



RHRA Complaints Review Officer Policy and Procedural Manual

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DEFINITIONS

In this Policy Manual

“Act” refers to the *Retirement Homes Act*, 2010, S.O. 2010, c. 11 and its associated regulation O. Reg. 166/11.

“Complainant” means an individual who has made a complaint to the Retirement Homes Regulatory Authority about a retirement home pursuant to sections 81-88 of the Act.

“CRO” means the Complaints Review Officer appointed under section 25 of the Act.

“Home” refers to a retirement home licenced under the Act.

“Resident” or “Residents” means someone who resides in a Home.

“RHRA” means the Retirement Homes Regulatory Authority.

“Substitute Decision Maker” refers to an individual who is entitled by law to make decisions on behalf of a Resident, such as someone who holds a Power of Attorney for the Resident.

CRO PROCEDURE

The Act does not specify a process for conducting complaint reviews. Section 88 (6) of the Act provides that the CRO may develop their own process for reviewing complaints, as long as the process does not conflict with section 88 of the Act. The following process has been developed to conduct complaint reviews:

1. **The Request:** The complaint review request is received by the RHRA.
2. **The Record:** RHRA staff prepare the record, which includes the decision, the complaint and all information that was before the Registrar in making the decision. RHRA staff provide the Record and the Request to the CRO. RHRA staff notifies the licensee of the Home that is the subject of the complaint.
3. **Written Process:** The CRO process is a written process. It does not involve meetings or a hearing.
4. **Jurisdiction:** The CRO ensures that they have jurisdiction to consider the review. Under section 88(1) of the Act, the CRO will have jurisdiction if:
 - a. the Registrar has considered the merits of the complaint;
 - b. the Registrar has notified the complainant in writing that the Registrar will be taking no further action on the complaint; and
 - c. the CRO has not previously reviewed the complaint.

If the CRO believes they do not have jurisdiction, they will notify the complainant in writing and allow the complainant to make a submission as to why they believe the CRO has jurisdiction. The CRO provides 30 days for the submission. If no submission is received or having reviewed the submission, the CRO still believes that no jurisdiction exists, the CRO will close the file. This decision is final.

5. **Acknowledgement Letter:** if the CRO has jurisdiction, the CRO prepares an Acknowledgement Letter and sends it to the complainant and provides 30 days for the complainant to respond. The Acknowledgement Letter includes:
 - a. An overview of the jurisdiction of the CRO, including an explanation of the standard of review of reasonableness and that decisions are final;
 - b. The legislative outcomes available from a Request;
 - c. An explanation about section 88(8) of the Act relating to what happens if significant new information is obtained; and
 - d. A request that the Complainant provide submissions relating to reasonableness (i.e. their specific concerns with the Decision). If the complainant has provided submissions in the Request, the complainant is asked to confirm their concerns.
6. **Confirmation of Concerns Letter:** On receipt of a response from the complainant, the CRO sends the complainant a Confirmation of Concerns Letter. This letter summarizes the submissions made

by the complainant as to why they feel the decision is not reasonable and asks the complainant to confirm the accuracy of the Confirmation of Concerns Letter within 30 days.

7. **Review:** The CRO conducts the Review which includes reviewing the Record, the Decision and any submissions from the complainant. The Review is a “paper review” and does not involve any meetings with the complainant or hearings. The CRO is not an investigator and the review is based on the information before the CRO.

Fresh Information: if at any time during the complaint review, the CRO obtains information about the Home that was not known to the Registrar, the CRO will determine whether that information is significant. If the information is significant, the CRO will refer the complaint back to the Registrar for further consideration. The decision of whether the information is significant is made by the CRO and is final.

8. **Decision:** After conducting the Review, the CRO issues a written decision and reasons which is provided to the complainant and the Home.

9. **Limitations:** The CRO cannot:

- Consider matters not raised in the original complaint;
- Consider matters outside the jurisdiction of the Act;
- Intervene with the Home on a complainant’s behalf;
- Conduct investigations;
- Take enforcement action;
- Direct the Registrar to take specific action in relation to the Complaint
- Make any finding of non-compliance with the Act;
- Award payment of money or other compensation; or
- Direct a licensee to refund fees.

INTERPRETATION AND JURISDICTION GUIDELINE

No Further Action

Section 88(1) of the Act provides that the CRO has jurisdiction to review matters where the Registrar will be taking no further action on a complaint. The term “no further action” is not defined in the legislation. In order to ensure that complainants have ample opportunity to review Registrar decisions, the CRO considers “no further action” to include anything other than enforcement action, i.e. anything other than the Registrar imposing conditions on or revoking a Home’s licence, or making an order against a Home for a contravention of the Act (i.e. a compliance order, administrative monetary penalty, or management order). Where the Registrar takes other action in response to a complaint, such as issuing a written education letter or warning letter to a licensee, the CRO will have jurisdiction to review such matters.

