



CASE HANDLING PROCEDURES

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3.0 STAGE 3 – DECISION

Statement of Reasons

- 3.1 Where the Committee approves a draft statement of reasons, Visual Files prompts the legal officer to send an email to the DOCS to tell them that the Committee has done so.
- 3.2 The legal officer sends to the DOCS and the admin team the draft statement of reasons, any supporting papers and a note for the Board (the note includes the time taken to review the case and the names of any interested parties who, in the legal officer's opinion, require to be told about the decision; it is, however, the Board that decides which parties require to be told about the decision.) The case is added to the agenda for the next Board meeting.
- 3.3. **One week before the meeting**, the DOCS sends, by way of Diligent Boardbooks, the note for the Board, the draft statement of reasons and any supporting papers to the Members, the Chief Executive and the Consultant Legal Adviser – who email any comments or proposed amendments to the draft statement of reasons.

- 3.4 At the Board meeting, the legal officer presents the draft statement of reasons to the Members and those others present, and they answer any questions that the Members have about the terms of the document. While the Chief Executive, the Consultant Legal Adviser and the legal officer may express their views on the case, the Board decides whether to refer the case to the High Court. A majority of the Board Members present must be in favour of any decision. The decision of the Board is noted.
- 3.5 Where the Board decides that material amendments require to be made to the statement of reasons in order that it reflects the Board's decision, the legal officer, **no later than five working days from the date of the Board's decision**, emails an amended document, highlighting the amendments, to the Chief Executive. The Chief Executive approves the wording of the amended statement of reasons.

Non-reference

- 3.6 After the Board meeting, **but no later than five working days from the date of the Board's decision**, the legal officer passes to the Chief Executive a hard copy of the statement of reasons and the covering letters to the applicant and their representative. The Chief Executive signs the covering letters
- 3.7 The statement of reasons is sent to the applicant and their representative. It is sent by secure email to the representative and by special delivery to the applicant.
- 3.8 The Commission aims to issue the statement of reasons to the applicant and their representative **within 15 working days from the date of the Board's decision**. In the event that the Board require further information then the legal officer informs the applicant and their representative that the case has been continued and the Chief Executive ensures that the case is called at the next Board meeting.
- 3.9 One copy of the signed decision is retained, and it is put on the relevant file on Visual Files.
- 3.10 After the statement of reasons is issued, the applicant is permitted a period of 28 days in which to consider the statement of reasons and to make any further submissions that they believe are appropriate (but the applicant may, on cause shown, have the 28-day period extended).
- 3.11 Where the Commission does not receive any further submissions in that 28-day period (or within the extended period), the legal officer passes the final decision letter to the Chief Executive, or, in their absence, a member of the management team, for them to sign.
- 3.12 The final decision letter is sent to the applicant and their representative. It is sent by secure email to the representative and by special delivery to the applicant.

- 3.13 One copy of the signed final decision is retained, and it is put on the relevant file on Visual Files.
- 3.14 When the Commission issues the final decision letter, its review of the case is completed.

Further Submissions

- 3.15 Where the applicant requests an extension of time in which to make further submissions, the legal officer sends an email to the DOCS, telling them about the request and the reasons for it.
- 3.16 Where the DOCS, or, in their absence, another member of the management team, approves the request, the legal officer emails (or writes to) the applicant and their representative, telling them that they have been granted another 28 days to lodge further submissions (a period which runs from the expiry of the initial 28-day period).
- 3.17 Where the applicant requests another extension of time in which to make further submissions, the legal officer emails (or writes to) the applicant and their representative, telling them that the Board will consider the further request. The legal officer sends an email to the DOCS, explaining the basis for the request. The Board considers the request at its next meeting.
- 3.18 Where the Board grants the applicant another extension of time, which it does only in exceptional circumstances, the legal officer emails (or writes to) the applicant and their representative, telling them the date by which the Commission must receive any further submissions.
- 3.19 **Where the Commission receives further submissions**, the legal officer emails (or writes to) the applicant and their representative, acknowledging receipt of the further submissions. (Where the Commission does not, the procedures set out in paras 3.11–3.13 are followed.)
- 3.20 The legal officer emails the admin team, telling them that the case is to call at the next Committee meeting. Where the Committee considers that further lines of inquiry are required, the legal officer carries out those inquiries.
- 3.21 After any further inquiries have been carried out, the legal officer drafts a supplementary statement of reasons to refer or not to refer the case to the High Court – which is sent to the Committee for consideration.
- 3.22 The Committee decides whether the draft supplementary statement of reasons is suitable to be placed before the Board for its consideration.
- 3.23 The Commission aims for the Board to consider the draft supplementary statement of reasons within three months from the date of receipt of the further submissions.

- 3.24 Where the Board confirms its decision not to refer the case, the procedures set out in paras 3.6–3.9 are followed. Where the Board decides to refer the case, the procedures set out under ‘**Reference**’ are followed.
- 3.25 When the Commission issues the supplementary statement of reasons, its review of the case is completed.

