

# **RQIA Enforcement Review Panel Procedures in Respect of Written Representation Regarding Failure to Comply Notice/s**

**(Document 4 in a Suite of 6)**

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## **1. Introduction**

- 1.1 These procedures should be read as part of a suite of documents regarding enforcement action taken by RQIA that includes:
- RQIA Enforcement Policy (Document 1 in a Suite of 6)
  - RQIA Enforcement Procedures (Document 2 in a Suite of 6)
  - RQIA Enforcement Review Panel Procedures in Respect of Written Representation Regarding Improvement Notice/s (Document 3 in a Suite of 6)
  - RQIA Decision Making Panel Procedures in Respect of Notice/s of Proposal (Document 5 in a Suite of 6)
  - RQIA Decision Making Panel Procedures in Respect of Urgent Procedures (Document 6 in a Suite of 6)
- 1.2 Regulations relating to registered establishments/agencies (except those relating to nursing homes, residential care homes and independent health care) make provision for Registered Person/s to have a right of written representation regarding a Failure to Comply Notice. However, RQIA has extended to all Registered Person/s the opportunity to make formal written representation following the issue of a Failure to Comply Notice, in line with the principles underpinning the enforcement policy and good governance, and in line with the principles of public sector administration.
- 1.3 This procedure outlines the process to be followed by RQIA's ERP. An ERP will be convened by the Chief Executive or his/her nominated deputy, following receipt of written representation from a Registered Person, regarding a Failure to Comply Notice served on that person.
- 1.4 This procedure must be adhered to by all staff.
- 1.5 It should be noted that there is no legislative provision to rescind a Failure to Comply Notice.

## **2. Composition of the ERP**

- 2.1 Membership of an ERP convened to consider a written representation will consist of at least two senior RQIA staff who have not been directly involved in the enforcement action relating to the notice concerned.

Prior to the commencement of the Panel meeting, a Chairperson will be nominated and agreed by Panel members.

- 2.2 The Director (or a nominated deputy) will be in attendance to present the case and to answer any questions in respect of the matter under consideration.
- 2.3 The Complaints and Representations Manager will provide administrative support to the ERP.

## **3. Written Representation**

- 3.1 A Registered Person should make a written representation regarding a Failure to Comply Notice using the template provided to RQIA's Chief Executive.
- 3.2 Written representation must be received within one month of the Failure to Comply Notice being served.
- 3.3 If the written representation is submitted using an incorrect template, the Chief Executive or his/her nominated deputy may write to the Registered Person seeking an appropriate submission on the relevant template.
- 3.4 The Chief Executive or his/her nominated deputy will also determine whether an issue raised within the representation constitutes a complaint against RQIA as defined within the Policy and Procedure on the Management and Handling of Complaints against RQIA. If so, the Chief Executive or his/her nominated deputy will initiate those procedures.

#### **4. Procedure**

##### **Setting up the ERP**

- 4.1 Any written representation received following the issue of a Failure to Comply Notice will be acknowledged in writing within two working days (Template 1)
- 4.2 The Chief Executive or his/her nominated deputy will advise the Complaints and Representations Manager, who will convene an ERP within 10 working days.
- 4.3 The Director and relevant Assistant Director, relating to the service will be informed of the date of the panel meeting. The Director will ensure that all relevant documentation relating to the Failure to Comply Notice is made available to the ERP.
- 4.4 The ERP will be convened by the Complaints and Representations Manager who will contact panel members and supply them with papers ahead of the meeting.

##### **ERP Meeting**

- 4.5 The chair of the ERP will be appointed as per point 2.1.
- 4.6 The chair of the ERP will ensure that the panel determines the terms of reference for the panel. A guide to draft terms of reference for consideration by the panel is attached at Appendix 1.
- 4.7 The ERP will review the correspondence from the Registered Person and will identify individual points of representation.
- 4.8 The Director or nominated deputy will present the case to the panel, providing clarity on any issues when required.
- 4.9 If the ERP determines that legal advice is required, this advice may be sought by the chair of the panel.

- 4.10 The ERP may consult and interview any relevant RQIA staff as necessary to ascertain the context of any fact and/or process regarding the issue of the Failure to Comply Notice or to obtain any further relevant information that might assist the ERP.
- 4.11 The ERP's decisions will be documented against each of the relevant terms of reference.
- 4.12 The ERP will document its findings against all individual points identified as representation made by the Registered Person. (Template 2)
- 4.13 The outcome of the ERP will be communicated to the Registered Person within 28 days of the issue of the acknowledgement letter and will be accompanied by the report of the ERP's decision. (Template 3 or 4)
- 4.14 The ERP may also make recommendations to the Chief Executive or his/her nominated deputy.
- 4.15 The Director will inform the Board of RQIA of the outcome of the Panel's decision at the next Board meeting.

