

**Decision Making Tool for Complaint Investigators**

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Before you start

As a complaint handler you need to make fair, accurate and effective decisions about complaints. As a decision maker you do more than just apply a set of rules to solve a problem. You evaluate information and use your judgement to arrive at the best decision you can make in the circumstances. To do this you need to be decision ready. This means that you are comfortable about making a decision and confident about decisions you are making.

Being decision ready includes being as sure as you can be that:

* You have the right knowledge to make decisions.
* Your decision is impartial.
* You have no direct conflicts of interest.
* Your decision is free from bias.
* You are making your decision under the best possible thinking conditions.

Knowledge

Good decision makers know themselves and their limitations. They understand their own strengths and weaknesses. In particular, they understand their own circle of competence in relation to decision making. This means that they know what they know. It is very easy to mistake familiarity for knowledge – “I’ve seen one of these before, so I already know the answer”. Pride can get in the way here sometime – not wanting to admit that you don’t know something or feeling that people will think less of you if you ask for help. Good decision makers aren’t afraid to admit what they don’t know, and they recognise when they need to ask someone else who may have greater knowledge or expertise. Seeking expert advice does not mean that you are handing over responsibility for reaching a decision – it means that you are gaining additional evidence, help and support to help you reach a sound decision.

Independence of mind

Good decisions makers are impartial. To achieve this, you will need to have independence of mind. Where you are investigating your own organisation’s action it will be very difficult for you to be fully independent – you can, however, take steps to ensure and demonstrate that your thinking isn’t unreasonably influenced in any way or by anyone when you are making your decision. It can be difficult to make an independent decision for example if you work in a small organisation or team or are being asked to make decisions where those involved are more senior to you. Often you will need to make tough decisions about issues involving people you know. You need to be scrupulous about making you decision based on the evidence and be able to recognise if you are being swayed or influenced by something or someone else.

Conflicts of interest

Good decision makers have no direct conflicts of interest. A direct conflict of interest exists when you have, or appear to have, a personal interest in the decision. For example, where you are reviewing a decision which you yourself originally made. You should make known immediately – usually to a more senior person – any personal interest that you have in the complaint, and if needs be, ask for someone else to make the decision. An indirect conflict of interest might arise from a perceived or assumed interest – for example, because you know the people involved in the original decision even though you didn’t make the decision yourself. In these situations, it may not be practical for anyone else to investigate. Instead, you should ensure that your investigation and decision making demonstrate that you are free from direct conflict of interest.

Bias

Good decisions makers make decisions with as few biases and assumptions as possible. They also know and understand their own biases. Implicit bias is when you discriminate for or against a person in some way. We all make unconscious assumptions which influence our judgements. For example – we may have expectations or assumptions about characteristics associated with age, status or gender. We often apply generalisation which may not be accurate. You may also be biased by your experience of a complainant – it can be hard not to be affected by behaviour you find particularly challenging or difficult. We also have cognitive biases which affect the way we think – for example, we tend to give more weight to information that is more recent or readily available, we put too much emphasis on one piece of information when making a decision and we tend to prefer information which confirm what we want to believe. You can minimise the risk of bias by adopting rational, logical approaches to investigation. You will find more information about biases and how to achieve a rational and logical approach.

Thinking conditions

Good decision makers know what’s needed to allow them to make their best decision. Unfortunately, our judgement can be influenced by factors unconnected with the decision. These include how hungry you are, what the weather is like and what mood you are in. Time pressure can result in a rushed or hasty decision, rather than a measured one when you had the opportunity to weigh up the pros and cons. Self-reflection can help here – look back on your past decisions, good and bad, and think about what helped. Recreating the right conditions and avoiding the problems will help you make better decisions – they are seen to be accurate and consistent? Ideally you should build in time to deliberate so that you can set aside your initial conclusions and come back to review them later. Practically, there will often be deadlines to meet and you will need to balance competing demands.

Step 1 – What questions are you answering?

This is arguably the most important step in ensuring an effective investigation and a robust decision. You need to be very clear in your own mind about the exact questions you are setting out to answer. You need to check that you and the complainant have the same understanding of those questions.

