



INSTRUCTION			
RESOLVING DIFFERENCES OF REGULATORY OPINION			
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1. INTRODUCTION

- 1.1 A major strength of ONR is the range of expertise that can be brought to bear in resolving technical and regulatory issues, or setting regulatory strategies. ONR at all levels values the diverse opinions of its staff and encourages them to make known their professional opinions, even when they differ from the prevailing view. ONR recognises the benefit of well-argued, objective challenges to our regulatory decision making processes when those challenges take place in accordance with our behavioural framework. Importantly, such challenges are an indicator of a healthy safety and/or security culture in a regulator.
- 1.2 ONR employs professional people to use their diverse knowledge, skills, experience and judgement to achieve our mission. In making decisions on regulatory strategies, technical issues, or the regulatory action that should be taken in any particular case, the aim is to make the appropriate decision at the lowest appropriate level (consistent with the scheme of delegated authority) through consensus wherever possible.
- 1.3 Consensus does not mean that decisions are made by committee rather than through ONR's system of delegated authority, nor that it is necessary that everyone involved agrees with the final decision. Rather it recognises that people may not agree completely with all aspects of the decision, but the extent of their disagreement is not such that they object to it taking effect. Such challenges are welcome and encouraged; not least as they usually improve the robustness and/or broaden the basis of our decision-making in a helpful manner. Where the objection persists beyond these discussions, this process provides a mechanism to resolve the disagreement at the lowest appropriate level, with the Chief Nuclear Inspector acting as the final arbiter within ONR in the most complex cases.

2. PURPOSE AND SCOPE

- 2.1 This procedure describes the process for resolving differences of regulatory opinion within ONR. The process should be invoked in situations where there are differences in opinion over regulatory strategies, technical issues or regulatory action to be taken (or not taken) which cannot be resolved through ordinary discussion at the lowest appropriate level. It supplements ONR's human resources policies, and arrangements in the Staff Handbook for resolving problems at work ^(Ref. 1).
- 2.2 This process is designed to ensure that differences of regulatory opinion are fairly and objectively arbitrated in order to safeguard the integrity of ONR's regulatory decision making. The process should not be applied in cases where there is only minor difference of opinion or with respect to matters inconsequential to ONR's reputation as an effective, independent regulator.
- 2.3 The process is not designed for the retrospective review of permissioning or enforcement decisions already enacted. In the event of objections to past decisions, the relevant delegated person should instead consider initiating a regulatory oversight review ^(Ref. 2) to provide assurance and to identify relevant organisational learning.
- 2.4 The process does not apply to:
- Regulatory permissions already granted. For example, those which have already resulted in the issue of a licence instrument, or an approval under the Nuclear Industries Security Regulations (NISR) etc.
 - Enforcement decisions already enacted by the issue of an improvement or prohibition notice, a security direction, or use of powers in accordance with a nuclear site licence.
 - Decisions made by other organisations to which ONR has contributed advice.

- 2.5 The process, which provides for resolution of differences of regulatory opinion through line management discussion, is not intended to accommodate anonymous concerns. ONR's whistleblowing and protected disclosures process ^(Ref. 6) provides an alternative mechanism for staff who wish to protect their anonymity. This instruction is consistent with the UK Regulators' Code and international regulatory guidance ^(Ref.3 & 4).

3. RESPONSIBILITIES

Delivery Leads (DL)

- 3.1 Delivery Leads are responsible for ensuring that the views of regulatory staff are considered when decisions are made on technical and regulatory issues, and when regulatory strategies are set.
- 3.2 The relevant Delivery Lead is responsible for ensuring the process outlined in this document is instigated whenever he/she becomes aware of a position where consensus cannot be reached within the timescales needed for the decision through routine discussion.

Professional Leads (PL)

- 3.3 PLs are responsible for providing impartial advice on request to aid resolution of differences of regulatory opinion within ONR.