#### **Decision of the ERP**

- 4.16 The Panel's outcome decision will be as follows:
- The representation has not been upheld and the Registered Person will be advised accordingly (Template 3);
  - The representation has been upheld; and
    - The Chief Executive or his/her nominated deputy will communicate the decision of the panel to the Registered Person and relevant stakeholders (Template 4)
    - The Chief Executive or his/her nominated deputy will inform the Communications Manager of the panel decision and the enforcement section of RQIA's website will be updated to reflect this.

# Core Terms of Reference

## Core Terms of Reference

The chair of the ERP is responsible for establishing the terms of reference at the outset of the panels work. The terms of reference may vary depending on the content of each individual representation.

The ERP should consider whether:

- the enforcement notice has been issued in line with RQIA's Enforcement Policy and Procedures
- the enforcement notice has been appropriately served on the Registered Person
- the Registered Person has been given sufficient warning of RQIA's intention to take enforcement action
- there are sufficient grounds based on the information available to validate that the issue of the notice was fair, reasonable and proportionate
- the notice references the regulations which have been breached
- the Registered Person has been informed of the actions and the timeframe in which they are required to achieve compliance
- each of the points made within the letter of representation should be considered.
- there are any recommendations arising from the ERP's findings that will be referred to RQIA's Chief Executive or his/her nominated deputy.

The ERP determines whether the decision to issue the notice was fair, reasonable and proportionate.

This list is not exhaustive; rather it is a guide for ERP's

# Associated Templates

**Template 1: Acknowledging Receipt of Written Representation Letter**

**Private and Confidential**

*Date*

*Name and address of Registered Person*

Dear

*Name of establishment/agency*

**Confirmation of receipt of written representation re: Failure to Comply Notice/s**

**FTC Ref:**

I write to acknowledge receipt of your written representation regarding the Failure to Comply Notice/s issued to you on *(insert date)*.

An Enforcement Review Panel will be convened to consider your representation and review the Failure to Comply Notice/s served on you.

I will write to you again within 28 days to advise you of the decision of the Enforcement Review Panel.

Yours sincerely

**Chief Executive**

cc: Director  
Assistant Director

bcc: Chair of ERP



**Template 3: ERP Decision Letter – Representation Not Upheld**

**Private and Confidential**

*Date*

*Name and address of Registered Person*

Dear

*Name of establishment/agency*

**Enforcement Review Panel Decision**

**FTC Ref:**

I refer to previous correspondence sent to you on *(insert date)* which confirmed that in line with the Regulation and Quality Improvement Authority (RQIA) Enforcement Policy and procedures, the Enforcement Review Panel (ERP) would review the Failure to Comply Notice/s served on you on *(insert date)* and written representation made by you on *(insert date)*.

The ERP has considered your written representation dated and decided that your representation has not been upheld. The reasons for this decision are outlined in the attached report of the ERP.

If you wish to discuss this decision you should contact the Director.

Yours sincerely

**Chief Executive**

cc: Director  
Assistant Director

bcc: Chair of ERP

Enc.

## Template 4: ERP Decision Letter – Representation Upheld

### Private and Confidential

*Date*

*Name and address of Registered Person*

Dear

*Name of establishment/agency*

### Enforcement Review Panel Decision

#### FTC Ref:

I refer to previous correspondence sent to you on *(insert date)* which confirmed that in line with the Regulation and Quality Improvement Authority (RQIA) Enforcement Policy and procedures, the Enforcement Review Panel (ERP) would review the Failure to Comply Notice/s served on you on *(insert date)* and the written representation made by you on *(insert date)*.

The ERP has considered your written representation and decided that the grounds of your representation have been upheld.

The reasons for reaching this decision are detailed in the attached report. As RQIA has no powers to rescind a Failure to Comply Notice, we will update the enforcement section of RQIA's website to reflect the panel's decision.

This letter has been copied to relevant stakeholders for their attention (delete as appropriate).

Yours sincerely

### Chief Executive

cc: Director  
Assistant Director  
Communications Manager  
Relevant stakeholders (delete as appropriate)

bcc: Chair of ERP

Enc.