

Guidance on dealing with causes for concern

This guidance sets out the steps we need to take in considering causes for concern. The guidance covers the role of the regulatory decision-maker in the National Business Unit, who has responsibility for reviewing the information provided, and the inspector, who may be asked to pursue particular issues relating to suitability during a visit.

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Introduction

1. This guidance sets out the steps we need to take in considering causes for concern. The guidance covers the role of the regulatory decision-maker in the National Business Unit, who has responsibility for reviewing the information provided, and the inspector, who may be asked to pursue particular issues relating to suitability during a visit.

Reviewing the initial information

2. The regulatory decision-maker must review all applications for registration where an individual discloses details of any issues or incidents that may raise a concern about a person's suitability to work, or be in regular contact, with children. This includes any information declared on the individual's EY2 or CR2 form about:
 - offences the person has committed
 - medical issues
 - previous involvement with local authority.
3. In addition to the applicant's own information, the regulatory decision-maker must also review all information received from third parties relating to an application for registration or an existing registered provider, even if the individual has not disclosed details on an application or declaration form EY2/CR2.
4. We carry out a 'known to Ofsted' check on all individuals associated with an application to register. The National Business Unit will bring to the regulatory decision-maker's attention any issues arising from the 'known to Ofsted' check that could indicate a cause for concern. The regulatory decision-maker must take these into account alongside other information provided by the individual and obtained from other checks.
5. If the regulatory decision-maker believes there is insufficient information on the EY2/CR2 form about the offence or concern, they will either contact the individual to obtain further details before reaching the suitability decision, or will refer the case to the Compliance, Investigation and Enforcement team (CIE team) to progress the concern, depending on the seriousness of the concern.
6. The regulatory decision-maker may:
 - contact the individual to discuss minor concerns over the phone
 - arrange contact with other parties, such as the police or the local authority, for more information

- make a direct referral to the CIE team for further investigation, if the matter relates to something more serious (in these cases the CIE team takes over responsibility for pursuing the concern, organising the registration visit and making the individual suitability and overall registration decisions)
 - refer the information to the inspector to discuss at the visit.
7. In deciding which approach to take to follow up the concern, the regulatory decision-maker will need to take into account:
- whether any disclosure of a conviction or concern on an application or EY2/CR2 form is consistent with information received from third parties
 - the seriousness of the offence or concern and the frequency – for example, the number of convictions
 - whether there is a pattern to any offending, for example, escalating levels of violence, or a number of alcohol-related convictions
 - the accuracy of the person’s self-disclosure on the EY2/CR2 form, compared to information received from third parties
 - the relevance of an offence or concern to working or being in regular contact with children
 - the age of the individual at the time of the offence or concern
 - the length of time that has elapsed since the offence or concern.
8. Once the regulatory decision-maker has decided how to proceed, he or she must record the decision and the reasons for that decision in the Regulatory Support Application. We must not, however, record specific information relating to an offence that was identified in a Disclosure and Barring Service check (see the guidance in the registration and suitability handbook for further information on recording details from a Disclosure and Barring Service check).

The inspector’s role

9. The regulatory decision-maker or CIE case owner is responsible for liaising with the inspector and ensuring that they have sufficient information through the automatic data transfer or access to the Regulatory Support Application to enable the inspector to discuss concerns during a visit. The regulatory decision-maker or CIE case owner must work with the inspector to plan lines of questioning regarding the offence or concern.
10. The regulatory decision-maker or CIE case owner must make sure the inspector knows or has access to:
- where the visit should take place (if the information relates to a ‘third party’, that is someone who is associated with the application but is not the applicant for registration)
 - details of any documents the inspector needs to see during the visit

- all relevant information to help them pursue the cause for concern during the visit
 - the lines of questioning that the inspector should pursue during the visit (see further guidance below).
11. The regulatory decision-maker or CIE case owner must record details of discussions with the inspector on the Regulatory Support Application, including details of any direct line of questioning they have requested in relation to an offence or concern. This will ensure that there is a proper audit trail to support the decision-making process. The detailed process to follow when dealing with causes for concern sets out how this should be done.
 12. The regulatory decision-maker or CIE case owner and the inspector must plan lines of questioning to gain information relevant to the concern, which must result in evidence that allows the regulatory decision-maker to make a decision on an individual's suitability. In relation to an application, this will inform the registration decision. In relation to an existing registered provider, the NBU and the CIE team will assess the information in line with the risk assessment guidance and process. This guidance is set out in Chapter 2.1a of the *Compliance, investigation and enforcement handbook*.¹

