

# Social care compliance handbook

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This handbook sets out the legal background to our compliance work and our powers. We use it in our regulation of adoption support agencies, children's homes, residential holiday schemes for disabled children, independent fostering agencies, residential family centres and voluntary adoption agencies.

The 'Social care compliance handbook' is written for use by Ofsted staff. It is published to enable providers, managers and interested parties to understand Ofsted's compliance processes.

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# Part 1: Brief overview of Ofsted powers, legal basis, thresholds and recording

## Introduction

1. The law gives Ofsted a range of powers to deal with registered persons who fail to meet the legal requirements for social care settings that are regulated and where someone is carrying on or managing a setting without the appropriate registration. We exercise these powers; for example, we take 'enforcement action', to reduce the risk of harm to children, young people and adults who use regulated social care services and to enforce compliance with the law to improve the quality of services.<sup>1</sup> The protection of children and adults is a fundamental consideration in our work.
2. Our compliance and enforcement powers are set out in the Care Standards Act 2000 and associated regulations and apply to the establishments and agencies<sup>2</sup> that Ofsted regulates, which are:
  - adoption support agencies
  - children's homes, including secure children's homes
  - residential holiday schemes for disabled children
  - independent fostering agencies
  - residential family centres
  - voluntary adoption agencies.<sup>3</sup>
3. This handbook sets out our approach to compliance and enforcement action and how we handle concerns raised about a registered person's non-compliance with the law.

## Our policy on compliance and enforcement action

4. The protection of children, young people and adult service users is paramount to our approach to compliance and enforcement. We:
  - act immediately on any information that suggests the welfare of children, young people or adults is not safeguarded or that they are at risk of harm or being harmed
  - take appropriate action that:

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<sup>1</sup> We use the terms 'compliance' and 'enforcement' throughout this guidance to mean the action we take to ensure that the law is followed.

<sup>2</sup> Referred to as 'settings' in this guidance.

<sup>3</sup> For adoption, some of Ofsted's powers are also set out in the Adoption and Children Act 2002.

- raises standards and improve lives, as set out in our strategic plan
  - is capable of mitigating any risk of harm or actual harm to children, young people or vulnerable adult service users
  - takes account of, and is proportionate to, the seriousness of the non-compliance
  - will secure compliance with the law and improve the quality of the setting
  - uses our statutory or non-statutory compliance or enforcement powers when a relevant threshold is met.<sup>4</sup>
5. In carrying out our compliance and enforcement work, we ensure that we:
- consider the particular circumstances of each case
  - act swiftly to address any non-compliance with the relevant legislation
  - keep accurate records and an audit trail of all aspects relating to a case including records relating to decision-making
  - are proportionate in our approach
  - regularly review the progress of a case
  - take timely legal advice, where appropriate
  - revise our approach as appropriate
  - ensure that all Ofsted staff are suitably trained and have high-quality support, advice and supervision when taking compliance action
  - publish information about our compliance policies
  - comply with the Regulators' Code.<sup>5</sup>

### **Recording case information**

6. It is essential that all Ofsted staff who are involved in a compliance case at any stage record all relevant information, actions, decisions and reasoning in the appropriate place.
7. OfficeBase is the main repository of all social care case-based recording. 'Case thinking' is a section of this recording system that provides a place for inspectors and managers to maintain a record of each case. Inspectors will record any relevant information that they receive about a setting or registered person to provide as detailed a picture as possible about their strengths, weaknesses, concerns or issues.

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<sup>4</sup> We can only use our compliance and enforcement powers when specific criteria are met. See Part 3 for each power and their criteria.

<sup>5</sup> Regulators' Code, Better Regulation Delivery Office, 2014; [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).

8. The 'case thinking' section should be used to record:
- findings from documentation and/or evidence (for example, a summary of the previous inspection reports for a setting and what they show)
  - an analysis of concerns about a case and a summary of next steps following a case discussion
  - any strategic thinking about a case. For example, whether advice is required from policy or legal colleagues, or whether we need to gain further information before holding a case discussion or case review.