Related Matters

- 3.26 Where the Board has concerns that the applicant’s receipt of the statement of reasons might cause the applicant to harm themselves, the Commission will, where the applicant is in custody, send the statement of reasons, in a sealed envelope, to the Governor or the Director of the prison, with a covering letter in which it asks the Governor/Director to pass the sealed envelope to the applicant and it explains that the contents of the envelope may cause the applicant distress..
- 3.27 Where it has such concerns, and the applicant is at liberty and represented, the Commission will ask the applicant’s solicitor to request that the applicant attends the solicitor’s office to collect the statement of reasons.
- 3.28 Where it has such concerns, and the applicant is at liberty but unrepresented, the Commission will tell the applicant that they should telephone the Commission if they wish to speak to someone from the Commission about its decision.
- 3.29 Where it has such concerns about a person other than the applicant, the Board decides the appropriate way in which to proceed.
- 3.30 Where the applicant has alleged that a witness has lied or has otherwise acted improperly, and where the Commission has sought the views of the witness about the allegation made against them, or where it is reasonable to infer that the witness is aware of the allegation, the legal officer writes to the witness, telling them that the Board has decided not to refer the case.
- 3.31 Where the applicant has made an allegation of defective representation against their solicitor or counsel, and where the Commission has sought the views of the solicitor/counsel about the allegation made against them, or where it is reasonable to infer that the solicitor/counsel is aware of the allegation, the legal officer emails (or writes to) the solicitor/counsel, telling them that the Board has decided not to refer the case to the High Court.
- 3.32 Where the Board considers it is appropriate to notify other interested parties, which may include the complainer, their family or other witnesses, about the Board’s decision, the legal officer writes to them, telling them that the Board has decided not to refer the case to the High Court.
- 3.33 The procedures set out in paras 3.26–3.32 are repeated at the supplementary stage or where no further submissions are received.

Reference (see also the attached flowchart)

- 3.34 The legal officer, **no later than five working days from the date of the Board meeting**, passes to the Chief Executive the victim notification letter (which the Chief Executive requires to sign). The letter, which informs the Crown Agent of the decision to refer the case, is sent by secure email to the Crown Agent.
- 3.35 The information is given at that stage to the Crown Agent solely for the purpose of telling the complainer or the next of kin about the reference. It is given on the strict understanding that any such notification is not to be made until the Crown Agent is in possession of the statement of reasons.
- 3.36 The legal officer drafts a news release; in doing so, they consider whether the applicant's name should be anonymised (see the Commission's disclosure policy). The legal officer, **no later than five working days from the date of the Board meeting**, emails the news release to the Chief Executive. The Chief Executive approves the wording of the news release. The legal officer emails the approved version to the DOCS. The legal officer tells the DOCS the date on which the statement of reasons is to be issued.
- 3.37 **On the seventh day after the date on which the victim notification was issued**, the statement of reasons and covering letters are sent to the Principal Clerk of Justiciary, the applicant and their representative (the letters to the applicant and their representative set out the procedures they require to follow to initiate appeal proceedings), the Lord Advocate and the Crown Agent.
- 3.38 Copies of the statement of reasons are sent by secure email to Justiciary Office, the applicant's representative and the Crown Office.
- 3.39 **On the afternoon the statement of reasons is issued**, the DOCS emails the news release, along with a note of issuing instructions, to the Scottish Government Press Department. The news release is embargoed until 3pm on the third working day after the date on which statement of reasons is issued.
- 3.40 Before the statement of reason is issued, the legal officer makes sure that the Commission has complied with section 4 of its disclosure policy ('Disclosure of information in a reference case').
- 3.41 The legal officer writes to the parties specified in paras 3.30–3.32, if applicable.
- 3.42 One copy of the signed decision is retained, and it is put on the relevant file on Visual Files.
- 3.43 When the Commission issues the statement of reasons to refer the case, its review of the case is completed.

Date first approved	November 2014
Date of this review	November 2021
Date of next review	November 2022

Flow Chart of the Procedures to be followed in a Reference Case

Date of the Board's decision to refer the case



No later than **five working days** from the date of the Board's decision, LO emails the statement of reasons to CE (CE must approve any amendments that LO has made to reflect the terms of the Board's decision)



No later than **five working days** from the date of the Board's decision, LO passes the victim notification letter to CE for them to sign; the victim notification letter is issued



No later than **five working days** from the date of the Board's decision, LO drafts the news release and emails it to CE; CE must approve the wording of the news release; LO emails the approved version to DOCS; LO informs DOCS of the date on which the statement of reasons is to be issued



On the **seventh day** after the date on which the victim notification was issued, the statement of reasons and covering letters are sent to the Principal Clerk of Justiciary, the applicant and their representative, the Lord Advocate and the Crown Agent; copies of the statement of reasons are sent by secure email to Justiciary Office, the applicant's representative and the Crown Office



On the afternoon of the day on which the statement of reasons is issued, DOCS emails the news release, along with a note of issuing instructions, to the Scottish Government Press Department. The news release is embargoed until **3pm on the third working day** after the date on which statement of reasons is issued