

**TITLE:** HIQA policy for managing written representations made under Section 54(1) of the Health Act 2007, as amended.

**DIVISION:** Regulation Directorate

**REFERENCE NO:** REP-POL-01

**REVISION NO:** 1.0

**AUTHORS:** Noel Sheehan, Niall Byrne

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**APPROVAL:** Phelim Quinn

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Superseded



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## **1.0 Background**

**1.1** Under section 54(1) of the Health Act 2007, as amended, (the 'Act') the applicant or registered provider may make a written representation to the Chief Inspector of Social Services (the Chief Inspector) concerning the subject matter of a notice of proposed decision ('Notice of Proposal') within a time limit of 28 days after the Notice of Proposal is given, where the Chief Inspector proposes to:

- refuse an application,<sup>1</sup>
- grant an application subject to any conditions,<sup>2</sup>
- cancel the registration of a designated centre,
- vary or remove any condition of registration of a designated centre, or,
- attach an additional condition to the registration of a designated centre.<sup>3</sup>

**1.2** Pursuant to Section 53 of the Act, the Chief Inspector will not decide the matter that is subject of the Notice of Proposal until the applicant or registered provider has:

- made written representations to the Chief Inspector concerning the Notice of Proposal, or
- notified the Chief Inspector in writing that he/she does not intend to make representations, or
- the time limit of 28 days has elapsed (see 1.1 above).

**1.3** The purpose of this policy is to provide a formal procedure to the Authority for managing and responding to written representations from the applicant or registered provider.

**1.4** The Authority carries out its functions in accordance with accepted principles of good public administration<sup>4</sup> and is guided in its regulatory work by the six principles of good regulation.<sup>5</sup>

**1.5** Together, these two sets of principles help ensure the Authority acts in ways that are reasonable, proportionate, fair and effective. This policy and procedure should be read in conjunction with the following policies and procedures of the Authority:

- Complaints policy
- Policy for managing submissions in respect of regulatory judgments.

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<sup>1</sup> Under Section 50 or 52 of the Act

<sup>2</sup> Under Section 50 or 52 of the Act

<sup>3</sup> 3), 4) and 5) are pursuant to Section 51 of the Act

<sup>4</sup> *Six Rules for Getting it Right: The Ombudsman's Guide to Good Public Administration*. See <http://www.ombudsman.gov.ie/en/Publications/Guidelines-for-Public-Bodies/Six-Rules-for-Getting-it-Right/>.

<sup>5</sup> *Regulating Better: A Government White Paper Setting out the Six Principles of Better Regulation*. Dublin: Department of the Taoiseach. 2004

**1.6** The Ombudsman (Amendment) Act 2012 extended the remit of the Office of the Ombudsman to include the Authority. From 1 May 2013, the Ombudsman can examine complaints from members of the public about the administrative actions of the Authority.

## **2.0 Policy statement**

It is the policy of the Authority and of the Chief Inspector to give due consideration to representations made under the Act. This will be done in a fair and balanced way and in accordance with the relevant legislative provisions. Representations will be considered in a timely way based on the complexities of each particular situation. A clear explanation will be given to the person making the representation as to how their representation has been considered and the outcome of that consideration.

## **3.0 Scope of this policy and procedure**

This policy and procedure applies in all situations where a formal, written representation is made under section 54 of the Act in relation to a proposed decision to refuse an application for registration or renewal of registration or regarding the proposed cancellation of a registration or a proposal to vary, attach or remove conditions of registration of a designated centre.

## **4.0 Consideration of representations**

Details of how the applicant or registered provider may make a written representation are included with the Notice of Proposal.

Once a representation is received, it will be considered in the following manner:

- 4.1** Any written representation to the Chief Inspector will be acknowledged in writing within five working days<sup>6</sup> of receipt of the written representation.
- 4.2** Following receipt of the written representation the case-holding inspector will review the written representation against the previously issued Notice of Proposal. In conjunction with their line manager, the inspector will make a determination as to whether an inspection is required to verify any actions taken by the applicant or registered provider which are referenced in the written representation.
- 4.3** Where an inspection is required, this will be scheduled to take place within 15 working days of receipt of the written representation.

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<sup>6</sup> The Authority will use its best endeavours to abide by the timelines given in this policy. Where this is not possible, the person making the representation will be kept informed.

