

How to make representations and appeals

Guidance for people applying to register, or who are registered, as children's social care providers or children's social care managers

This leaflet tells you how and when to make a representation against our proposal, or appeal against our decision, to take steps that will affect your registration. It provides guidance for people applying to register, or already registered, to provide or manage a: children's home, voluntary adoption agency, adoption support agency, independent fostering agency, or residential family centre.

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Introduction

1. Ofsted is responsible for the regulation of children's homes, voluntary adoption agencies, adoption support agencies, independent fostering agencies and residential family centres in England.
2. In some circumstances it is possible for an applicant, a registered provider¹ or a registered manager² to make a representation or appeal against an action we take or propose to take. This leaflet explains how and when you can make a representation or appeal.

Section 1: Representations

What is a representation?

3. You can make a written representation against our proposal to take certain steps in relation to your registration or application to register. Making a representation is your opportunity to tell us why you think the steps we intend to take are not required. You must make any representation in writing to us.

What can I make a representation about?

Notice of proposal

4. We must tell applicants, registered providers or registered managers about certain steps we propose to take about your registration and why. We do this by a written notice called a notice of proposal. **You can make a representation against a notice of proposal.**
5. We must send you a notice if we propose to:
 - grant an application for registration with conditions that have not previously been agreed in writing with the applicant
 - impose a change to the conditions³ that apply to your registration, which may include adding new conditions, varying existing ones or removing them (conditions can restrict or allow you to operate in a particular way, such as limiting the number of children and adults you can care for)

¹ Ofsted registers adoption support agencies, children's homes, independent fostering agencies, residential family centres and voluntary adoption agencies only. We do not register local authority fostering or adoption services.

² Ofsted registers managers for adoption support agencies, children's homes, independent fostering agencies and residential family centres only. We do not register managers of local authority adoption or fostering services or voluntary adoption agencies.

³ If you need further information about conditions, please refer to *Conditions of registration for all regulated social care services and categories of registration for children's homes and voluntary adoption agencies* (110049), Ofsted, 2011; www.ofsted.gov.uk/publications/110049.

- cancel your registration
 - refuse your application to register as a provider or manager
 - refuse your application to vary or remove conditions of registration
 - refuse to give our written consent allowing you to operate, manage or have a financial interest in a children's home, or to employ someone who is disqualified to work in a children's home⁴.
6. At this stage we have not made a final decision to take the steps outlined in the notice of proposal. This is an opportunity for you to explain why the proposed action should not be taken.

When can I make a representation?

7. We serve each notice by hand or by post. You must make your representation in writing within 28 days from the date the notice of proposal is served or deemed served⁵. Your representation must include any relevant information that will help us decide in your favour. This might include any information or evidence you believe we have not previously considered, or details of any actions you have taken since you received the notice. If you can demonstrate that you have taken action to resolve our concerns, then we may decide not to take further action.

How do I make a representation?

8. You must send your written representation to:

Social care compliance team
Ofsted National Business Unit
Piccadilly Gate
Store Street
Manchester
M1 2WD

Who considers my representation?

9. Your representation is considered by a panel consisting of the original decision-maker, a Regulatory Inspection Manager or above who has had no involvement in the case to date and a colleague from the social care compliance team. One of these members chairs the panel. This person is responsible for ensuring the panel follows the correct procedures and for informing you of the outcome of your representation.

⁴ Section 65 of the Children Act 1989 allows us to give written consent to those disqualified under that section.

⁵ Deemed served means the date at which the notice would be delivered in the ordinary course of post having been properly addressed, pre-paid and posted (Section 7 of the Interpretation Act 1978).

What happens during the representation panel?

10. You can attend the representation panel in person and bring representatives to support you; this can include a solicitor. If you wish to attend the panel in person please make this clear on your written representation.
11. When you arrive at the meeting we show you or your representative to a private room where the panel will hear your representation.
12. This is your opportunity to tell us about the information and evidence you believe we have not previously considered, or details of any action you have taken since you received the notice telling you about the steps we plan to take. The members of the panel may ask you to explain any point you make.
13. If you attend the panel in person, the panel members will only ask questions if they do not understand any of the information you give on the day. They will not challenge the information you or your representatives give.
14. In the same way, you or your representative cannot challenge the panel. This is not an opportunity for you to challenge Ofsted's evidence or interpretation of events.

How will Ofsted make its decision?

15. The panel will consider and discuss all the information before deciding on the outcome of your representation. The panel base their decision only on that information. The panel will either:
 - uphold your representation
 - partially uphold your representation, or
 - not uphold your representation.

How will Ofsted tell me about the outcome of my representation?

16. We write to tell you the panel's decision within 10 working days of considering your representation. The outcome letter includes an explanation of how the panel reached its decision.
17. If the panel **upholds** your representation, we confirm the outcome of the representation in writing.
18. If the panel **partly upholds** your representation, we confirm the decision in writing and send you a new notice of proposal. We may in some cases tell you about other steps we intend to take or require you to take. You then have the right to make a written representation against this new notice as set out above.

19. If the panel does **not uphold** your representation, we write to tell you why. We also write to confirm the steps we are taking in a written notice called a notice of decision. This notice sets out why we decided to take those step(s).

Can I appeal against the notice of decision?

20. Yes, you have the right to appeal to an independent body – the Health, Education and Social Care Chamber, First-tier Tribunal – against the steps set out in the notice of decision. Please read the following section on appeals.

Section 2: Appeals

What is an appeal?

21. As an applicant, registered provider or manager you can appeal against certain decisions that we make or the effect of a magistrates order. The appeal is your opportunity to explain to an independent organisation why you believe that our decision, or a magistrates order, is wrong.