* What complaints do you think the complainant wants answered? Make a list, but make sure it is manageable. If there seems to be numerous issues, try to find the common theme.
* Read through (or listen) the complaint and write down a list of all the issues you found.
* Have you checked with the complainant that you have properly understood these? Often the investigator has assumed they know what the issue is when they don’t as it looks similar to another complaint they have dealt with before or an issue they looked at recently. It is also helpful to find out about the impact that the problem has had on the complainant.
* Contact the complainant in person. Share your list of question and check if you have properly understood the issues. Ask if there are any other issues they haven’t mentioned already and check the impact all this has had for them.
* Can you deal with all the issues? If not, you need to explain why not and, if relevant and you know, who else can look at these issues. Typically, the reasons for this might be:
	+ Timescales - How long ago did the complaint happen?
	+ Jurisdiction – is (some of) the complaint about another organisation?
	+ Consent – if this is a complaint on behalf of another living person, do you have/need their consent to share information with the person bringing their complaint?
	+ Alternative process – is there another process to deal with (some of) the issues? For example, an appeal.
* Explain to the complainant in person any limitations on what you can look at and why.
* Do you know what the complainant wants to achieve? Does the complainant know what they want to achieve? Unless you both know what this is then you will struggle to reach a resolution to the problem. If they want to achieve something you cannot ever achieve for them then you need to manage their expectations from the beginning. Sometimes people want something much simpler and more achievable than you might have thought and a quick solution can be found.
* Ask the complainant what outcome they are looking for.
* Explain what outcomes are possible and what is not.
* If the complainant doesn’t know you can make some suggestions: for example, “when we find problems, we might arrange staff training or an apology or a change of policy”.
* Does the complainant share your understanding of the issues to be considered and the potential outcomes?
* Summarise your understanding on the phone/in the meeting.
* Send the written summary to the complainant confirming your discussion.
* If you can’t make personal contact, send a written summary and ask the complainant to let you know if they have queries.

Step 2 – Planning and information gathering

Now you are clear about the question you are going to answer, you need to think about the information that will let you decide those answers. It is very tempting to dive headlong into the issues and immediately look for solutions, but this approach will often lead an investigation astray. Sometimes investigators concentrate on one part of the problem (often the piece they find most interesting or know most about) and may forget to answer all the questions. At other times investigator waste time looking into issues where there isn’t a disagreement, or which are relevant. Finally, some investigators keep investigating long after they have enough information and should reach a conclusion. It may take an extra 20minutes to do this in the beginning, but it will save a lot of time later.

What information do you need?

For every issue you need to answer two basic questions: What did happen and what should have happened? if what did happen is the same as what should have happened then the complaint is unlikely to be upheld, but if there is a difference between the two answers then there is likely to have been a problem that needs fixing.

The information you need to answer these two questions can be broken down further for each issue:

* Decide what relevant information you already have and make a note of it.
* Decide what information you need and how you are going to find it.

Here’s an example of what this might look like:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Complaint issue | Information we have about what did happen | Information we need about what did happen | Information we have about what should have happened | Information we need about what should have happened | communication |
| Mrs Jones was told that there was a 6 week wait for the service, but she waited 10 weeks | Mrs Jones account of the telephone call with staff at the service centre who told her there was a 6 week wait | The recording of the telephone call if this these questions is still available (may not be) customer service note on Mrs Jones file comments from staff member involved in the call | Internal all-staff email from July 2016 explaining the current waiting time was between 9 and 12 weeks | Policy and staff guidance on processing service requests – especially what information should be given and what should be recorded |  |

Revise your investigation plan

Once you have started your plan you can start to add the information gathered, moving from information needed to information you have. Sometimes a piece of information will create more questions, and these can be added to the plan but always check first if the question is relevant to the original problem. Don’t allow yourself to become distracted by more interesting but irrelevant issues. If the information doesn’t give you all the answers you need you may need to think about other sources of information and add these to your plan. Again, think carefully about whether it is reasonable to try and follow every possible source of information. If you don’t think it will help, make the situation clearer or it will be very expensive or time consuming to find out. You should note down why you decided not to look any further.

* Keep checking back with your plan and revise it as you get new information.

Step 3 – Evaluating the evidence

We said in step 2 that there are two key questions which need to be answered in an investigation these are: what did happen? And what should have happened? Step 2 identified the information needed to answer these questions. At step 3 the information gathered needs to be evaluated to decide if it provides the necessary evidence to answer those two key questions. There are a number of ways this information should be analysed. Not every test will apply to every case.

**Types of evidence**

Official or personal:

* Official documents are generally those produced by organisations, while personally produced documents are those produced by individuals. It should not be assumed that official documents are more reliable than personally produced ones or that computer records are more accurate than handwritten or manual record.

Documentary or Narrative:

* Evidence will be either documentary (a letter or computer file record for example). It is often assumed that documentary evidence is more reliable than personal recollection. However, the people directly involved may have had more and better reason to notice what was happening at the time than the member of staff who created the documentary record.

All the information you have gathered, whatever its source of type, needs to be evaluated. This will help you decide how useful any piece of information is to you as evidence of what did or should have happened.