- 4.4** Following the inspection, if any, the case-holding inspector will prepare a report to the Representation Panel (see 4.7 below) making a recommendation based on (a) consideration of the content of the representation and (b) the findings of the inspection.
- 4.5** The case-holding inspector will ensure all relevant documentation is available to the Representation Panel within five working days after the inspection has taken place. Where no inspection is required the case-holding inspector will ensure all relevant documentation is available to the Representation Panel within 10 working days of receipt of the written representation.
- 4.6** The Representation Panel will meet within 10 working days of the inspection taking place, or, where an inspection is not required, within 15 working days of receipt of the written representation.
- 4.7** All written representations made under Section 54 of the Act will be considered by a Representation Panel consisting of the following members:
- Chief Inspector or Deputy Director (Chairperson of the Representation Panel),
  - a manager at Head of Programme level, and, optionally,
  - an inspector manager not directly involved in regulating the centre in question.
- 4.8** The following staff will present the relevant background and proposed recommendation to the Panel:
- line-managing inspector manager, and,
  - case-holding inspector.
- 4.9** Depending on the facts and circumstances of the particular representation, other relevant staff, including the Authority's legal adviser, may be asked to attend and/or to make prior submissions to the Panel to aid in its deliberations.
- 4.10** The Representation Panel will produce a written report reflecting a detailed consideration of all aspects of the representation. The Representation Panel should reach a firm view in relation to each point made by the applicant or registered provider, taking into account all of the regulatory findings.
- 4.11** The Representation Panel may recommend that the Chief Inspector should:
- 1) Issue a new Notice of Proposal reflecting revised grounds for the proposed decision, or
  - 2) Issue a Notice of Decision in respect of the proposed decision either on the same grounds as proposed or on amended grounds.

- 4.12** A copy of the Panel’s report and the draft Notice of Proposal or draft Notice of Decision shall be submitted to the Chief Inspector for review and approval within five working days of the conclusion of the Representation Panel.
- 4.13** Subject to the approval of the Chief Inspector, the Notice of Proposal or Notice of Decision will be issued to the provider within 10 working days of the Representation Panel making its recommendation. Where a Notice of Decision is issuing, the covering letter will include reference to Section 57 of the Act whereby the applicant or registered provider can appeal to the District Court from a decision of the Chief Inspector.

## **5.0 Monitoring**

The Chief Inspector will report to the Authority’s Health and Social Care Governance Committee (HSCGC) annually on the numbers and outcomes of Representation Panels.

## **6.0 Panel Support**

The Chairperson of the Representation Panel has responsibility for coordinating panel meetings. Administrative support, including minute taking for the panel, will be undertaken by an identified member of staff.

## **7.0 Review**

This policy and procedure will be reviewed 12 months after its implementation.

This policy should be read in conjunction with the following:

- Complaints policy
- Policy for managing submissions in respect of regulatory judgments.

## **Revision History**

<b>Number</b>	<b>Effective Date</b>	<b>Reason for Update</b>
1.0	1 March 2014	First publication of this policy

### **Appendix 1: Table of defined terms used**

<b>Act</b>	The Health Act 2007, as amended
<b>The Authority</b>	The Health Information and Quality Authority
<b>Chief Inspector</b>	Either: (1) the Chief Inspector of Social Services, or, (2) an inspector designated to perform the functions of the Chief Inspector of Social Services pursuant to Section 41(2) of the Act.
<b>Notice of Decision</b>	Notice of Decision issued pursuant to Section 50, Section 51 and Section 55 of the Act.
<b>Notice of Proposal</b>	Notice of Proposal issued pursuant to Section 50, Section 51, Section 53 and Section 54 of the Act.
<b>Working day</b>	Working day means a day which is not a Saturday, a Sunday or a public holiday within the meaning of the Organisation of Working Time Act 1997.
<b>Inspector</b>	An inspector appointed under Section 43 of the Act to perform the functions of the Chief Inspector, to the extent the Chief Inspector may determine.
<b>Inspector manager</b>	The line manager of an inspector.
<b>Registered provider</b>	A person carrying on the business of a designated centre under Section 46 of the Act.
<b>Ombudsman</b>	Offices of the Ombudsman pursuant to the Ombudsman Act 1980 and the Ombudsman for Children Act 2002.
<b>Representation Panel</b>	A Representation Panel is an internal mechanism for reviewing written representations made under Section 54 of the Act.