Regulatory Oversight Manager (ROM)

- 3.4 The ROM is responsible for:
- Screening submissions and formally assigning a case number for submissions which fall within the scope of this process.
 - Identifying the manager at the next (higher) level of accountability who will be called upon to arbitrate the difference of regulatory opinion (known within this procedure as the Resolution Manager).
 - Progressing the disagreement up the management chain if agreement cannot be reached at the current level, and ensuring that any later Resolution Managers receive a full account of the resolution process to date.
 - Effective record keeping by maintaining a register summarising the use of this procedure and the status of on-going cases.
 - Supporting and overseeing effectiveness of this process and its application within the organisation.

Resolution Manager

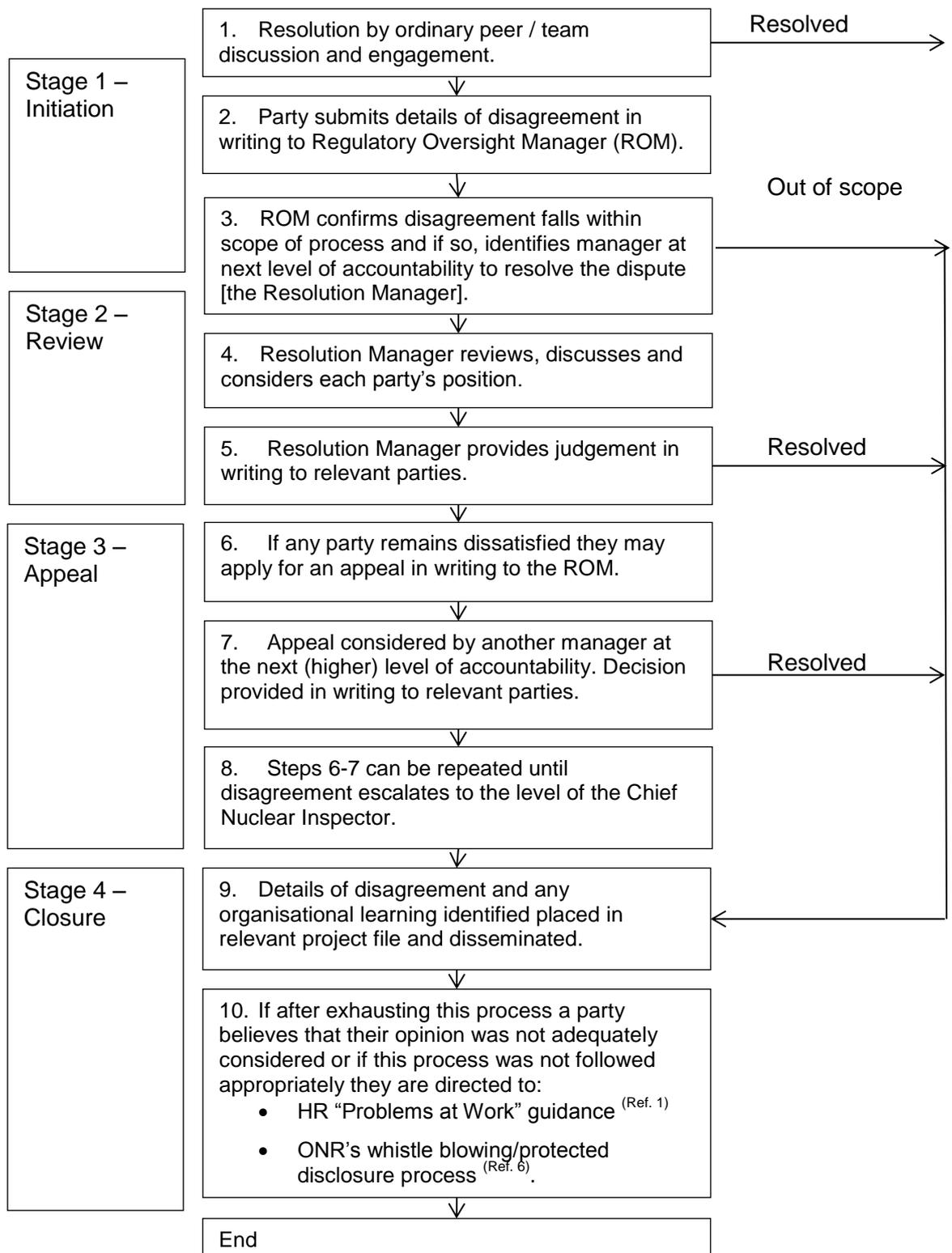
- 3.5 The Resolution Manager is the manager at the next level of accountability, called to arbitrate a difference of regulatory opinion. In so doing, the Resolution Manager is responsible for:
- Meeting with those on all sides of the difference of regulatory opinion to understand their positions.
 - Fairly and objectively considering the merit of arguments and evidence put forward by all parties.
 - Consulting PLs, Regulatory Oversight and other internal sources of regulatory or technical advice, and external independent advice as they consider appropriate.
 - Ensuring that all those involved in the process (including the ROM) are made aware of any independent advice taken and received, the decision reached, and its basis.
 - Ensuring that their review is adequately documented within the relevant project file.

