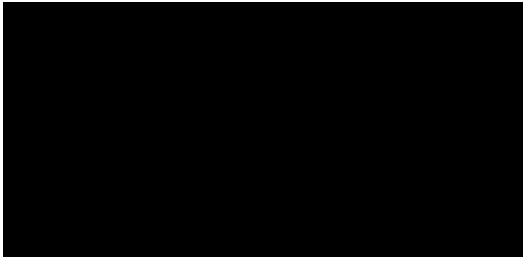


14 August 2023



Official Information Act #22.222 - Response

1. We refer to your request received on 30 June 2023 for information about the Commission's complaints process. Specifically, you asked:
 - 1.1 How is a complaint assessed when first received by the Commission?
 - 1.2 What factors determine whether a complaint is progressed to an inquiry/investigation?
 - 1.3 What staff (job titles only) handle a complaint at the various stages of the process?
 - 1.4 Is there a triage process for complaints (i.e. a committee or panel)? If yes, please provide a terms of reference.
 - 1.5 If yes, please provide all decisions or determinations made by this committee including all supporting documentation between 1 June 2023 and today (Friday 30 June). These can be anonymised to protect complainant details.
2. On 31 July 2023, the Commission extended the time limit by which we must make a decision on your request to 14 August 2023.
3. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

How is a complaint assessed when first received by the Commission?

4. The Commission operates a complaints function to provide the public with a method of raising concerns directly with the Commission. It is also one of the ways the

Commission identifies matters that it may choose to investigate and assists the Commission with prioritisation decisions and identifying sectors and industries that may require education and outreach. When a consumer or business contacts the Commission, either through our call centre or direct to one of our staff, with a complaint about a trader, this is logged in the Commission's complaint database.

5. The Commission receives thousands of complaints every year across the legislation we enforce. Each complaint is initially assessed by the Screening and Analysis Team on the basis of the information available at the time.
6. Every enquiry received by the Commission is triaged by the Screening and Enquiries Team. This process involves an initial consideration about:
 - 6.1 the likelihood of a breach of the relevant legislation;
 - 6.2 the Commission's Enforcement Response Guidelines, and;
 - 6.3 the Commission's strategic priorities.
7. The Commission's Enforcement Response Guidelines¹ outline that we cannot give priority to all the complaints that we receive. While we consider all complaints carefully some complaints may be screened out because they:
 - 7.1 do not identify a breach of the law;
 - 7.2 are factually or legally incorrect;
 - 7.3 are outside our jurisdiction;
 - 7.4 are out of date for us to action;
 - 7.5 do not identify any real harm;
 - 7.6 are not in the public interest to pursue;
 - 7.7 may be more effectively dealt with by other agencies; or
 - 7.8 involve private parties who are able to try to resolve their own dispute.
8. Our Enforcement Response Guidelines provide that the Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
9. If determined that the conduct could raise concerns under legislation enforced by the Commission, then the complaint will enter an assessment queue for consideration by a Screening and Enquiries Analyst.

¹ <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines> page 3.

10. During the screening process, our Screening and Analysis team adds information about the Act(s) and section(s) of the Act(s) relevant to each complaint. The most appropriate Act(s)/section(s) are selected based on the information available to our Analysts at the time.

What factors determine whether a complaint is progressed to an inquiry/investigation?

11. When assessing a complaint, the Screening and Enquiries Team consider:
 - 11.1 The likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003 and the Commerce Act 1986) based on the evidence available at the time of assessment;
 - 11.2 Whether the complaint is likely to meet the Commission's enforcement criteria, considering the extent of detriment, seriousness of conduct, and the public interest; and
 - 11.3 Relevance to the Commission's responsibilities and current work programme.
12. After assessing the complaint against these key considerations, the Screening and Enquiries Analyst may recommend that the complaint be sent to a screening panel for consideration. Complaints that are not screened become part of Commission future pipeline of insights for potential work programmes.
13. When complaints require further information before a decision can be made on whether or not to prioritise it, enquiries may be made by either the Enquiries and Screening team with guidance from subject matter experts or by members of the investigations teams.

What staff (job titles only) handle a complaint at the various stages of the process?

14. In response to your request at [1.3], we set out the job titles of the people at the Commission who handle complaints at the various stages of the process.
15. At the triage and assessment stage, the following staff are involved:
 - 15.1 Screening and Enquiries Analyst
 - 15.2 Senior Screening and Enquiries Analyst
 - 15.3 Screening and Enquiries Team Leader
16. There is a weekly screening meeting to discuss complaints relating to fair trading, credit and competition matters. The following people attend each screening meeting.
 - 16.1 Fair Trading Screening Meeting

16.1.1 Members of the Fair Trading Investigations and Compliance Team
(Typically 1-2 people attend a meeting)

- (a) Senior Investigator
- (b) Principal Investigator
- (c) Investigations and Compliance Manager

16.1.2 Members of the Fair Trading Legal Team (Typically 1-2 people attend a meeting)

- (a) Legal Counsel
- (b) Senior Legal Counsel
- (c) Chief Legal Counsel Fair Trading

