



Decision Reviews

Introduction

These Guidelines set out the principles applying to, and the process for, conducting internal reviews of operational decisions made by Ombudsman staff in handling complaints received by the Ombudsman under the *Parliamentary Commissioner Act 1971 (PC Act)*.

It applies in circumstances when a request is received from a complainant who is not satisfied with the outcome of their complaint and wants a review of the decision made by the Ombudsman's office.

If the complainant wants to complain about the way we have handled the complaint, that is, the conduct of our staff or our policies and procedures, rather than about our decision, the matter should be treated as a 'complaint' and handled in accordance with the Complaints Policy (once drafted).

Definition of an operational decision

Operational decisions are decisions made by Ombudsman staff in relation to complaints received under the PC Act and generally include, but are not limited to, the following decisions:

- Decisions made not to investigate a matter;
- Decisions made to discontinue an investigation; and
- Decisions made in finalising investigations.

Principles

The following principles apply to dealing with external requests for reviews of operational decisions:

- Complainants do not have a legal right to have a decision of our office reviewed. However, the Ombudsman is committed to providing complainants with a service that reflects best practice administration. As part of this service, the Ombudsman offers complainants who are dissatisfied with a decision we have made the opportunity to have that decision reviewed by the Assistant Ombudsman Complaint Resolution (**AOCR**).
- Reviews are undertaken by the AOCR, who may appoint a Reviewing Officer to assist them. The Reviewing Officer should be a senior officer at least of the same level as the original case officer.
- The decision to undertake a review is not automatic, and the complainant must supply sufficient evidence to persuade the AOCR that a review is justified. It is not sufficient to merely disagree with the view formed by the investigating officer.

- Requests for review will be handled in a fair, timely, professional manner and in accordance with these instructions.

The purpose of a review is to confirm whether the original decision should stand, not to conduct a separate or new investigation.

- Any information provided to the complainant should restrict itself to the review of the decision itself, and not discuss matters outside our jurisdiction or which concern third parties.
- As a review can often require substantial resources it is the policy of this office to review a decision only once.

Procedure

The following procedure is to be followed when dealing with requests for reviews of operational decisions of the Ombudsman in relation to its complaint handling function.

The procedure is summarised in a flow chart at Attachment No. 1.

Informal Resolution

If a complainant complains about our operational decisions by telephone or in person, in the first instance, they should be referred to the officer who dealt with the original complaint (or their supervisor or Team Leader if the person refuses to deal with the original investigator) who will try to resolve the matter.

During the conversation, the officer should acknowledge the complainant's views and try to address their specific concerns. The officer should also clarify and explain the reasons for their decision.

The officer should ask the complainant if they are satisfied with the explanation and if they would like any further action to be taken. If the complainant is satisfied with the outcome of the conversation, the officer should record the information on the file and in Resolve and advise their manager. No further action is required.

If the complainant wants further action to be taken, the officer should explain the review process and ask the complainant to write to the AOCR explaining their reasons why they believe a review should be undertaken. The officer should advise the complainant about the Ombudsman's Information Sheet on *Requesting a review of a decision* and the type of matters the office considers when a review is requested, as set out in Attachment 2. The officer should then record the information on the file and in Resolve and advise their manager. No further action is required.

If the officer who dealt with the original complaint was either a Director or Team Leader, and the complainant refuses to deal with that person, the complainant should be advised to write to the AOCR with their concerns.¹

¹ This is because as the AOCR will be responsible for undertaking the Review they should not prejudge the matter until they have properly considered all the relevant matters.

Deciding to Review

When the written request for review is received, the request must be referred to the AOCR who will acknowledge the request in writing before determining whether the request for review will be approved.

If the request for a review concerns a decision that the AOCR was involved in making the request should be discussed with the Deputy Ombudsman to identify the appropriate person to handle the request.

The decision to undertake a review is not automatic, and the complainant must supply sufficient evidence to persuade the AOCR that a review is justified. It is not sufficient to merely disagree with the view formed by the investigating officer.

If the AOCR believes a review is not warranted they will document their reasons and inform the complainant of that decision.

If the AOCR believes a review is warranted they may appoint a Reviewing Officer to assist them with the review. The Reviewing Officer should be of a level at least that of the original case officer. In some cases the AOCR may indicate specific approaches to be adopted or require a plan to be submitted by the Reviewing Officer.

Reviewing a File

The purpose of a review is to confirm whether the original decision should stand not to conduct a separate or new investigation.