## **Part 2: Responding to information of concern**

### **2.1 Responding to concerns and notifications**

9. We may receive information from a variety of sources. Information or concerns may come from:
- notifications from registered persons – the law requires registered person(s) to inform us of certain matters (notifications). A notification from a registered person must be made 'without delay' of the event taking place or concern arising
  - notifiable incidents from a local authority<sup>6</sup>
  - other agencies, such as the police, schools, environmental health, fire safety, local authority children's services departments, health and local safeguarding children boards (LSCBs)
  - other regulators/inspectionates, such as the Care Quality Commission, Food Standards Agency and HMI Constabulary
  - parents and carers
  - children and young people, or their representatives
  - members of staff
  - the public, including neighbours
  - Ofsted's inspections of social care or other settings.
10. The information we receive may suggest that:
- children, young people or adult service users are at risk
  - a registered person is not meeting the regulations or conditions of registration
  - a person is no longer fit for registration to carry on or manage a setting

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<sup>6</sup> Formerly 'serious incident notifications'.

- a person is providing or managing a children’s social care setting without the required registration.
11. Where we receive concerns from a member of the public, service user or other similar third party, we always try to keep the person’s name and details confidential if that is their wish. However, sometimes the provider may be able to guess their identity from the content. Occasionally, we may have to reveal the identity of a complainant in order to allow a thorough investigation of the concern, or where action results in a court or tribunal hearing, but we would always explain any such need to the complainant before doing so. Any such actions or decisions must be recorded in OfficeBase.
  12. We will always conduct an immediate assessment of risk on receiving any information to determine if any safeguarding or compliance action is required. We liaise with other agencies as necessary, but we always conduct our own investigation or inspection where appropriate. Ofsted is not the statutory authority for the conduct of enquiries into specific child protection concerns and will bring to the attention, of the local authority social services and the police, any concerns in relation to safeguarding or allegations of abuse identified through any part of its work.<sup>7</sup>

## **2.2 Risk categorisation of information**

13. Ofsted receives information via:
  - notifications recorded straight into OfficeBase
  - through the Applications, Regulatory and Contact Team (ARC), who may receive information by phone or email. This information should be recorded into OfficeBase and categorised in the normal way
  - an inspection or from another professional who contacts inspectors directly. This information should be sent to the categorisation mailbox and recorded on OfficeBase.
14. Any information that suggests a risk of harm and the need for swift action to protect children, young people or adult service users, must be forwarded immediately to the Regulatory Inspection Manager (RIM) and the duty Social Care Compliance Inspector (SCCI) in charge of categorisation. Such information would be information in one of the following categories:
  - the death of a child, young person or vulnerable adult
  - the involvement or suspected involvement of a child or young person in sexual exploitation

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<sup>7</sup> See *Safeguarding children and young people and young vulnerable adults policy*, Ofsted, February 2015; [www.gov.uk/government/publications/ofsted-safeguarding-policy](http://www.gov.uk/government/publications/ofsted-safeguarding-policy).



- the instigation of a child protection inquiry
  - information from any source that suggests a child may be at risk of harm.
15. The SCCI makes an initial assessment, on the date that they receive the information, if any action must be taken and categorises it on OfficeBase. This includes whether a case review or case discussion is necessary, or no further action is required. Where no further action is required, the SCCI sends this to the allocated inspector to record as per any other notification received.
  16. If further action is required, the duty SCCI opens a compliance case on OfficeBase and records the actions they have taken, any discussions that they have had, and information they have received. They must consider whether this meets the criteria for a serious incident briefing.<sup>8</sup>
  17. In all other cases, information is sent to the allocated inspector (where there is one) for their review. They must assess the information in line with the guidance in the inspection handbook relevant to that particular type of setting.
  18. The RIM must retain strong oversight of serious cases to ensure that we take swift action to protect and promote the welfare of service users.
  19. Where information received relates to a setting's manager or member of staff being suspended because of an allegation of abuse, we will speak to the police immediately if they are involved, and conduct a case discussion as soon as is reasonably practical to consider our next steps and whether there needs to be an urgent monitoring visit.
  20. SCCIs and inspectors must use the risk factors in Table 1 below when making decisions about further action.

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<sup>8</sup> See SIB guidance on SharePoint.

**Table 1: Factors to consider when assessing information and determining risk**

This list is not exhaustive and colleagues should consider other factors where relevant.

