crime, this is an important safeguard, which enables them to meaningfully exercise their right to challenge CPS decision making.

Why is this change needed?

- The CPS can end proceedings in two main ways in the Crown Court; within a narrow timeframe, 'discontinuing' proceedings, which allows them to reinstate proceedings at a later point, or 'offering no evidence' which they can do up until the start of the trial. This is in effect an acquittal of the defendant, meaning that, even where proceedings are ended in error, there is no means to reinstate proceedings.

- Due to the narrow timeframe for discontinuing a case in the Crown Court, where the CPS decides to end a prosecution, they often have no other option but to 'offer no evidence.'

- The Victims' Right to Review (VRR), introduced in 2013, allows victims to challenge certain CPS decisions - such as not charging, discontinuing, or offering no evidence in a case.

- For survivors of rape and serious sexual offences (RASSO) and other victims, VRR is often the only route to challenge CPS decisions – but in the Crown Court it usually comes after the CPS have already 'offered no evidence' in court, at which point the case is effectively dead.

- Unfortunately, VRR data shows that sometimes the CPS decision to 'offer no evidence' is incorrect:
  FOI data (2021–2025):
  - Over 820 VRR requests submitted in four years.
  - 106 original decisions overturned (approx. 13%).
  - In RASSO cases, 77 requests were submitted, with 9 overturned

  This proves that the CPS sometimes gets it wrong, and that victims' challenges make a difference.

- In such cases victims are left with an apology but no chance at a justice outcome because the defendant has been 'acquitted' and the prosecution cannot be reinstated.

Case Study

Jade Blue (Survivor) Jade Blue went through the Victims' Right to Review process - and while she finally felt heard, it came far too late for her case. Despite an initial decision to charge and take the case to court, the CPS later chose to offer no further evidence just 13 days before the trial was due to begin. That decision meant her case was formally acquitted. She challenged it

through VRR, and an independent prosecutor concluded a jury would likely have convicted. However, by then, the damage was already done: the case could no longer be reopened. The BBC highlighted these failings in Sexsomnia: Case Closed. Eventually, Jade Blue received an apology and £35,000 in compensation from the CPS for their wrongful decision, but no justice. This change to the legislation would mean that the CPS could discontinue proceedings right up until the trial and if, having conducted a VRR, they decided that they had ended proceedings in error they could reinstate the prosecution.

Why this matters

- There are others, like Jade, who have lost their opportunity to see justice done because the CPS, out of time to discontinue proceedings, 'offered no evidence' in their cases.

- In these circumstances the VRR is effectively redundant because the decision cannot be put right even where there has been an error.

- In general, it is not possible or realistic to demand that decision making is infallible, but this is particularly the case given the current state of the justice system and the pressures upon agencies within the system, mistakes are inevitable.

- The system asks a great deal of victims, and the VRR is one of very few opportunities victims have to challenge decisions that affect them and so it is imperative that it offers remedies that are actually meaningful.

- As well as the individual implications for victims, that fact that prosecutable offences are sometimes ended has wider implications on society because it means that perpetrators do not have to face justice.

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Background

- The CPS have 2 main methods of ending a case during proceedings in the Crown Court.

    1. To issue a discontinuance notice under s.23A Prosecution of Offences Act 1985, which permits the CPS to bring a fresh prosecution in respect of the same matter at a later point, i.e. to reinstitute proceedings. Discontinuing a case is only available to the CPS in the Crown Court before an 'indictment is preferred' which means within the first few weeks of the matter reaching the Crown Court.

    2. To 'offer no evidence' under s.17 Criminal Justice Act 1967 at a court hearing, when the CPS 'offer no evidence' this is affectively an acquittal of the defendant meaning that proceedings cannot be reinstated.

- Section 23 Prosecution of Offences Act 1985 covers the circumstances in which the CPS can discontinue proceedings in the Magistrates Court. In the Magistrates Court, they can discontinue up until the trial.