Guidance on questioning

13. If the concern relates to an 'associate' of an applicant or registered person (usually a member of a childminder's household), the inspector must discuss the matter with the individual concerned before discussing it with the applicant/registered person. This is so that the individual concerned has a chance to tell us (and take up the matter with the Disclosure and Barring Service or other agency) if the information is wrong. It also gives the individual the opportunity to alert the applicant/registered person, if he or she does not already know about the issue. This process satisfies data protection requirements which prevent us from disclosing information about a third party.
14. The inspector will need to ask questions relating to:
 - the circumstances surrounding each offence or concern
 - the individual's attitude to the offence or concern
 - whether the individual is remorseful for any offence and if so is this because:
 - they got caught for the offence; or
 - they are receiving punishment for the offence and do not like it; or

¹ *Compliance, investigation and enforcement handbook*, Ofsted, September 2012; www.ofsted.gov.uk/resources/120240.

- someone else suffered as a result of their actions
 - the individual’s understanding/awareness of the impact on others of the offence or concern
 - the action the individual has taken to avoid repetition of the offence or concern
 - the failure to disclose the offence or concern, or to disclose it accurately, on the EY2 form, taking into account information received from third parties (the inspector must not disclose the source of any additional or third party information to the individual).
15. When considering the recommendation about suitability after the visit, the inspector must take into account the answers to the questions above as well the potential impact of any individual and their past or current behaviour on the quality of care for children. For example, if there are domestic violence concerns about a family member who no longer lives in a childminder’s household, the inspector should consider not only the access by such an individual to children but also the impact the domestic violence had on the childminder and whether this may affect any decision she makes about the children she looks after.

Examples of other concerns and considerations

The examples provided below are a guide only. This is not an exhaustive list. Regulatory decision-makers and CIE case owners must use their knowledge and expertise when making a decision about who is most appropriate to take forward a concern, taking into account the criteria set out above and balancing this with any potential risk to children.

Example 1a

A Disclosure and Barring Service check discloses that the new member (AB) of an already registered childminder’s household has two convictions, one for theft (three years ago), the other for battery (one year ago). AB was sentenced to 150 hours community service and two years in prison, suspended for 12 months, respectively. AB did not disclose the convictions on his EY2 form. AB works shifts and is occasionally on premises while minded children are present.

The regulatory decision-maker considers:

Seriousness

Both offences are considered to be relatively minor; battery shows a level of violence – although not necessarily serious violence or any indication that the violence concerned children.

Pattern

There does not appear to be a pattern to the offences.

Accuracy of disclosure

AB did not disclose the offences.

Role and contact with children

AB is a household member. AB is occasionally on premises while minded children are present.

Relevance of the offence/concern to working with children

AB does not work directly with children, but the childminder’s attitude to the offences and their impact on her may affect her childminding.

Age of offence/length of time since conviction/concern

The offences are recent.

Decision

Although AB does not work directly with children it is clear that he is occasionally on premises while minded children are present. The offences occurred recently yet AB failed to disclose the details on the EY2 form, which in itself raises concerns about AB’s character. We have no details relating to the circumstances surrounding the conviction for battery or the levels of violence that occurred. In particular, we do not know whether the offence for battery was against a child, nor do we know whether children were present and witnessed the offences being committed. We also have insufficient information about any action AB has taken to prevent the reoccurrence of the same or similar offence. The regulatory decision-maker should refer the concern to the CIE team in line with the decision-making thresholds in the process for handling causes for concern

Example 1b

A Disclosure and Barring Service check discloses that the new member (AB) of an already registered childminder’s household has two convictions one for theft (six years ago), the other for battery (four years ago). AB was sentenced to 150 hours community service and two years in prison, suspended for 12 months, respectively. AB disclosed the convictions and details relating to the conviction for battery on his EY2 form. AB works shifts and is occasionally on premises while minded children are present.

The regulatory decision-maker considers:

Seriousness

Both offences are considered to be relatively minor; battery shows a level of violence – although not necessarily serious violence or any indication that the violence concerned children.

Pattern

There does not appear to be a pattern to the offences.