What can I appeal against?

Notice of decision

22. Ofsted must tell applicants and registered providers about certain decisions we make and why. We do this by a written notice, called a notice of decision. You can appeal against our decision to:
- grant an application for registration with conditions that have not previously been agreed in writing with the applicant
 - impose a change to the conditions that apply to your registration, which may include adding new conditions, varying existing ones or removing them (conditions can restrict or allow you to operate in a particular way, such as limiting the number of children and adults you can care for)
 - cancel your registration
 - refuse your application to register as a provider or manager
 - refuse your application to vary or remove conditions of registration
 - refuse to give our written consent allowing you to operate, manage or have a financial interest in a children's home, or to employ someone who is disqualified to work in a children's home⁶.

⁶ Section 65 of the Children Act 1989 allows us to give written consent to those disqualified under that section.

Notice to restrict

23. You can appeal against a notice to restrict accommodation at a children's home or residential family centre.

Magistrate's order

24. You can appeal against a magistrate's order that:
- varies, imposes or removes conditions of your registration, or
 - cancels your registration.

Who do I appeal to?

25. You appeal to the First-tier Tribunal of the Health, Education and Social Care Chamber.⁷ The tribunal considers appeals against Ofsted's decisions or against the effect of a magistrate's order on a children's social care service.
26. The Tribunal is an independent organisation that has the power to change Ofsted's decisions or the effect of a magistrate's order. Each appeal is heard by a specifically convened panel consisting of a legally qualified member, known as a 'judge', and two non-legal members with relevant experience or expertise.

How do I ask for an appeal?

27. You appeal by writing to the secretary of the tribunal. You must submit your written appeal within **28 days** of service of:
- the magistrate's order
 - our decision to:
 - change the conditions that apply to your registration
 - grant an application for registration with conditions that have not previously been agreed in writing with the applicant
 - cancel your registration
 - refuse your application for registration as a provider or manager
 - refuse your application to vary or remove conditions of registration
 - restrict accommodation in a children's home or residential family centre.

⁷ Established by the Tribunals, Courts and Enforcements Act 2007

28. You must appeal within **three months** from the date you receive written confirmation that Ofsted:
- refuses to give written consent for you to provide, manage or have a financial interest in a children's home because you are a disqualified person
 - refuses to give written consent for you to employ someone who is a disqualified person to work in a children's home.
29. If you are late in sending your appeal, you must explain why, so that the judge can decide whether you have a good reason for not meeting the time limit. If she/he thinks your reason is not acceptable, she/he can dismiss your appeal without a hearing.
30. Ofsted always have legal representation at an appeal. You may wish to seek advice from your own legal representative or from your local Citizen's Advice Bureau (www.citizensadvice.org.uk).

How can I contact the tribunal?

31. You can contact the Tribunal by⁸:
- telephoning 01325 392712 between 9am and 5pm, Monday to Friday
 - faxing 01325 391045
 - e-mailing CST@tribunals.gsi.gov.uk
 - visiting the website at: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/care-standards/index.htm
 - writing to:

The Tribunal Service (Care Standards)
Mowden Hall
Staindrop Road
Darlington
DL3 9BG.
32. You may find it helpful to request a copy of the tribunal's guidance which tells you about the appeals process. This is available from their website: www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/care-standards/AppealtoFtT_CareStandards_Aguidetotheappealsprocedure.pdf

⁸ All contact details are correct as at May 2011; individuals are reminded to check before submitting an appeal.

Tribunal decisions

33. The tribunal decides to either:
- uphold your appeal, or
 - dismiss your appeal.

Tribunal timescales: expedited appeals process

34. The First-Tier Tribunal (Care Standards) has agreed an expedited appeals process with Ofsted for appeals against a magistrate's order for cancellation of registration, or against a notice to restrict accommodation.
35. Further information is provided in the *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*. This is available on our website: www.ofsted.gov.uk/publications/100242 and on the tribunal service website: www.justice.gov.uk.

What happens if the tribunal upholds my appeal?

36. If the tribunal upholds your appeal, this means they agree with you that Ofsted's decision is wrong or a magistrate's order is inappropriate. The tribunal's decision applies immediately.⁹ The tribunal can, at the same time:
- impose conditions on your registration
 - remove a condition from your registration
 - change the conditions that apply to your registration, or
 - keep the existing conditions.
37. If the tribunal decision changes your conditions of registration, Ofsted sends you a new certificate of registration. The certificate sets out the conditions that apply to your registration. If the tribunal does not change the conditions of your registration, we write to confirm that there is no change, but do not re-issue the certificate.
38. If your appeal is against another action listed in paragraph 24, Ofsted writes to you to confirm the tribunal's decision and any action that you need to take.

⁹ 'Immediately' means from the date the tribunal makes its final decision.

What happens if the tribunal dismisses my appeal?

39. If the tribunal dismisses your appeal, this means that they support our decision or agree with the magistrate's order. This means that Ofsted's decision applies immediately or that the effect of the magistrate's order continues. For example, if we decided to cancel your registration, and you appeal against our decision, the law allows you to continue to provide care until the tribunal has reached their decision about your appeal.¹⁰ If the tribunal dismisses your appeal, **you must immediately stop** providing the care for which you are registered and you cannot provide any other care which requires registration.
40. We write to you to confirm the tribunal's decision and what this means. You may have the right to a review of the tribunal's decision, or to appeal against the tribunal's decision. You can read further information about how to appeal against a tribunal's decision on their website or you can contact the tribunal secretary for more information. You may also find it helpful to speak to a solicitor for advice.

¹⁰ This does not apply to notices restricting accommodation or magistrate's orders which take immediate effect on service. These are not delayed until an appeal is heard.