Chief Nuclear Inspector (CNI)

3.6 The CNI will act as the final arbiter within ONR in resolving differences of regulatory opinion where these have not been resolved at an earlier stage in this process. The CNI has the same responsibilities as other Resolution managers, but will make the final decision.

4. PROCESS FLOW

4.1 The process for resolving differences of regulatory opinion within ONR is set out below:



5. PROCEDURE

- 5.1 Leaders are expected to create an environment which fosters open discussion, where diverse views are respected and valued, free from fear of negative consequences. All staff are expected to act in accordance with ONR's Behavioural Framework and the relevant code of conduct of their professional body. We expect our staff to recognise that others may not always share their views on technical and regulatory issues, or strategic factors, and that regulatory decisions on such issues that need to be taken within ONR may not accord fully with their own judgement of the evidence and argument, especially when wider considerations are taken into account.
- 5.2 In forming their own view as to what action needs to be taken in a particular case, inspectors are expected to discuss issues with their peers, the Delivery Lead(s) and relevant Professional Leads. This is particularly important where there are likely to be differing views and inspectors should be alert to such situations so that every opportunity is taken to resolve areas of disagreement early through discussion.

6. STAGE 1 – INITIATION

- 6.1 Where staff have strong concerns about regulatory strategies or technical or regulatory issues that are within the scope of Section 2, which have not been resolved through routine discussion, they should raise these with their Delivery Lead and/or Professional Lead, requesting that the process for resolving differences of regulatory opinion be initiated.
- 6.2 The process may be initiated by any party then submitting a written request to the ROM. The request should include the following information:
- A summary of the prevailing view or position, together with principal legal, policy, or technical arguments, evidence and judgements on which it is founded.
 - Name/s and role/s of those staff holding this view
 - A summary of the alternative view, together with key underpinning arguments, evidence, and judgements on which it is based.
 - Name/s and role/s of staff holding this alternative view.
 - Their assessment of the consequences of ONR failing to adopt either view/position.
- 6.3 As a good practice, it is preferable for this written request to be agreed by both parties; however it is appreciated this may not be appropriate in all cases. If the act of producing an agreed request resolves the difference in opinion, then the process should be terminated at that point.
- 6.4 The ROM (or delegate) will within 5 working days review the request, confirming whether it falls within the scope of this procedure and will identify the manager who will arbitrate on the disagreement. The Resolution Manager will normally be the manager one level above those parties involved in the disagreement with accountability for the issue in question. For example, a disagreement between the author of an assessment report and the inspector peer-reviewing the report would be referred to the relevant Professional Lead. A disagreement between a specialist inspector and a project inspector regarding the treatment of specialist advice within a permissioning decision would be referred to the Delivery Lead. The aim is to resolve areas of disagreement at the lowest level where possible.
- 6.5 The Resolution Manager should not have any detailed prior involvement in the disagreement. If the manager feels that they may have a potential conflict of interest

(or this may be perceived), they should discuss these concerns with the ROM. In such circumstances, it may be appropriate for the ROM to identify an alternative person of similar authority and appropriate grade to fulfil the role of Resolution Manager. The role of Resolution Manager may also be assigned to other alternative persons for reasons of technical competence or workload.