Accuracy of disclosure

AB did disclose the offences and details relating to the conviction for battery. In addition, he gave further details about the battery offence.

Role and contact with children

AB is a household member; AB is occasionally on premises while minded children are present.

Relevance of the offence/concern to working with children

AB does not work directly with children, but the childminder's attitude to the offences and their impact on her may affect her childminding.

Age of offence/length of time since conviction/concern

The offences are fairly recent.

Decision

Although AB does not work directly with children it is clear that he is occasionally on premises while minded children are present. The offences occurred fairly recently. AB disclosed full details on the EY2 form, including details relating to the circumstances which led to the conviction for battery. There have been no further offences since. Either the regulatory decision-maker or the inspector must discuss the matter with the individual concerned, in line with the guidance in the registration and suitability handbook.

Example 2

CD discloses an offence of dangerous driving on the CR2 form. The offence was 11 years ago. The Disclosure and Barring Service disclosure confirms the offence. CD was sentenced to 18 months in prison. CD is on the committee of an out-of-school club and is also employed there as a part-time member of staff.

Seriousness

Dangerous driving is a serious offence.

Pattern

There is no pattern as this is the only identified offence.

Accuracy of disclosure

CD disclosed the offence.

Role and contact with children

CD works directly with children and is a member of the registered person.

Relevance of the offence/concern to working with children

There is no relevance in relation to working with children, unless the out-of-school club intends that CD will transport children as part of her duties as a committee member or member of staff.

Age of offence/length of time since conviction/concern

The offence was 11 years ago. There have been no further convictions.

Decision

The offence is serious but occurred a significant time ago and was declared by CD on the CR2 form; there is no evidence of any other offences. We need to establish whether CD will be required to transport children in either of her roles at the out of school club. The regulatory decision-maker may contact the individual to discuss this concern over the telephone, raising questions in particular about whether or not she will be involved at any time in transporting children. Lines of questioning might include:

- whether she will be involved in collecting children from or taking the children to school
- whether she will be expected to transport the children on outings, for example during school holidays
- whether she has insured any vehicle of her own to include the transportation of children who attend the out of school club.

If the discussion raises further concerns, the regulatory decision-maker will refer the information to the inspector to discuss at a registration/inspection or additional visit. (If the discussion raises serious concerns, the regulatory decision-maker will refer the information to the CIE Team for further investigation.)

Example 3

A local authority check identifies EF is known to social services. The reason identifies EF as 'child in need' when she was 12 years old. No further information is provided.

Seriousness

EF was the subject of the concern as a child in need.

Pattern

Not relevant.

Accuracy of disclosure

Not relevant.

Role and contact with children

EF is applying to register as a childminder.

Relevance of the offence/concern to working with children

It is unlikely that there is any relevance to the notification that would impact on an application for registration as a childminder, unless any neglect or abuse has left mental or psychological scars. Such issues would be likely to be covered in the information provided by the applicant and/or their general practitioner in the health declaration booklet.

Age of offence/length of time since convictions/concern

Not relevant.

Decision

The applications team would try to obtain further information, such as the date their case was closed, any action taken and so on, from the local authority. The regulatory decision-maker would cross-reference the information received with the health declaration booklet. The regulatory decision-maker would advise the inspector so that the inspector can take this information into account when considering the childminder's attitudes to children.

Example 4

A Disclosure and Barring Service check identifies that GH received a caution for breach of the peace and being drunk in a public place. The convictions are 27 years old. GH did not disclose the convictions on the CR2 form. GH is the manager of a childcare setting.

Seriousness

The offences are minor.

Pattern

None.

Accuracy of disclosure

GH did not disclose the offences.

Role and contact with children

GH will be directly responsible for the care of children in the nursery.

Relevance of the offence/concern to working with children

The offences do not have any relevance to the role. However, GH's role assumes high responsibility and the non-disclosure could raise concerns about her integrity.

Age of offence/length of time since convictions/concern

The offences occurred 27 years ago when GH was 17 years old. There are no further offences.

Decision

Although GH did not disclose the offences it is possible she had 'forgotten' about them or did not believe she needed to disclose them due to being a minor at the time, and/or that they occurred so long ago. However, a discussion needs to take place relating to the non-disclosure of information by a person in such a position of trust. The regulatory decision-maker may discuss the offence during a telephone call and should also refer the information to the inspector to pursue at a registration/inspection or registration visit.