* Relevance: Is the information relevant to the issue being investigated? Does it help in either proving or disproving a fact at issue?
* Time: When was the information created and how close was it to the events in question? Is the information (for example a policy) the one that was in place at the time of the event being looked at?
* Expertise: Who created the information? Is it the opinion of someone who has up to date specialist knowledge of the issues? If you are relying on one of your own experts, were they directly involved in the events and if so, do you need to seek an independent view? If statements or other communications show signs of defensiveness, then it will be especially important to consider getting a ‘second opinion’
* Direct or indirect: Is it the recollection of someone who was there at the time of the event or is it relying on ‘usual’ practice and what someone expects to have happened? is the information second-hand and does it rely on what someone else told someone or on records made by a third party?
* Credibility: Does the document contain obvious errors which makes the whole document less reliable? If something is stated as a fact in one document but this fact isn’t supported by other information, it may make the document less credible. What is the source of the information? Is it a well referenced or researched guideline or is it an unchecked internet article?
* Information Bias: Occurs when we keep seeking out more information which won’t actually make any difference to your decision. If you have enough information to reach a reasonable decision you can stop.
* Clustering Illusion: Happens when we string together randomly occurring events to make a cohesive story. This is a strong human tendency and again you may see examples of it from those providing you with information.
* Blind spot Bias: Is the failure to recognise your own biases.

For example:

|  |  |  |  |
| --- | --- | --- | --- |
| What complainant said happened | What staff said happened | What the complainant said should have happened | What the policy, guidance, usual practice says should have happened |
| Waited 10 weeks for operation | Waited 6 weeks from consultant agreement for operation | Waiting Time Guarantee means operation should be in six weeks of GP referral | Waiting Time Guarantee only applies from time of consultant agreement not GP referral |

Conclusion: Operation happened within six weeks of consultant agreement. Complaint not upheld.

* Compare what did happen to what should have happened.

**Responsibility**

If you have identified a difference between what did happen and what should have happened, you may need to consider who or what is responsible for the difference before reaching a conclusion. Was your organisation responsible for the difference or was it outside of your organisation’s control?

* Determine where you are responsible for the difference.
* Partially upheld decisions.

If you find that some aspects of the complaint are upheld but that others are not you can manage this in a number of ways. You might partially uphold the complaint, or you might break the complaint down into two separate complaints with one an uphold and another not-upheld. If you do opt to partially uphold it is important to be very clear which aspects of the complaint you supported and which you didn’t.

* Complaints can have a very negative perception in organisations. One of the most effective ways of enabling a positive attitude to complaints and encouraging a positive complaints culture in any organisations is to share the learning from complaints. This helps people see what improvements have been brought and also enables them to consider whether a similar problem could arise elsewhere in the organisation which they could take steps to prevent happening.
* PSOW come across a number of complaints where a previous fix was implemented but either no action plan was created, or no one checked the action had been taken. Following the previous steps should ensure this doesn’t happen. It is best practice to also review any fixes that are implemented to check that they have worked and also that there haven’t been unintended adverse consequences. It can also be extremely helpful to demonstrate to your colleagues the value of complaints if you are able to demonstrate to them the improvements and benefits that have happened as a result of complaints.
* Check whether you have achieved the desired outcomes and share information about the improvements achieved.

Tips for good communication

* Check all names are spelled correctly and that any dates are properly detailed and correct (double check years).
* Include specific reference to every aspect of the complaint you agreed to investigate at stage 1.
* Set out a brief summary of how you have investigated; for example, reading electronic or paper files, interviewing staff, researching policies or guidance, seeking expert advice.
* Set out the information provided to you by the complainant as well as the internal information.
* Set out clearly any relevant law, standard, guidance or procedure which applies.
* Explain how you have evaluated the information against any standard or other rule.
* Include a clear and easily identifiable decision; a number of complaints escalate to PSOW that have been upheld by the organisation, but the fact isn’t clear in their communications.
* If there have been errors, make a clear and easily identifiable apology.
* If you are taking action to sort the problem, then include appropriate details about this.
* Include details on any next steps open to the complainant, not forgetting any referral to PSOW or any other appeal or review body.
* Acknowledge the impact events have had on the complainant and the outcomes they were seeking.
* If there is an element of difficult or problematic behaviour by the complainant that is relevant to your decision you can take that into account, but you must clearly explain it. If the behaviour has no direct bearing on your decision, then it should not be mentioned as part of your decision. Not should any other irrelevant information – two wrongs don’t make a right and (for example) the fact that the complainant is behind in their rent doesn’t mean that an organisation can ignore their obligations to carry out repairs
	+ Consider asking someone to review your letter to give it a sense check/proofread. Or leave it overnight and look at it with fresh eyes the next day.
	+ Create an action plan including a process for management review of completion.