- 6.6 Where the ROM judges that the request falls outside of the scope of this procedure (as defined in Section 2), he/she will discuss the basis for this judgement with relevant parties, together with alternative mechanisms.
- 6.7 On receipt of a written request to initiate this process, the ROM will inform relevant Directors, Delivery Leads, Professional Leads and other internal stakeholders they judge appropriate.

7. STAGE 2 – REVIEW

- 7.1 The Resolution Manager should use their professional experience and take appropriate advice to consider objectively the differing professional opinions, respecting the views and professional standing of all parties. The Resolution Manager should meet with the concerned parties to understand the basis for their position. The Resolution Manager should also consult PLs, and other internal sources of regulatory or technical advice, and external independent advice as they consider necessary and appropriate to inform their judgement. This advice should be documented in writing. Any meetings convened should be recorded with agreed minutes.
- 7.2 Senior managers should avoid any direct involvement which could be perceived as adversely impacting their ability to hear a subsequent appeal.
- 7.3 The Resolution Manager should document their final judgement and its technical basis in a file note which should be distributed to relevant parties. This file note, together with relevant supporting documentation should be placed within the relevant project file. These documents should be accessible to the ROM so they can maintain oversight of overall process health.
- 7.4 The manager should arrange to meet with affected staff to discuss the basis for their final judgement.
- 7.5 The regulatory decision being challenged should be deferred until a final outcome of this process is achieved, allowing time for any appeal. The process described above should, therefore, be conducted promptly, minimising any delay. The Resolution Manager should agree a timescale for completion of their review with the ROM and relevant Director. Where application of this process may adversely impact our permissioning programme, Delivery Leads should ensure that dutyholders remain informed of any revised timescales.

8. STAGE 3 – APPEAL

- 8.1 If, after the review process described above has been completed, any party involved is still in disagreement then they should lodge an appeal. Appeals should be lodged in writing to the ROM within three working days, who will refer the appeal to another Resolution Manager at a higher level of accountability. Given the need potentially to delay regulatory decisions to allow time for potential appeals, all parties should be proactive in advising colleagues if they are not minded to appeal.
- 8.2 This process may be repeated until the appeal is considered by the Chief Nuclear Inspector, who acts as the ultimate arbitrator for ONR.

9. STAGE 4 – CLOSURE

- 9.1 The Resolution Manager should ensure that good records documenting the application of this process are recorded and appropriately filed.
- 9.2 On completion of the process, the relevant DL (or PL, if the ROM considers this would be more appropriate) should ensure that any wider organisational learning is captured, for example via application of ONR's Review Learn Improve process ^(Ref. 5) or via a Regulatory Oversight review ^(Ref. 2). The objective of the review should be to contribute to ONR's aim of continuous improvement. To this end, the ROM should brief the Technical Division Board on conclusion of the application of this process, confirming proposals for implementation of identified organisational learning.
- 9.3 If after following the process described above, the member of staff still feels that their concern has not been adequately resolved then he/she should seek redress from either the procedure set out in Human Resource Guidance – "Problems at work" ^(Ref. 1) or ONR's whistle blowing/protected disclosure process ^(Ref. 6).

10. REFERENCES

1. ONR Staff Handbook, [Problems at Work](#),
2. Regulatory Oversight Process, ONR-TD-GD-001 Revision 0, A Wylie, December 2018, 2018/248338
3. The Safety Culture of an Effective Nuclear Regulatory Body, Nuclear Energy Agency, NEA 7247, Organisation for Economic Cooperation and Development, 2016
4. Organization, Management and Staffing of the Regulatory Body for Safety, IAEA Safety Standards Series No. GSG-12, 2018
5. Review, Learn, Improve (RLI) Process, [HOW2](#)
6. Protected Disclosures And Whistleblowing Process, ONR-GEN-IN-006 Revision 1, Sarah Atherden. June 2017, 2017/284184