16.1.3 Members of the Screening & Analysis Team (variable attendance)

- (a) Screening and Enquiries Analyst
- (b) Senior Screening and Enquiries Analyst
- (c) Screening and Enquiries Team Leader
- (d) Screening and Analysis Manager
- (e) Senior Intelligence & Research Analyst

16.2 Credit Screening Meeting

16.2.1 Members of the Credit Investigations & Compliance Team (variable attendance)

- (a) Investigator
- (b) Senior Investigator
- (c) Principal Investigator
- (d) Investigations and Compliance Manager
- (e) Senior Certification Officer

16.2.2 Members of the Credit Legal Team (variable attendance)

- (a) Legal Counsel
- (b) Senior Legal Counsel
- (c) Chief Legal Counsel Credit

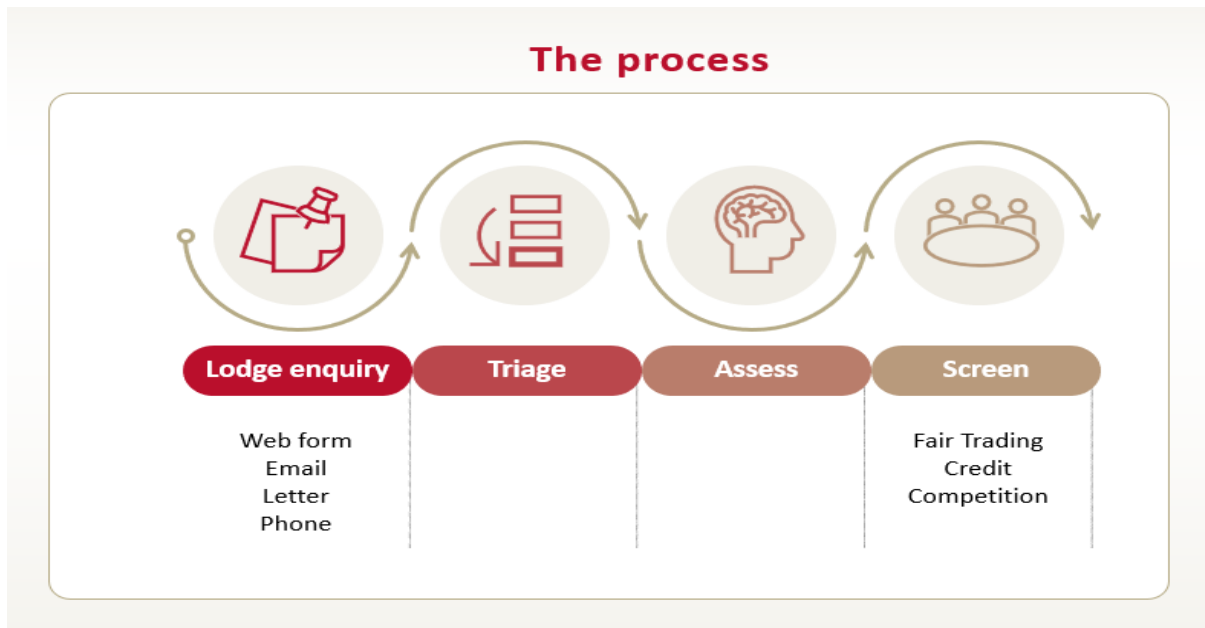
16.3 Competition Screening Meeting

16.3.1 Members of the Competition Leadership team (variable attendance)

- (a) Cartels Manager
- (b) Chief Economist
- (c) Intelligence Analyst
- (d) Principal Investigator
- (e) Competition Investigations Manager
- (f) Engagement and Operations Manager

16.3.2 Members of the Screening & Analysis Team (variable attendance)

- (a) Screening and Enquiries Analyst
- (b) Senior Screening and Enquiries Analyst
- (c) Screening and Enquiries Team Leader
- (d) Screening and Analysis Manager
- (e) Senior Intelligence & Research Analyst



Is there a triage process for complaints (i.e. a committee or panel)? If yes, please provide a terms of reference.

17. In response to your request at [1.4], as noted above weekly screening meetings are held with key stakeholders of the relevant regulatory branches (Fair Trading, Competition, and Credit) to review complaint assessments. At these meetings, decisions about whether further action should be taken in respect of a complaint are made.
18. The Commission must apply an administrative discretion over a wide range of matters and has developed enforcement criteria to consider when making decisions on whether to take further action.
19. At screening, the panel considers the criteria together, weighing them against the available information and decides what action is required in the context of the Commission's overall activities.

If yes, please provide all decisions or determinations made by this committee including all supporting documentation between 1 January 2023 and today (Friday 30 June).

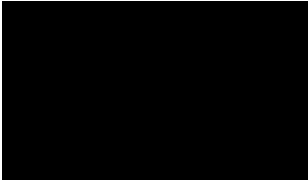
20. We consider good reasons exist under the OIA to withhold the screening decisions (mentioned at [17]-[19] above) under section 6(c) of the OIA because the making available of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

Further information

21. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.

22. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
23. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this request.

Yours sincerely



OIA and Information Coordinator