



The review process

If people who originally complained about an advertisement or the advertiser are unhappy about a Board determination regarding a particular advertisement, they may ask for a review of the determination.

Who can ask for a review?

People who originally complained about an advertisement and the advertiser are the only people who may request a review. If the complaint was made by an organisation, an advertiser or an industry complainant, the request for review should be signed by a person who, in the opinion of the Independent Reviewer, has the right to bind that organisation.

Requests for review received from people who were not original complainants will not be submitted to the Independent Reviewer and payment will be returned.

Time frame for requesting a review

Requests for review of a Board determination must be received within 10 business days of the date of the ASB's final letter of notification of a determination and must relate to a determination taken by the Board within the previous month.

Grounds for review

Reviews may be undertaken if the request is about at least one or all of the following grounds.

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).
- Where there was a substantial flaw in the process by which the determination was made.

Since no review will proceed if the point at issue is the subject of legal action between anyone directly involved, requests for review should make plain that no such action is underway or contemplated.

Cost of making a request

The cost of lodging a request for review is \$100 for complainants, \$500 for complainants from not for profit organisations, \$1000 for advertisers who pay the advertising levy and \$2000 for advertisers who do not pay the advertising levy. This payment must accompany a request for review and is not refundable if the Independent Reviewer decides that the request does not meet the grounds for review. The payment is refundable if the Independent Reviewer accepts the request and the Board changes its original determination.

Making the request

Requests for a review must be lodged via the ASB's online complaints system and must:

- contain a full statement of the grounds
- be in writing
- be accompanied by relevant payment.

Role of Independent Reviewer

In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Board, or to assess any new material provided by parties to the case.

The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Board's original determination should be confirmed or be reviewed. It is inappropriate to set up one person as a decision maker in place of a 20 member Board that makes determinations on the basis of community standards.

The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request.

If the Independent Reviewer decides to accept the request, the Independent Reviewer will undertake appropriate investigation. The investigation will include an invitation for other parties in the case (ie either the complainant(s) whose views were considered by the Board or the advertiser) to comment in writing on the submission provided by the party requesting the review. The Independent Reviewer can request that parties to a case appear in person or by teleconference if necessary.

If the Independent Reviewer decides not to accept the request because they consider that it does not meet any of the required grounds, the person making the request will be informed.

Following investigation the Independent Reviewer will make a recommendation to the Board, stating whether the Board's original determination should be reviewed or confirmed.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The ASB will not delay publication of the relevant determination pending the outcome of the review.

What happens after a review

The Independent Reviewer can recommend:

- the Board's determination should be **confirmed**. There is no further investigation and the Board's original determination remains in place.
- the Board should **review** its determination. In this situation the case will be referred back to the Board at its next meeting along with the Independent Reviewer's recommendation and any material submitted during the independent review process. The Board must then review its determination in line with any recommendations from the Independent Reviewer. The Board can then either uphold or dismiss the original complaint/s.

The case report for the original case will be revised to include details of the Independent Reviewer's recommendation and, where necessary, the outcome of the Board's review of its determination.

The Board's determination on reviewed cases is final. No further review is possible.

The ASB will inform all parties of the Board's final determination. Determinations that are revised or amended following a review will be published on the ASB website.