



Ombudsman for Children's Office
Appeals Policy and Procedure

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OCO Policy and Procedure for Appeals by Complainants about a Case Decision

1. Introduction

- 1.1 The OCO values the feedback from both Complainants and public bodies throughout and particularly at the conclusion of our preliminary examination process. It is important to the OCO that any decision we make in relation to a complaint are fair, transparent and are understood to be in accordance with the Ombudsman for Children Act, 2002 (the 2002 Act) .
- 1.2 At the preliminary examination stage, a Caseworker and Supervising Investigator are usually the original decision makers in determining the OCO's role in the complaint.
- 1.3 The vast majority of cases examined by the OCO are concluded at a local level within 6 months. The outcomes can be a combination of:
 - Advice to the Complainant:
 - OCO intervention to bring about local resolution
 - OCO using the information to highlight concerns and promote better legislation and administration relating to the children
- 1.4 A small number of the complaints received in the OCO proceed to a full statutory investigation. When dealing with complaints involving children, it is important that we get our decision right and in a manner that can bring about positive outcomes.
- 1.5 If the OCO has examined a complaint and the Complainant is unhappy about the decision, there may be circumstances where we will reconsider that decision. For example, the Complainant may feel that the OCO decision on their case was incorrect or that it failed to take account of all evidence relating to their case.
- 1.6 When we conclude cases, we invite feedback from both Complainants and public bodies. We have always acted upon this where Complainants feel we have got it wrong, by looking at how we dealt with the case, what we relied upon and how we communicated this to all sides in the complaint.
- 1.7 In the past, this has meant that the OCO has;
 - Re-opened cases that were concluded to determine if an investigation is required
 - Re-engaged with public bodies to try and improve the outcome for the child
 - Further and better explained the decisions we have made
- 1.8 Not every appeal request results in a re-examination of the complaint but our open approach to this feedback ensures that we are independent and fair. It also helps the Office to improve how we conduct our complaints and investigation function.

- 1.9 There is a key difference between an appeal request on a decision we have made and a complaint about how we may have interacted with a Complainant. As a complaint handling body we can appreciate how it may be sometimes difficult to distinguish between the two. It is important however that any concerns about how we have interacted with a Complainant are dealt with separately to appeals on decisions we have made. A separate complaints procedure, exists for complaints about the way the Office interacted with a Complainant. This procedure is called “*How to Complain about how we dealt with you*”. The details are available on the website or by contacting the Office.
- 1.10 The aim of the OCO Appeals Policy and Procedure is to place on a formal basis our approach to date when Complainants tell us that they feel we have not made the correct decision.

2. Overview of OCO Appeals Procedure

2.1 As an ombudsman’s office we operate a free, independent and impartial complaint handling function. Under the 2002 Act the OCO is **not** statutorily obliged or required to have an appeals process in place, nor are we obliged to review every decision that we make, but we consider it good practice that decisions that we make, if incorrect should be redressed or reconsidered.

2.2 The OCO has determined that the following elements apply to the appeals procedure:

2.2.1 Process- Submitting an appeal request

- There is no automatic right to an appeal of a decision
- A request for an appeal must first satisfy strict criteria for an appeal before it is accepted for consideration
- Complainants have one opportunity at an appeal request. There is an onus on Complainants to submit all the relevant information in support of their appeal request.

2.2.2 Outcome of a successful appeal request

- A successful outcome to an appeal request is that the OCO will review the decision which has been made, in accordance with OCO legislation. An OCO review of our decision is not and should not be considered as being a finding, criticism or adverse comment with respect to the public body involved.
- If the OCO has made a mistake, we will openly acknowledge it and make efforts to remedy the matter as efficiently as possible
- If the case needs to be reconsidered, the OCO will, where possible and appropriate, assign this review to a person who has had no previous

involvement in the case and who is at the same or a more senior level than the original decision maker

- Any re-examination or reconsideration of a complaint following an appeal request and subsequent review shall be done in accordance with the 2002 Act. The purpose of a preliminary examination is to determine whether an investigation is required and if an issue can be best resolved at a local level between the parties involved.

2.2.3 *Exclusions*

- The OCO will not consider a request for an appeal of an OCO decision where we have determined that the matter should be or is best addressed at a local level between the Complainant and the public body. This is in line with our policy to support and promote local resolution where possible and appropriate.
- The OCO will not consider a request for an appeal regarding a public body or type of action, inaction or decision that is not within the investigative remit of the Ombudsman for Children Act 2002 as amended by the Ombudsman (Amendment) Act 2012.
- The OCO will not consider a request for an appeal of an OCO examination that has progressed to full investigation stage.