Fresh Information

Section 88 (8) of the Act provides that if at any time during the complaint review, the CRO obtains significant information about the Home that was not known to the Registrar, the CRO will refer the complaint back to the Registrar for further consideration.

The submissions made by a complainant about an existing complaint is not considered fresh information. Rather, fresh information means “evidence” such as documents that are in the possession of the complainant or names of witnesses that are able to speak to the issues raised in the complaint. Complainants are urged to provide any such information or documentation directly to RHRA during the complaints process. However, if a complainant provides fresh information during the review process, the CRO will determine whether the fresh information is “significant.” The standard applied by the CRO to determine if such information is significant is whether it might reasonably be expected to have affected the decision about the concerns raised in the complaint, should the Registrar have received it. The CRO’s decision of whether the information is significant is final.

In some cases, complainants put forward new concerns or complaints. The CRO is not an investigator and can only consider the concerns that were before the Registrar when the Registrar made their decision. As such, if the complainant raises new complaints or concerns, RHRA may require the complainant to submit a new complaint.

Decisions Are Final

Decisions of the CRO are final and cannot be appealed.

The CRO is also not able to review a decision relating to a complaint matter that was already before them – this includes matters where the CRO found the decision not to be reasonable and sent it back to the Registrar and the Registrar has issued a decision. This restriction, however, does not apply to matters where there is fresh information.

POLICY ON TIMING FOR COMPLAINTS REVIEW OFFICER DECISIONS

The Act does not specify a timeframe for complaint reviews by the CRO. As such, this Policy is intended to address the timing for complaint reviews.

The CRO will endeavour to complete the review of a matter within six (6) months of the receipt of a request for a review.

Some matters may not be able to be completed within that timeframe. In these cases, the CRO will provide the complainant with an explanation in writing for the delay after 90 days and then every 30 days thereafter (see Appendix A for template notification correspondence).

In straightforward reviews, where timelines are also met by the complainant, matters will generally be completed prior to the six month timeframe. Some reviews are much more complex than others and require additional time in order to conduct a fair and thorough review. Some of the factors leading to delays include:

- When the complainant provides lengthy or complex submissions;
- The number of issues in the complaint; and
- The complexity of the issues.

The CRO is continuously reviewing the review process to identify ways to complete the process more quickly, without compromising its integrity.

Appendix A Sample Delay Letter

I am writing to advise you that I have not yet made a decision in this matter.

The primary reason for the delay as of (DATE) is that (EXPLANATION)

I will aim to provide you with a decision by (DATE). Should I be unable to do so, I will update you in writing every 30 days until a decision is made.

Please be advised that although these timelines are not unusual, it is my policy to send you this letter.

Thank you for your patience. If you have any questions, please feel free to contact me by return email.

POLICY FOR WITHDRAWALS OF REVIEWS

The Act does not specify what should happen if a complainant no longer wishes to proceed with their request for a review. As such, this Policy is intended to address the situation where:

1. The complainant advises that they no longer wish to proceed with the complaint; or
2. The complainant is not responsive to communications.

The CRO review process is for the benefit of complainants to be able to have decisions of the Registrar reviewed by an independent decision maker if the complainant has concerns that the decision was not reasonable. As such, the CRO expects complainants to engage in the complaint review process by responding to communication requests and providing relevant information and documentation within reasonable timeframes. The CRO will provide clear communication to complainants regarding the expectations and requirements for the complaint review process.

When a complainant has requested a review by the CRO and then withdraws their request, the CRO is not required to look into the matter further.

When a complainant fails to respond to communication attempts from the CRO, reasonable efforts will be made to contact the complainant using various available channels, such as email, or registered mail. The CRO will outline the consequences of non-responsiveness, including the potential discontinuation of the complaint review process.

If the complainant does not respond within a reasonable period, the CRO will decide whether to proceed with the review. In deciding whether to proceed with a review in these circumstances, the CRO may consider the following factors:

- a. The public interest;
- b. Whether the review request provides any indication of what the complainant's concerns are about the decision; and
- c. The issues raised in the review.

If the CRO decides not to proceed, the CRO will notify the complainant and the RHRA.

POLICY REGARDING HOMES NO LONGER LICENSED

The Act does not specify what should happen if a complaint is made in relation to a retirement home where, at the time of the review, the retirement home is no longer a licensee under the Act. As such, this Policy is intended to address such circumstances.

In such circumstances, the CRO will still conduct a review of a complaint.

