

Escalation of performance review concerns

Process document

1. Purpose

- 1.1 The purpose of this process is to address two concerns. The first is to ensure that the Authority is aware of continuing concerns about a regulator's performance and, secondly, can consider whether to escalate them further, particularly if the regulator does not appear to be taking effective action to address them. The Authority has no power to require regulators to take action and it is therefore important that others, particularly in Government and Parliament, should be aware of any concerns.
- 1.2 It should be stressed that the escalation of concerns is likely to be exceptional. Regulators do address the bulk of concerns we raise in performance reviews and it is important to recognise that some issues may be difficult for the regulator to address swiftly. The process is designed to ensure that concerns are only escalated when they are serious and/or intractable and that decisions are made consistently while taking into account the relevant factors for each individual situation.

2. Thresholds for escalation

- 2.1 The performance review team keeps a record of Standards met and not met for each regulator over the years. Where one or more Standards have not been met for three or more years, the escalation process will be engaged.
- 2.2 If the three-year threshold is not met, but concerns are so serious that, in the view of the team, consideration should be given to escalation, the escalation process will be followed. Seriousness will be determined by the aggravating and mitigating factors outlined at paragraph 2.3, below.
- 2.3 The consideration of whether escalation should be recommended will include an assessment against the following factors:
 - How serious are the issues that have caused the Standard(s) to not be met? Do the findings of the report have implications for public protection, public confidence in the profession, or the upholding of professional standards?
 - How many Standards have not been met, and for how long?
 - How widespread are the issues?
 - How long have the issues been occurring?
 - Has the regulator recognised the issues? Had the regulator identified the issues prior to the performance review?
 - Does the regulator have in place a plan to remedy the issues?

- Has the regulator already undertaken action to begin to remedy the issues? Is there any evidence of early impact of this action?

3. Process

- 3.1 Where issues are identified that may engage the escalation process, this will be raised in the month 12 decision-making Panel meeting.
- 3.2 Following the month 12 Panel meeting, the escalation template at Annex A should be completed by the relevant performance review team member and provided to the Panel for consideration within one week of the meeting, including a recommendation to either escalate or not escalate. This will allow time for the recommendation to be considered by the Panel and any questions to be resolved ahead of this being submitted to the Scrutiny Committee. The escalation template will need to contain enough detail to enable the Committee to make an informed decision.
- 3.3 The team will consider and recommend the actions to be taken through escalation. This may include a letter to the regulator's Chair, setting out our concerns, together with one or more of:
 - a letter to the relevant Secretary of State
 - a letter to the Chair of the relevant Select Committee
 - a programme of closer monitoring of the regulator's work in the relevant area.
- 3.4 Once the Panel has reviewed the team's recommendation, this should be provided to the Scrutiny Committee outside of a meeting with a decision requested within one week.
- 3.5 The Committee will consider the recommendation and endorse or alter this. If the Committee determines that the issue should be escalated to the Board, it should use the template at Annex A to do so, being clear as to its reasons for doing so and its independent consideration of the issues. In the interests of timeliness, this is likely to be done outside of a regular Board meeting.
- 3.6 If the Committee determines the issues should not be escalated, it should outline the reasons for its decision and note this in its next report to the Board.
- 3.7 Where the Board has accepted a recommendation to escalate, the regulator should be informed once this decision has been made. This will provide the regulator with sufficient notice of the escalation. Where an escalation letter is being sent to external parties, the regulator should be provided with the letter for information shortly ahead of this being sent.
- 3.8 Escalation letters should be sent, along with a copy of the report, to recipients prior to publication of the report.
- 3.9 The regulator should also be notified of a consideration that does not result in escalation. We will publish information about our consideration of escalation within our reports and web statements.

- 3.10 If support is required by the Committee or Board at any stage of the escalation process, this may be provided by the performance review team.

Annex A

Template for escalating concerns

1. Introduction

- 1.1 This paper outlines the performance review team's consideration of [ongoing / serious] performance review concerns about [regulator] and the team's recommendation relating to escalation.

Or:

- 1.2 This paper outlines the Scrutiny Committee's consideration of [ongoing / serious] performance review concerns about [regulator] and the Committee's recommendation for escalation by the Board.

2. Summary of concerns

2.1

3. Consideration of escalation factors

- 3.1 How serious are the issues that have caused the Standard(s) to not be met? Do the findings of the report have implications for public protection, public confidence in the profession, or the upholding of professional standards?

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- 3.2 How many Standards have not been met, and for how long?

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- 3.3 How widespread are the issues?

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- 3.4 How long have the issues been occurring?

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- 3.5 Has the regulator recognised the issues? Had the regulator identified the issues prior to the performance review?

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- 3.6 Does the regulator have in place a plan to remedy the issues?

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- 3.7 Has the regulator already undertaken action to begin to remedy the issues? Is there any evidence of early impact of this action?

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4. Recommendation

- 4.1 [Concluding summary of relevant aggravating and mitigating factors].
- 4.2 It is recommended that the Scrutiny Committee [escalates / does not escalate] this to the Authority's Board for consideration of further escalation to the [Chair of regulator / Department of Health and Social Care / Department for Education / Secretary of State for Health and Social Care / Secretary of State for Education] to outline the Authority's concerns as detailed above.
- Or:
- 4.3 The Scrutiny Committee [recommends / does not recommend] that the Chair of the Board writes to the [Chair of regulator / Department of Health and Social Care / Department for Education / Secretary of State for Health and Social Care / Secretary of State for Education] to outline the Authority's concerns as detailed above.

Document Control

Version Control

Printed documents are uncontrolled. This document is only valid on the day it was printed.

Version	Description of Version	Date Completed
1.0	Escalation of concerns process	March 2020
1.1	Updated to reflect learning from implementation, including bringing decisions to not escalate to the Scrutiny Committee level consideration of escalation, moving initial recommendation review to the decision-making panel rather than Directors Groups, and reordering sections	February 2021
1.2	Updated to take account of new performance review approach and to include notification of consideration of escalation in addition to escalation itself	June 2022