

# **Guidance on reviews of determinations**

## Introduction

Paragraph 31 of the [Housing Ombudsman Scheme](#) provides that the Ombudsman make provision for review of the Ombudsman's determinations. There are three drivers behind the need for a provision for review.

### *Fairness*

There is no appeal against the Ombudsman's determinations. Our process must however be conducted in a way that is fair to the parties. This means that we must provide an opportunity to the parties to understand and challenge the basis of our determinations.

### *Customer care*

People often seek review of our determinations because they do not agree with them. However, there are also those who may not understand them. A review can be used to help the parties understand our decisions. It is an opportunity to provide further explanation where the parties appear not to have understood either the determination itself, or the way in which it was made.

### *Risk mitigation*

In the absence of an appeal mechanism the only route available to the parties to challenge any of our decisions is to seek judicial review. Although opportunities for the parties to seek judicial review are limited, the consequences for the Service could be serious. Reviewing a determination mitigates against the risks of both judicial review proceedings being started and being successful.

## Which determinations are subject to review?

We determine complaints in the following instances:

- Jurisdiction decisions under paragraphs 23 to 24 and paragraph 32(a) and (d)
- Decisions to suspend or stop investigation under paragraph 32 (b) and (c)
- Investigation and findings under paragraphs 42 and 43.

## Who can ask for a review?

The review process is open to people and organisations who have received a determination from us.

## How to request a review?

A review request can be made:

- in writing
- by email
- over the phone, and confirming the request in writing with the party.

## What is the time limit for making a review request?

A review request should be made within **three weeks** of receiving our determination letter, unless the party requesting the review can show special circumstances that

meant they were unable to meet this timeframe – e.g. they were out of the country, in hospital.

The person carrying out the review will decide whether to accept the late review request taking into account all the circumstances of the case including the length of time the parties had to wait for a determination. We need to be sure that we consider each request and do not fetter our discretion.

### **What are the bases for review?**

Paragraph 31 of the Scheme sets out when we must conduct a review of a determination whether or not it is formally presented as a review:

*‘The Ombudsman will make provision for a review of the Ombudsman’s determination of a complaint subject to the parties:*

- a) providing new facts and/ or evidence; or*
- b) making comments on or challenging the facts and /or evidence on which the Ombudsman made the determination.’*

This means that a review can be requested on the following grounds:

- we made our decision based on important evidence that contains facts that were not accurate, and the party can show this using readily available information.
- a party has provided new and relevant information that was not previously available and that affects the decision we made.
- comments on the facts/evidence relied on to make the determination.

### **Paragraph 32(a) and (b) Early Resolution (ER) (dependent on ER Policy changes)**

ER determinations under paragraph 32(b) and (c) are usually as a result of agreement between the parties in relation to the way forward to resolve a complaint. A determination **reflects the terms on which agreement was reached**.

A review request of an ER determination is likely to arise if there are factual inaccuracies or the terms of the agreement reached was misunderstood by the parties.<sup>1</sup>

### **Referring back to the parties following a review request**

Reference back to the parties may not always be necessary as the matters raised can be addressed in the **review response**, for example:

- factual inaccuracies can be corrected

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<sup>1</sup> Remember that two factors impact on ER determinations: (a) if recommendations form part of the agreement, they may not be implemented, or (b) the dispute may not reach a resolution. Where recommendations are not implemented, a case owner should take this up with the member landlord. This would not fall into the category of a review. Where ER does not resolve the dispute the case will move to investigation and a determination will be issued. That determination would be open to review.

- parties' comments on the facts/evidence
- if new or relevant information was provided which will not result in a change to the findings, orders and/or recommendations. These can be addressed in the review response.

### **Cases when we will always refer back to the parties**

We will **always** refer back to the parties if the new information will result in a change to the findings, orders and/or recommendations. This provides the parties with the opportunity to:

- consider the new information
- comment on the proposed changes.

We can then issue the revised determination taking account of those further comments without the need for a further review.

### **Time-period for completing the review**

It is important to recognise there is a balance between having sufficient time to carry out a review and the need to provide the parties with the review decision in a timely manner.

The time-period will depend on the circumstance of the review request:

- If we have not had cause to refer back to the parties a review should be completed within **four weeks** of receipt of the request.
- If we must refer back to the parties the review should be completed within **six weeks** of receipt of the request.

### **Who carries out the review?**

In the interests of fairness and transparency a review should be conducted by someone unconnected with the original decision.

## **Review procedure**

The original caseworker will consider the request for a review and decide whether the review grounds are met. If the request is out of time or there are no grounds to review the determination the caseworker will advise the customer requesting the review of the decision and will ensure that a record is kept on the case file of the reasons for the decision. The caseworker will inform their manager that this action has been taken.

The case should be moved to review on Workpro and completed.

Enter 'no change in decision' and then add 'review refused' in the box underneath.

(NB – Workpro is to be updated to add 'refused' to the available options to simplify this).

A Dispute Resolution Manager (DRM) **with no previous involvement in the case** should complete and sign the review.

### **The case owner on receipt of a request will:**

- Confirm the review request was made within the three week time period. If not, decide whether there are any special circumstances to consider.
- Re-open the case if closed.
- Move the case into the Post Formal Resolution stage of the workflow (will change to review following CMS changes).
- Acknowledge the request in accordance with our Customer Care Standards.
- Notify both parties that a review request has been made and whether the orders and/or recommendations are suspended pending review.
- Enter name of reviewer.
- Consider the request for review, decide the basis for it and draft a memo for the reviewer addressing salient points.
- Ensure all relevant evidence is on file and flagged.
- Pass the case to the reviewer.

### **The Reviewer**

The reviewer should be a DRM who has had no previous involvement in the case.

The reviewer will:

- Identify if information and/or evidence provided has already been considered as part of the determination.
- Identify if there is new information and/or new evidence provided.
- Identify if the information and/or evidence relied on in the determination was inaccurate.
- Consider whether the determination and reasons for it were clearly expressed, or whether there is room for improvement in our review (if it is

clear that the parties have not understood the basis of our decisions, we should always consider providing additional explanations).

- Decide if either party should be asked to comment on any new information and/or evidence before issuing the review.
- Decide if there is any inaccurate information and/or evidence which was relied upon and which will require correcting in the review.
- Decide if the request for a review is, in fact, the party disagreeing with the outcome of the determination.

The reviewer will also consider:

- if any further information and/or evidence is required before drafting the review; and
- if there is likely to be a change to the determination and/or findings, provide an opportunity for the parties to comment and refer back to parties and set a deadline for response.

### **The review response**

The response must:

- Address the complaint we investigated and the determination made.
- Address the basis upon which the review is requested.
- Consider whether the request for a review is, in fact, the party disagreeing with the outcome of the determination and, if it is, say so.
- If there is new evidence, explain whether it does/does not impact on the determination made.
- If evidence and/or facts relied upon are inaccurate, acknowledge this and make the amendments.
- Explain why new evidence and/or facts necessitate a change to the determination.
- Confirm the determination made **or** reflect any changes as appropriate.
- Confirm the case is closed and thank the parties.

### **Note**

- If orders and/or recommendations are made, the case remains open with a date for compliance as appropriate.

### **Who signs the review response?**

The review response will be signed by a DRM.

**Once signed by the DRM, the reviewer must send a copy of the review to both parties.**