Although the retirement home is no longer licensed at the time of the complaint, there are still important learnings that could be had from the review process. In addition, the licensee of the retirement home could purchase another home in the future. As such, a review of the complaint by the CRO could still be of educational value to the licensee. It is therefore determined that a review of the complaint by the CRO under these circumstances is in the public interest.

POLICY ON COMPLAINANT ACCOMMODATION

Access to Reviews

The CRO is committed to providing an inclusive and accessible environment in which anyone who is seeking a complaint review has equal access to reviews and are treated with dignity and respect.

The CRO is committed to providing accommodation for needs related to disability, unless doing so would cause undue hardship. Disability includes physical , sensory , mental health , and “invisible” disabilities such as learning disabilities or environmental sensitivities.

This policy sets out a process for complainants to let the CRO know about situations where accommodation is needed so that the CRO can work with individuals to make reviews accessible.

Application of the Policy

The CRO review process is a written process. However, the CRO recognizes that accommodation may be required. The CRO will promote equal access for all complainants and representatives to fully participate in the review process, short of undue hardship.

Process

Requests for accommodation will be considered on an individualized case-by-case basis.

When requested to accommodate a complainant or representative who is unable to communicate in writing, the CRO will arrange for a scribe to speak to the individual requesting the accommodation and to make a transcript or summary of the discussion. If another form of accommodation is required, the individual requesting the accommodation should specify the request being made. For instance, if an individual has a visual impairment, the individual may request that documents be delivered in an accessible format (e.g., Braille, etc.).

It is the responsibility of the complainant or their representative to request the accommodation. The individual must provide as much information as possible so that the CRO has all the details about the request.

The CRO will decide the appropriate and reasonable accommodation for the circumstances.

POLICY ON CONFIDENTIALITY AND CONSENT

Confidential Process

The CRO process is a not a public process. The CRO protects the confidentiality of all forms of information, including written documents, and any other materials related to the complaint review.

Records of reviews are retained in a secure manner by the CRO and the RHRA as required by applicable laws, regulations, or organizational policies. Records are only disclosed in accordance with applicable laws and organizational policies including the RHRA's Access and Privacy Code.

Requests for Documents

The CRO will not provide access to any requestor of any complaint-related information or documents, including the record that was before the Registrar.

Disclosure of Decisions

Decisions of the CRO are provided to the complainant, the Home that was the subject of the complaint and the Registrar via their staff.

Consent and Capacity

The CRO aims to uphold the principles of consent, autonomy, and dignity while safeguarding the rights and well-being of individuals.

Consent refers to the voluntary agreement given by an individual who has the capacity to understand the nature and implications of their actions and decisions. Capacity refers to an individual's ability to understand relevant information and make informed decisions about their participation in complaint investigations or resolution processes.

The CRO presumes that individuals involved in the complaint process have the capacity to provide consent unless there are reasonable grounds to believe otherwise.

In cases where an individual appears to lack the capacity to participate in the review process, the CRO may seek to involve a legally recognized substitute decision maker, as defined by applicable laws and regulations. While decision-makers assess an individual's capacity on a case-by-case basis, considering factors such as cognitive abilities, communication skills, and comprehension of relevant information, the CRO is not in a position to make a formal capacity assessment. If necessary, the CRO may consult with healthcare professionals or other relevant experts to obtain an independent assessment. The assessment process shall respect the principles of consent, fairness, dignity, and privacy, ensuring the individual's rights are protected.

Where the complaint has been made by an individual who is the Resident's Substitute Decision Maker and confirmation has been provided to RHRA in this regard, the CRO will rely on that confirmation and not make any further inquiries in that regard.

Complaints made by Individuals who are not the Resident or their Substitute Decision Maker

Personal information of residents, including but not limited to health records and financial information, will be treated with the highest level of confidentiality and privacy.

A complaint about a Home may be made by any individual. Where the complaint is not made by the Resident of the Home or their Substitute Decision Maker, then the information in a CRO decision that can be shared with the complainant will be limited and no personal information will be shared with such individuals without the express consent of the Resident or their Substitute Decision Maker where applicable.

POLICY ON COMMUNICATION WITH THE CRO

The CRO is committed to procedural fairness in the review process. This includes explaining the review processes and the reasons for CRO decisions.

The CRO strives to communicate in a clear, professional, respectful, courteous and timely manner with complainants and expects the same of those with whom the CRO communicates. While the CRO understands that some people are dealing with frustrating circumstances and emotional issues, the CRO will not tolerate behaviour that is harassing, abusive, intimidating, discriminatory or threatening. Threats of violence may be reported to police or appropriate authorities.