

Review of 2018 Independent Reviews

1. Executive summary

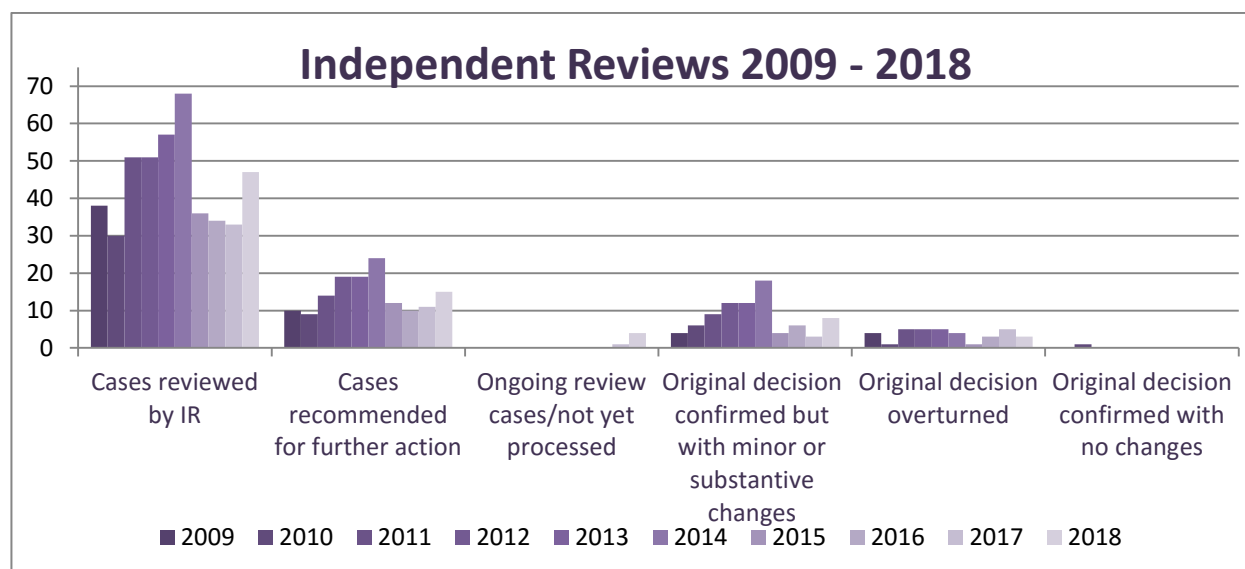
This review found that whilst the absolute numbers of cases requested for review by the Independent Reviewer has risen compared to 2017, the proportion of cases where corrective action was considered necessary remains low and well within our quality target expectation of having no more than 3% of formally investigated cases where a corrective action is identified. Cases where corrective action is required are a small fraction of all Formal Investigation and Not Investigated after Council Decision (NAICD) cases completed. A small number of cases where corrective action was identified highlight some learning that will help to improve quality standards.

2. Objective

The ASA undertakes an annual exercise to assess all Independent Review cases. The review is an important element in meeting our on-going [Commitment to Good Regulation](#) and has been carried out with the aim of identifying any thematic quality concerns in our casework, and how we might go about addressing that.

3. Quantitative analysis

There were more requests for review in 2018 than the year before (48 vs 33 in 2017). This increase was in part accounted for by more requests for review of NAICD decisions (10 vs 6 in 2017) but that should also be seen in the context of an overall 56% increase in NAICD case outcomes compared to 2017. The number of review cases which resulted in decisions being overturned (two cases) was smaller than in 2017 when five were overturned. This was balanced with slightly more review cases where the original outcome was sustained but with minor or substantive changes to the rationale of the decision (eight in 2018 vs three in 2017).



(On-going review cases in the table above represent those being processed by the executive under a re-investigation or by the Independent Reviewer himself. When they have been concluded they

are then removed from the on-going case numbers column and included in the decision re-confirmed with revisions, the decision overturned or the decision not changed column).

3.1. Detailed quantitative analysis

We published 500 rulings in 2018 (490 in 2017). A further 343 cases were NAICD (220 in 2017). The following table puts Independent Review requests accepted by the IR into the context of all the cases eligible for review.

All review cases received by IR in 2018:

Eligible Independent Review requests received by IR (Note: includes 3 cases where the ASA recommended that the Independent Reviewer should review a decision without having received a request from an advertiser or complainant)	48
Of which: 38 were of Formal Rulings (7.6% of all formal rulings in 2018; 5% in 2017) 10 were of NAICD cases (2.9% of all NAICD cases in 2018; 3.2% in 2017)	
- Number of Formal Investigation review requests IR recommended for corrective action (2.4% of all Formal Rulings in 2018; up from 2.2% in 2017)	12
- Number of NAICD case review requests IR recommended for corrective action (0.6% of all NAICD cases in 2018, down from 1.8% in 2017)	2

The following table provides more detail on the outcome or status of cases reviewed in 2018

Outcomes and status:	
- Decision reversed (includes one case sent to investigation from an NAICD)	3
- Decision not reversed but minor wording changes made to the ruling	4
- Decision not reversed but substantive changes made to the rationale	4
- Decision left unchanged following review or re-investigation	0
- Currently on-going (re-opened investigation or due to be re-presented by IR)	3

In 2018 as part of our review of departmental targets we committed to seeking to deliver against a target of there being no more than 3% of our formal rulings that are considered by the Independent Reviewer to require any form of corrective action. We met this target with just 2.4% of cases referred for any form of corrective action required, as noted above.

14 cases recommended for corrective action out of 48 reviewed in total means that the Independent Reviewer recommended some form of corrective action in 29% of all review requests and 32% of all review requests of Formally Investigated cases seen by him in 2018.

4. Qualitative analysis

We have analysed the 14 cases recommended for corrective action to establish whether there are any patterns or learning points that will help us make improvements.

a. Cases that raise no concerns over quality or do not provide organisational learning

Five out of the total of **14 cases** did not present any wider quality issue or learning points for the organisation to consider. Whilst these cases required some further work, this work was often minor in nature, was due to issues outside our reasonable control and/or related to matters of subjective

interpretation and judgment and which are part and parcel of the challenge that comes with the work we do. For example: In one instance the review was caused by us receiving faulty information from a government department. In another instance, following publication of a ruling a trade body contacted us for the first time to share information we had not been aware of in the investigation which led us to conclude that the ruling could be potentially flawed.

b. Cases that raise quality and organisational learning

The remaining **nine cases** did raise some quality learning points

These learnings can be categorised as follows:

- Relevant issues missed in the case investigation (four cases)
- Assessment did not identify which of “serious or widespread” offence had been caused (one case)
- Similar case on programme credit seen by Ofcom not taken account of (one case)
- Ruling reviewed and on review the decision was found to be either too strict in interpretation or worthy of further elaboration to clarify reasons (three cases)

Corrective actions to address issues

Some of the learning is clearly case specific or relevant as learning for individuals to take forward and as team case studies. Some of the examples highlighted the importance of us maintaining a focus on training in order to ensure that we keep quality high and stay up to date with evolving technology. We have a clear focus on that for staff and Council in 2019.