- Once a decision has been made to cease the prosecution the CPS are under a duty to communicate that decision to the court and defendant as quickly as possible. For that reason, it is usual for the CPS to formally 'offer no evidence' in a case before notifying the victim about the decision or their right to review.

- Following campaigning by Jade Blue, in June 2025, the CPS launched a pilot in the West Midlands for Rape cases, enabling survivors to be told that a decision had been made to 'offer no evidence' and to request a review before final closure. This approach aims to provide an additional safeguard, allowing decisions to be reconsidered before proceedings are halted. The scheme is being robustly evaluated to ensure the right balance is struck between victims' rights to review, the requirements of the court process, and defendants' rights to timely notification.

- The CPS have now rolled this pilot out for rape complainants across England and Wales.

Case Studies reflecting the importance of the VRR

Daria (Anonymous Survivor)
In September 2021, Daria reported offences of harassment, stalking, and image-based abuse to the police. The perpetrator was arrested in November 2021; however, confusion between police forces and errors in case handling resulted in delays and lapses in time limits for some offences. By December 2022, the CPS issued a decision of No Further Action for the most serious charges of disclosing and threatening to disclose private sexual photographs and films with intent to cause distress. This was despite Daria providing detailed evidence that the intent threshold was met. She immediately requested a review under the Victims' Right to Review scheme. Over the following months, the CPS kept her updated, requested a further statement, and in May 2023, a District Crown Prosecutor overturned the original decision. The CPS authorised two counts of disclosing/threatening to disclose private sexual images with intent to cause distress. In December 2023, the perpetrator was convicted on both counts and sentenced in Crown Court in March 2024. The CPS formally apologised for the distress caused by the initial wrongful decision.

Why it matters - *"Without the Right to Review, my case would have ended in silence. The CPS originally decided not to prosecute - despite everything I'd reported and the evidence I'd provided. It was only through the VRR process that my voice was finally heard, and justice was served. The man who targeted and humiliated me online was ultimately convicted. Survivors deserve this second chance. The Right to Review gave me mine."* - Daria

Victoria (Survivor)
Victoria was groomed and sexually abused from the age of 14. When she reported the crime years later, the CPS initially decided on "No Further Action," wrongly re-aging her as 16 and dismissing the evidence that she had been below the age of consent. Victoria requested a VRR. The first review upheld the decision, but she escalated it further. In 2021, after a second

ABE interview, the CPS overturned their decision and charged her abuser with seven counts of indecent assault. A further charge was added at trial. Her abuser was unanimously convicted on all eight counts and sentenced to 23 years in prison. He was also placed on the sex offenders register indefinitely. Despite this, Victoria endured nearly six years of delays before her trial, which left her with PTSD, agoraphobia, and severe anxiety.

Why it matters - *"After the CPS refused to charge my abuser, I requested a VRR. This led them to overturn that decision, and my abuser was later convicted. He would not have faced justice without the VRR process. My case highlights the need for VRRs to be permanently accessible to complainants so mistakes can be addressed."*

FAQs

- **Doesn't the CPS pilot address this issue?**

  The CPS have taken welcome action by piloting and rolling out a scheme which enables a VRR to take place before they formally 'offer no evidence' in rape cases. However, while the expedited Victims' Right to Review is a useful safeguard enabling challenges to prosecution decisions without court proceedings, it does not guarantee justice for all victims.
  The scheme only applies in rape cases and does not address the broader issue, which is that, save for very early in proceedings, the CPS must 'offer no evidence' to end a prosecution in the Crown Court which is fatal to the prosecution.

- **Will the pilot scheme end if this change is enacted?**

  The pilot roll out would remain unaffected by any change on discontinuance, because it remains an important strand of CPS best practice in RASSO cases.

