

STEP-BY-STEP: HOW TO RESPOND TO AN IMPROVEMENT NOTICE

Steps	Description
1. Report the notice	Report the notice internally to your compliance officer, manager or director – such notices give rise to potential legal liability and should be escalated appropriately internally.
2. Seek legal advice	Non-compliance with improvement notices may result in prosecution therefore it is important to seek legal help. By doing so you can ensure you receive appropriate advice regarding compliance. This will also reduce the likelihood of further conduct which may additionally prejudice any explanation or defence you have in relation to the initial incident.
3. Note compliance time	This is typically a short period (7 days). If timely compliance is a concern, write and request a short extension of time, setting out the reasons why the extra time is reasonably required.
4. Consider revocation	Consider whether there is any technical basis to apply for the revocation of the notice – that is, does the notice contain the information mandated under the HVNL and discussed in our above article.
5. Consider complying	<p>Review the notice and consider if you can comply with what is requested. You should ensure that the conduct complained of and steps required are within your ability, power and/or control to effect.</p> <p>This may include or require you to issue directives to your agents. If it is not within your power to take some or all of the steps set out in the notice, you will need to ask for the notice to be amended or wholly/partially revoked. If you don't do this and then do not comply, you may be subject to an undeserved and avoidable penalty for non-compliance with the terms of the notice.</p>
6. A reasonable excuse	Consider whether you have a reasonable excuse not to comply. As a general guide, reasonable excuses in the context of regulatory enforcement may include that the notice is not valid or doesn't meet the requirements of the HVNL, or you have reasonably requested legal advice on your obligations before responding.
7. Assess systems for compliance	Assess what actions, systems and/or procedures you have in place to comply with the notice. It is helpful to identify each individual step required under the notice and ensure that responsibility is allocated to an individual to ensure that the step is taken. Partial compliance won't be sufficient, so make sure nothing falls through the cracks. It may help to set out each individual action required and the steps taken to implement it in your response, in order to make sure nothing is overlooked
8. Reflect and look ahead	Take a moment to reflect and look forward. The notice has been issued due to some past or ongoing breach of the HVNL. Whilst this breach or breaches have been identified, are there any similar areas of operation in which your business is committing other similar breaches? If so, you should take the opportunity to address them now, rather than waiting for a further notice in the future.
9. Supply information	Supply the information set out in the notice by the due date and in the manner directed in the notice – typically by postal address or email.
10. Seek confirmation	Seek written confirmation of receipt of your response.