

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 PSA 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 PSA 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 is not automatically required every time a regulator fails to meet a Standard. 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. 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? Is the three-year threshold met?
 - Which regulatory functions do the issues relate to? How widespread are the issues?
 - How long have the issues been occurring? Was there evidence of issues developing prior to Standard/s not being met?

- Has the regulator recognised the issues? Had the regulator identified the issues prior to the performance review? Is the regulator's Council as well as executive aware of the issues?
- Does the regulator have in place a plan to remedy the issues? Has this plan been communicated to and reviewed by the regulator's Council?
- 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, the performance review team will complete the escalation template at Annex A for consideration by the decision-making Panel. This paper will be tabled at the final Panel meeting, after the Panel has made its decision against the Standards. The escalation paper will not be shared with the Panel or the regulator in advance. The team will make a recommendation either to escalate, including the form this should take, or not to escalate. The escalation paper will need to contain enough detail to enable the Panel to make an informed decision.
- 3.2 Escalation will take the form of a letter to the regulator's Chair/President, setting out our concerns, together with a programme of closer monitoring of the regulator's work in the relevant area. It may also involve a letter to the relevant Secretary of State/Minister and/or a letter to the Chair of the relevant Select Committee.
- 3.3 The performance review team will document the Panel's discussion regarding escalation (including where this does not result in a decision to escalate) as part of the Panel Decision Record, which should be sent to the regulator within a week of the meeting. This will provide the regulator with sufficient notice of any 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.
- 3.4 Escalation letters (including subsequent update letters) should be sent, along with a copy of the report, to recipients prior to publication of the report. We will publish information about our consideration of escalation within our reports and web statements. Escalation letters will be published on our website.
- 3.5 The Scrutiny Committee will be kept informed of the use (and conclusion) of the escalation process through the performance review update reports at each meeting. Escalation letters will be attached to the next available update report.

4. Updates

- 4.1 As part of this process, the regulator's Chair/President, the Secretary of State/Minister and relevant Select Committee Chair will be provided with annual updates alongside future performance review reports until the issues that

triggered the escalation process have been resolved. This will be set out in the original escalation letter.

- 4.2 In the annual update letters, we should note any significant developments, set out what actions we are taking to support the regulator to resolve the issues, and what (if anything) we are asking the recipient of the letter to do.
- 4.3 The issues that triggered the escalation process will be considered as part of subsequent performance reviews and discussed at provisional and/or final Panel meetings. The Panel will decide whether those issues have been resolved to the extent that annual updates or further escalation is not required. The Panel's decision and reasoning will be set out in the relevant Panel Decision Record and sent to the regulator. If the Panel decides that the issues have been resolved, the next update letter will confirm this and state that no further annual updates will be provided on those issues. This concludes the escalation process.

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.

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? Is the three-year threshold met?

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- 3.3 Which regulatory functions do the issues relate to? How widespread are the issues?

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- 3.4 How long have the issues been occurring? Was there evidence of issues developing prior to Standard/s not being met?

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- 3.5 Has the regulator recognised the issues? Had the regulator identified the issues prior to the performance review? Is the regulator's Council as well as executive aware of the issues?

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- 3.6 Does the regulator have in place a plan to remedy the issues? Has this plan been communicated to and reviewed by the regulator's Council?

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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 PSA escalates the issues set out above by writing to the Chair / President of the regulator and the

	Y/N
Secretary of State for Health and Social Care	
Chair of the House of Commons Health and Social Care Committee	
Minister of Health for Northern Ireland	
Chair of the Northern Ireland Assembly Committee for Health	
Secretary of State for Education	
Chair of the House of Commons Education Committee	

Or

4.3 It is recommended that escalation is not required.

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
1.3	Updated to move decision making regarding escalation from Scrutiny Committee and/or Board level to the relevant decision-making Panel. New section added to set out the process for annual updates and the termination of the escalation process. Minor drafting changes to reflect current PSA style and performance review language and terminology. Drafting changes to the consideration of escalation factors to make these more explicit.	April 2025