- **How many cases would be impacted by this change?**

  In total, the CPS receives approximately 1600 requests for VRRs each year, with a small proportion of original decisions overturned. Not all of these will be cases where the CPS has offered no evidence, some will be in circumstances where the case has been discontinued, and others will relate to charging decisions. Whilst it is possible that more victims might seek a VRR if they knew the case could be reinstated, the number of VRR requests is unlikely to rise significantly. Importantly, this would mean more victims achieve justice instead of simply an apology.

- **Given the significant issues with workload and delays in the Crown Court what would the impact be on court time?**

  The CPS ends proceedings in the Crown Court by 'offering no evidence' in approximately 10,000 cases a year, which usually requires a hearing. If these hearings were no longer needed, significant savings and court efficiencies could be realised, contributing to more timely outcomes for other victims in the system.

- **Why can't the CPS extend the pilot to all offence types?**

  The pilot was used by the CPS to look very specifically at rape cases because of the specific circumstances of Jade's case. This is a small proportion of the approximately 10,000 cases in which they 'offer no evidence' at the Crown Court each year. In order to successfully run the scheme, the CPS had to get agreement from the Judiciary and have had to expedite the VRR process, turning them around within a much shorter time frame than they usually do under the scheme. It is simply not possible or realistic given the pressures on the system for them to expand the scheme to all offence types nationwide. The amendment would allow the CPS to conduct the VRR in line with their standard procedures and timeframes and this would be much less resource intensive than adopting the pilot 'expedited VRR' scheme in every case where they have made a decision to end the prosecution.

- **Will this increase the likelihood of more cases being reinstated?**

  More extensive discontinuance powers are common in other similar jurisdictions, including several Australian territories and New Zealand. While different models are used, all of them permit discontinuance more widely than in England and Wales, something which available information shows is also the case in Scotland, the United States of America and Canada.
  Critically, rates of reinstatement are very low, even where the regime is more liberal. This tends to indicate that prosecutor behaviour limits the use of the power to reinstate cases to rare cases of wrong decisions or where further evidence has become available, and to use a theoretically wide power sparingly and where appropriate.
  The power to discontinue is available in the magistrates' court up to the point of trial in England and Wales – reinstatement here is so rare it is difficult to find examples of its use.
  Each jurisdiction will have safeguards relevant to their institutional approach, and these could also be explored, should these be deemed necessary. These could include a permission hearing if the case is to be reinstated or a time limit for the period in which the power could be used, though this would have an arbitrary element.

- **Are there any other circumstances where this change could enable the CPS to reinstitute proceedings?**

  Yes, such as in response to a complaint, MP correspondence, or following an inquest. This change would also enable the CPS to re-open cases where further evidence comes to light that tips the 'code test' in favour of a realistic prospect of conviction, which they are currently largely prohibited from doing under the double jeopardy rules, which only allow the reinstitution of proceedings in very strict circumstances.

- **If the CPS reinstituted proceedings wouldn't this mean that the case would start again from the beginning, what does this mean for victims?**

Yes, this is the case. Jade, who has led the campaign for this change, is clear that reinstating proceedings would not have affected her personally and that she would have supported the CPS doing so despite any delays. For some victims, however, longer timelines may deter them from seeking a VRR. It remains essential that victims can exercise this right meaningfully, and—if CPS powers were extended—the scheme and all potential outcomes would need to be clearly explained so victims can make fully informed decisions.

- **What checks and balances already exist to ensure the CPS do not misuse their powers in respect of discontinuance and reinstitution of proceedings?**

  Firstly, the court has an inherent power to protect against an abuse of its process. It can stay proceedings which are an affront to justice.
  Secondly, the Director of Public Prosecutions issues guidance for prosecutors on reconsideration of decisions. See Code for Crown Prosecutors (part 10), and Reconsidering a Prosecution Decision, the latter guidance is the subject of a Written Ministerial Statement. The court can also use this guidance in determining whether there has been an abuse of process.
  Finally, a Deputy Chief Crown Prosecutor must oversee any decision to reinstate proceedings, see the Referrals, Approvals and Notifications guidance.