In reviewing the decision based on the evidence available at the time the Reviewing Officer should consider the following matters and whether:

- The complainant had an adequate opportunity to put their case;
- All significant arguments considered;
- The investigating officer had a conflict of interest and acted without bias;
- The decision made, or the view formed by the investigating officer was reasonably open to them on the basis of the evidence;
- Adequate reasons were given for the decision; and
- The investigating officer followed the Ombudsman's prescribed procedures for the conduct of an investigation.

In addition, before recommending that the investigation be reopened, the Reviewing Officer should consider the following matters:

- The likelihood of being able to obtain new evidence (including that already provided by the complainant with their request for a review);
- Whether the administrative processes which contributed to the original complaint have been rectified;

- Whether any practical outcome can be achieved for the complainant;
- Whether the matter has also been investigated by another external agency;
- The public interest; and
- Whether re-investigating the matter is an efficient and effective use of our limited resources.

In assessing the above matters the Reviewing Officer should:

- Consider the evidence on the file;
- Consider the views of the complainant; and
- Identify any gaps in evidence or reasoning that would undermine the original decision.

A request for review does not provide an opportunity to open up the whole case, and the review should focus on the issues raised by the complainant in the request for review. New evidence will not be considered as part of the decision to review the original decision, but if significant new evidence is provided by the complainant it should be considered and drawn to the attention of the AOCC.

When conducting the review the Reviewing Officer may need to contact the complainant to clarify matters they have raised in their request. Occasionally, the Reviewing Officer may also need to clarify with the public authority the process followed by the original investigating officer when conducting the investigation, however, there should be no need to clarify the information previously supplied.. If the Reviewing Officer considers that inquiries beyond this are necessary they should discuss the matter with the AOCC as this will probably indicate that the case should be re-opened rather than a review conducted.

The Reviewing Officer should notify the original investigator of the issues raised in the request for review with the officer who originally handled the case, and may obtain information from them on the process followed.

The outcome of the review

If, after reviewing the file, the Reviewing Officer believes that the original decision should stand, they should document their reasons and provide their recommendation, together with a draft letter to the complainant for the AOCC's signature to the AOCC.

If the Reviewing Officer believes that the original decision was wrong, for example, that the matter should be investigated when it was not; that relevant considerations may have been overlooked in the original investigation; or the decision to discontinue an investigation was wrong; they should document their reasons and provide their recommendation, together with a draft letter to the complainant for the AOCC's signature to the AOCC.

The AOCR should then inform the complainant of their decision, recording the outcome on the file and on Resolve.

If the review sustains the complaint the AOCR will arrange for a new complaint file to be opened, with a new complaint number and, in general, for it to be allocated to a new case officer.

The AOCR must tell the staff member who originally dealt with the matter of the outcome of the review, and provide them with the opportunity to respond to any adverse views.

Record keeping

The Reviewing Officer should document details of their review in file notes on the file and in Resolve. This includes but is not limited to:

- Decisions on key decision points in the review process such as decision to confirm that a review will or will not be undertaken;
- Telephone discussions or meetings with the complainant;
- Telephone discussions or meetings with the public authority;
- Identification of material considered; and
- Reference to any additional material necessary to reopen the case.

The review decision

The AOCR decision on the review will be final. If the complainant writes to the office requesting a further review, the AOCR will consult the Deputy and subject to any comments write to the complainant to advise that the matter will not be reviewed further. A copy of this letter is to be saved in the file and Resolve.