2.3 *Communication of OCO Appeals Procedure*

- Information on how to use this appeals procedure is included on the OCO website.

2.4 *Operation date*

- This policy comes into place on the **19th day of May 2014**. All OCO decisions issued before this date are **not** subject to the Appeals Policy and Procedure.
- We commit to reviewing the operation of the Appeals Policy and Procedure on a regular basis.

3. Administration of OCO Appeals Process

3.1 The procedure is administered by the **Appeals Manager**. In this process the Appeals Manager is the Director of Investigations who will decide on the admissibility of appeals, allocate them to individual staff members for review and collate statistics on the numbers received and outcomes. While it is not intended that the Appeals Manager would undertake substantive reviews, due to the small size of the Office this may sometimes be necessary.

3.2 The procedure provides for a possible internal review in the event that a Complainant is unhappy with the outcome of their original complaint. Where possible, the **Reviewer** will be a person who has had no previous involvement in the case and who is at the same or a more senior level than the original decision maker.

- 3.3 The Reviewer will consider the complaint file, the admissible appeal request and internal OCO comment and make a written determination on the merits of the appeal which is provided to the Appeals Manager. The Reviewer may also recommend a number of actions to occur which are also provided to the Appeals Manager for approval. Those actions include;
- Providing greater clarity and rationale of OCO decisions
 - Re-engaging with the public body or school complained against to promote local resolution, or amend OCO recommendations which may have been made
 - Re-engaging with the public body or school complained against to seek further information or amend OCO decision which has been made
 - Re-examining the complaint in accordance with the 2002 Act.
- 3.4 The original decision maker will have an opportunity to comment in every case on the merit of the appeal, having regard to the *Criteria for Acceptance of an Appeal* as set out in Section 4.2. In all cases the original decision maker will be notified of the Reviewer's preliminary decision and afforded an opportunity to comment in advance of the Reviewer's final decision. (Note: For the purposes of this document the term "Caseworker" means the person who is primarily responsible for dealing with a complaint file, regardless of the grade of that person.)

4. Criteria for Acceptance of an Appeal

- 4.1 The OCO will not consider a request for an appeal of an OCO decision where we have determined that the matter should be or is best addressed at a local level between the Complainant and the public body. This refers to complaints where we have advised Complainants or have taken our own steps to promote local resolution.
- 4.2 In deciding whether to review or re-open a case, the Complainant will be asked to demonstrate that:
- new relevant evidence/information has become available which might have had a bearing on the original decision in the case or
 - there was a failure on the part of the Office to examine a relevant and substantial issue or
 - there was a failure on the part of the Office to obtain relevant and necessary information from the body concerned or
 - the body's stated position is incorrect (this should be supported by evidence, where possible) or
 - the complaint has been misinterpreted or misunderstood by the Office or
 - the decision of the Office was incorrect or unreasonable in the context of the complaint made or the particular circumstances of the case and
 - the appeal is made in reasonable time i.e. not more than one month since the decision was made. Where an appeal application is received outside this time

limit, the Appeals Manager (see section 4.2 below) may accept it on a discretionary basis, depending on the particular circumstances.

5. The Appeal Process

5.1 Stage 1: Making an Appeal

In circumstances where the Complainant is dissatisfied with the decision made by the OCO at the conclusion of a preliminary examination of his/her complaint, he/she may submit a written request for an appeal.

5.2 The Appeals Manager will log the written request for an appeal on the complaints database and send a letter of acknowledgement to the Complainant within 5 working days. In the letter of acknowledgement, the Appeals Manager will explain that:

- an appeals procedure exists and details of how to make an appeal is included on the Office's website
- appeals must be made within one month of receipt of the closing letter
- only one appeal is allowed
- all necessary information must be provided in that appeal to assist in the decision to re-open the case and to review the original decision
- clear, substantive reasons for the appeal must be given which address the criteria at section 4 above for the acceptance of an appeal.

5.3 From the date of the acknowledgement letter, the Complainant is provided with 7 working days to provide his/her full appeal submission, including all relevant information or relevant argument to the OCO.

5.4 Stage 2: The Caseworker and Supervising Investigator

- The original decision makers, usually a Caseworker and Supervising Investigator, on receipt of the appeal request, will examine its contents and write a short note on the complaints database responding to the points made. The note should deal comprehensively with the arguments advanced by the Complainant and state why he/she feels the case should or should not be re-examined or the appeal upheld.
- Where the appeal is made on the basis of new, relevant information, the Appeals Manager should be informed of this.
- The original decision makers will provide the note to the Appeals Manager within 5 working days of receipt of the Complainant's full appeal submission.