- **At Committee stage the government raised concerns about the defence arguing for the CPS to offer no evidence instead of discontinuing the case, how likely is this?**

  It is extremely unlikely, because discontinuing a case is an administrative exercise. In order for the defence to argue this, the defendant would have to first apply for the case to be reinstated, to then argue that the prosecution should offer no evidence.
  In the Magistrates Court, defendants can ask the court to continue with a case where the CPS have sought to discontinue it but in practice defendants do not exercise this right, likely because it is very rare for the CPS to reinstate a discontinued case. Defendants do not currently have this right in the Crown Court.

If the defendant had received notice of the CPS intention to discontinue then the defence could feasibly make representations to the CPS to instead offer no evidence but again because reinstituting proceedings is rare, this is very unlikely. For the majority of defendants, a discontinuance marks the end of the matter.
The CPS do not have data on instances where the defence have made this argument but as we understand it, if this happens at all, it is extremely rare.

- **During debates for the Victims and Courts Bill, government raised concerns around trial venue in circumstances where a case was discontinued in the Youth Court but later reinstated once the defendant had turned 18. Would extending the CPS powers to discontinue a prosecution in the Crown Court increase the likelihood of this happening?**

  No, at present caselaw and guidance makes clear that a child must only be tried in the Crown Court in exceptional circumstances. It is usual for most children to be tried in the Youth Court even when charged with serious offences such as rape and GBH.
  The Youth Court is part of the Magistrates Court and as such the CPS can currently discontinue a case in the Youth Court up until trial as they can in the Magistrates Court, they can also, therefore, reinstate proceedings. Extension of powers in the Crown Court will not make any difference to this.
  We are not aware of any circumstances where a case was discontinued in the Youth Court and then reinstituted after the defendant had turned 18. This is likely because as outlined above the power to reinstitute a case is used rarely.

Supporting Statements

Survivors describe post-closure VRR as "false hope," calling early review common sense that gives them back some control and safeguards against re-traumatisation.

- **Victims' Commissioner for England and Wales, Claire Waxman OBE**: *"This change is vital to ensure that, where the CPS make a decision to end a prosecution, victims can*

meaningfully challenge that decision, as is their right; and crucially, where that decision is found to have been a mistake, prosecutions can be reinstated and perpetrators made to face justice."

- **Professor Katrin Hohl OBE, Independent Advisor to the UK government on Criminal Justice Responses to Sexual Violence**: "At present, there is a gap between victims' rights on paper and victims' ability to exercise their rights in practice. Permanent early VRR narrows that gap."

- **Dame Vera Baird**: *"Jade Blue's case showed what's broken. Once CPS offers no evidence, prosecutions end forever. Early VRR is a crucial fix that must become permanent."*

- **Rights of Women**: *"Too many survivors are failed by decisions rooted in myths and stereotypes. Greater accountability through early VRR is urgently needed."*

- **Solace Women's Aid**: "Survivors must be able to challenge last-minute CPS decisions before trial. Early VRR ensures their voices are meaningfully heard."

- **Rape Crisis England & Wales**: *"In more than 1 in 5 sexual offence cases, VRR overturns CPS decisions. Survivors need this safeguard before cases are closed, not after."*

- **Beacon Hertfordshire / Catch 22**: "*Early VRR restores a sense of autonomy for survivors, helping rebuild trust in the justice system."*

- **Charlotte Proudman, Barrister**: "*Permanent early VRR is essential if we are serious about transparency, accountability, and centring survivors' rights.*"

- **Professor Betsy Stanko OBE**: "*Current VRR comes after the "door has closed on justice." Early VRR keeps the door open - it must not be limited to one pilot area.*"

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- **Harriet Wistrich, Centre for Women's Justice**: *"The VRR pilot enables victims to challenge flawed decisions to stop cases after charge. We believe it will increase access to justice and must be made permanent."*