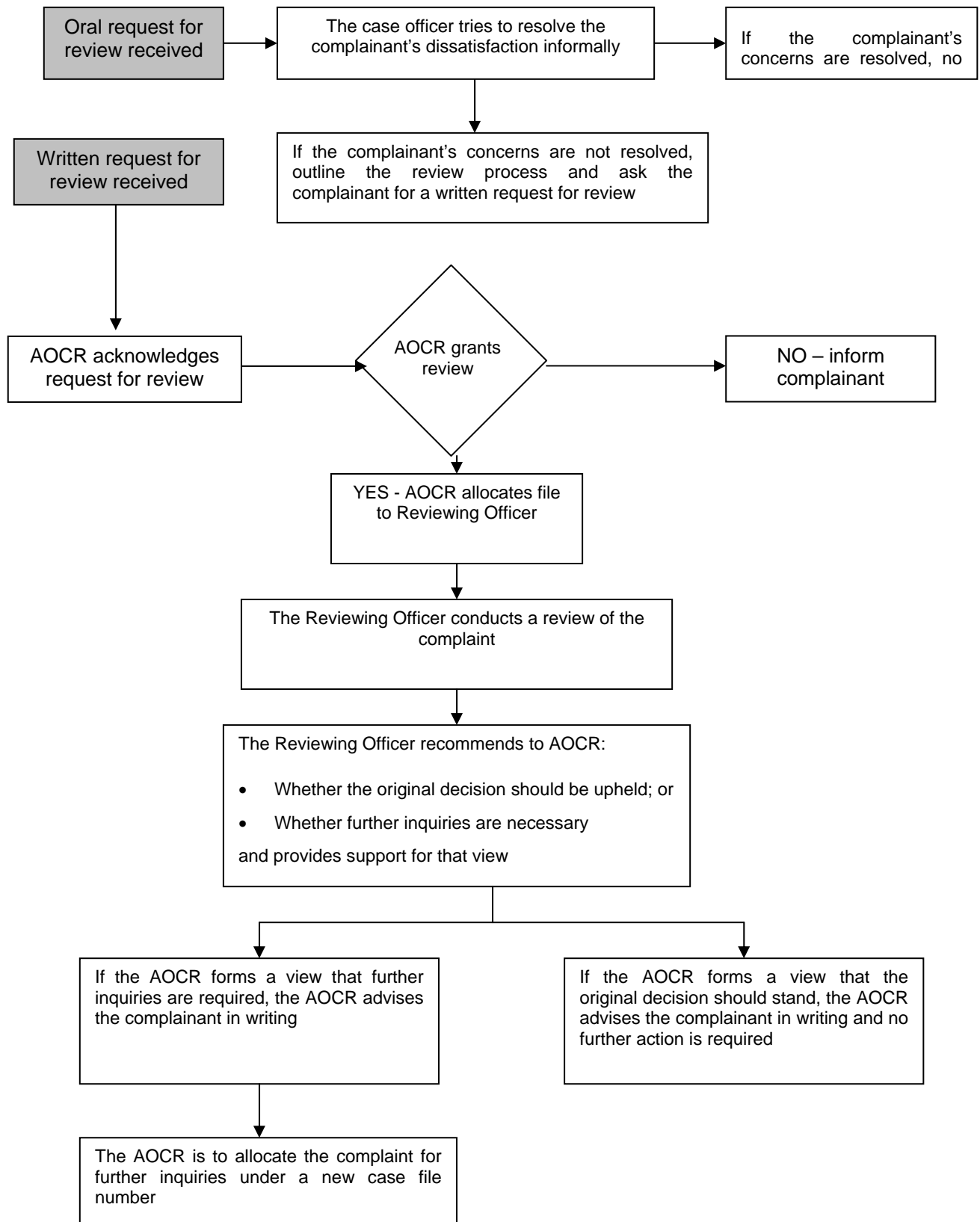
Discontinuing a review

The AOCR may discontinue a review at the request, or death of the complainant at any time.

Departures from the normal review process

Any departures from the review process set out in this practice note must be authorised by the Ombudsman or Deputy Ombudsman.

Attachment 1 - Outline of the Review Process



Attachment 2 – Factors to be taken into account during a review

In deciding whether the original decision was fair and reasonable and should stand, or whether further investigation is warranted, the factors we consider are:

- Determining whether the original decision was fair and reasonable
- Did the complainant have an adequate opportunity to put their case;
- Were all significant arguments considered;
- Did the investigating officer have a conflict of interest and act without bias;
- Whether the decision made, or the view formed by the investigating officer was reasonably open to them on the basis of the evidence;
- Were adequate reasons were given for the decision; and
- Whether the investigating officer followed the Ombudsman's prescribed procedures for the conduct of an investigation.

In determining whether a further or new investigation is warranted²:

- the likelihood of being able to obtain new evidence;

Here the age of the original complaint is relevant, as is ready access to witnesses. If we do not believe we will be able to obtain new evidence which can materially affect the outcome of the matter, we would be unlikely to pursue it further.

- whether the administrative processes which contributed to the original complaint have been rectified;

Where processes have not been rectified, we would want to look into the matter further. However where the problem no longer exists we are unlikely to take the complaint further since there would be limited practical effect.

- whether any practical outcome can be achieved for the complainant;

In combination with the point above, we consider whether any further action by the Ombudsman could personally assist the complainant. If the agency complained about has amended its processes and no practical benefit (such as redress or an apology) can be obtained because the events occurred too far in the past, we would be unlikely to reopen the matter.

² These factors are set out in the Ombudsman's Information Sheet *Requesting the review of a decision* which is available on our website.

- whether the matter has also been investigated by another external agency;

In those circumstances we would consider whether the complainant has had reasonable opportunity to put their case forward, and the relevant body has followed a fair and reasonable investigative process.

- whether re-investigating the matter is an efficient and effective use of our limited resources.

In all the circumstances whether further investigation warranted.