5.5 Stage 3: The Appeals Manager

- If it is apparent that an appeal request does not meet the relevant criteria (listed in Section 4.2 above) the request will be denied and the Appeals Manager will notify the Complainant accordingly. This Office will not consider an appeal or review of this decision. The Appeals Manager will record this decision on the complaints database.
- Where an appeal request is accepted by the Appeals Manager, it will be recorded on the complaints database in a manner which clearly identifies it as an appeal.
- If the appeal is based solely on new information, the Appeals Manager will determine if it is relevant, note this is for the purpose of statistical records and the case will be returned to the original Caseworker & Investigator, where possible, for re-examination and closure. Apart from advising the Complainant of this development, the Appeals Manager will have no further input into the case. The Caseworker and Investigator should endeavour to close the case within one month from date of letter advising of the re-examination of the complaint. If it is likely to run over that time then the Complainant should be notified ahead of time. The Caseworker or Investigator will write to the Complainant to advise of the outcome of the re-examination of the complaint.
- Where the appeal is based on perceived flaws in the original process or decision (see Section 4.2), the Appeals Manager will forward it to a Supervising Investigator (other than the original Supervising Investigator), or where this is not practicable, to another Caseworker of at least the same grade level as the original decision maker(s).
- Where the appeal has been returned to the original Caseworker, or allocated to a Supervising Investigator or another Caseworker, (the latter two referred to hereinafter as "*The Reviewer*"), the Appeals Manager will advise the Complainant accordingly. This letter will outline the likely timescale for finalising the appeal.

5.6 Stage 4: The Reviewer

- The Reviewer is assigned the complaint by the Appeals Manager, considers the appeal and the note of the original decision maker(s).
- The Reviewer makes a determination on the merits of the appeal request and may recommend a number of actions to occur. Those recommended actions are to be agreed by the Appeals Manager. Those actions include:
 - providing greater clarity and rationale for OCO decisions
 - re-engaging with the public body or school complained against to promote local resolution, or amend OCO recommendations which may have been made
 - re-engaging with the public body or school complained against to seek further information or amend OCO decision which has been made
 - re-examining the complaint in accordance with the 2002 Act.

- The Reviewer should endeavour to reach a decision on the case within one month.
- The Reviewer drafts and issues the outcome of the review to the Complainant and is responsible for any follow up contact which may be required.
- If proposing to amend the original decision or recommendations, the Reviewer will first consult with the original Caseworker(s).
- If a review decision is not possible due to the complexity of the case, but reason has been found to re-examine the case, the Reviewer, following consultation with the Appeals Manager, may return the case to the original Caseworker with instructions or suggestions for re-opening the case.
- The Reviewer will document the determination, proposed action (final outcome or decision to re-examine case) and rationale and notify the Appeals Manager of this decision.
- The Reviewer will write to the Complainant to advise him/her of the determination on the appeal.
- If a decision is made to carry out further re-examination of the complaint, the complaint will be assigned to a Caseworker. The outcome of the examination will be forwarded by the Caseworker to the Reviewer for consideration. The Reviewer will make the final decision in relation to re-examined complaints, which will be reported to the Appeals Manager and communicated to the Complainant. The decision by the Reviewer is final and cannot be further appealed.

5.7 Stage 5: Appeals Manager

- The Appeals Manager will consider the Reviewer's determination on the appeal, outcome of the review and any proposed actions. This may include the outcome of a complaint which has been re-examined.
- The Appeals Manager's role is to ensure that the grounds for appeal as submitted by the Complainant have been adequately and appropriately addressed.
- The Appeals Manager will consider and agree any proposed closing letters to Complainants to be issued by the Reviewer.
- The Appeals Manager will ensure that where the appeal is upheld, the Complainant is provided with an explanation of the change in outcome. Where appropriate an apology will be issued by the OCO to the Complainant. Where the appeal is not upheld, reasons will be provided.
- Where the appeal request is upheld, the Appeals Manager will discuss with the Reviewer whether any procedural changes should be put in place to avoid a recurrence of the matters relating to the appeal.
- The Appeals Manager will maintain statistics on the numbers of appeals and the numbers upheld. He/she will also identify the number of appeals admitted based solely on new relevant evidence/information becoming available.