Inspectors must consider:

- whether the information suggests that there is a risk of or actual harm to children, young people or adult service users
- the nature and severity of any potential non-compliance with regulations or conditions of registration, particularly the extent to which the quality of care is compromised
- whether the registered person(s) has/have committed an offence
- the length of time since the last inspection
- the outcome of the last inspection
- whether there is a history of complaints/concerns about the registered person(s)
- the registration status of the setting including, for example, if it has no registered manager
- the nature of notifications from the registered person (including, for example, trends in notifications, notifications arriving late, or ones containing limited or vague information)
- patterns of information (for example, possible links between information received from different sources)
- involvement of other agencies (for example, the police or Local Authority Children's Services) or concerns expressed by them
- compliance history of the registered person(s), including the current status of any active compliance cases
- whether the registered manager manages more than one setting or the responsible individual oversees the management of more than one setting
- organisational history, including the provider's response across all of their registered settings to previous inspection and compliance case outcomes
- any other information known about the registered person(s) and responsible individual.

All information about a provider, manager and setting must be considered when deciding about whether further action is required following a notification or receipt of information. Information may not suggest a risk when viewed in isolation, but may suggest fundamental problems when viewed in the context of other recent events and information.

### **Action following risk assessment**

21. Where information suggests a risk of harm, immediate action must be taken to protect children, young people and adult service users, for example by conducting an inspection/monitoring visit and/or alerting child protection agencies, such as the local authority and the police. We must act within two hours of receiving the information.

22. For guidance on how we handle child protection concerns about children, please refer to 'Concerns about children: guidance for all Ofsted staff'.<sup>9</sup>
23. The guidance requires us to ensure that any child protection concerns are referred to the local authority without delay and no later than two hours after receiving the information. The allocated SCCI will confirm our referral in writing within 24 hours of the decision to refer. SCCIs are responsible for ensuring that child protection referrals to local authority child protection teams are made.
24. If we are dissatisfied with any action a child protection team has taken or is proposing to take, we must convene an urgent case discussion to decide what further action we may need to take. This may include a Senior HMI, Social Care.
25. If children, young people or young adults' continued placements at the setting are at risk, the regional Senior HMI, Social Care and Regional Director should be alerted so that they can discuss these concerns with the relevant Directors of Children's Services. In addition, a discussion should be held about whether a serious incident briefing is required. A record of the discussions held, documents examined, actions taken and decisions made must be kept in OfficeBase.

### **Recording notifications**

26. The SCRI must record their assessment of all notifications on OfficeBase on the day they complete their assessment. This must include:
  - a brief summary of the reason for the notification
  - details of the action taken by the registered persons in response to the event being reported
  - details of any contact with the registered persons, or other relevant people
  - any advice sought from SCCIs or legal colleagues
  - action taken by Ofsted in response to the notification
  - agreed next steps if any.
27. Deciding whether a notification has been unacceptably delayed must take account of the reasons for delay. If the delay is in order to provide more comprehensive information from another agency about the action being taken to protect children, this is acceptable. The more serious the issue, the more important it is that notifications are provided with more immediacy.

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<sup>9</sup> *Concerns about children; guidance for all Ofsted staff*, Ofsted, 2015;  
[www.gov.uk/government/publications/concerns-about-children-guidance-for-all-ofsted-staff](http://www.gov.uk/government/publications/concerns-about-children-guidance-for-all-ofsted-staff).

28. Where we receive a delayed notification, the Social Care Regulatory Inspector (SCRI) must investigate and record on OfficeBase the reasons for the delay.

### **Changes in categorisation**

29. We keep our compliance cases under regular review and continue to monitor risk. We should change the category of a case where new information suggests increased or decreased risk. Although we cannot amend the category in OfficeBase, we must record the change in category and reasons for this on OfficeBase under 'case thinking'.

### **Notifiable incidents from local authorities<sup>10</sup>**

30. Local authorities have a duty to notify Ofsted of a serious childcare incident promptly and within five working days of becoming aware of the concern. These notifications are normally received by ARC and sent to the Serious Case Review/ Serious Incident Notification (SCR/SIN) team who upload them to SharePoint and make them available to the Senior HMI, Social Care and Regional Director for the area where the setting operates.
31. The criteria for notifying Ofsted are:
- a child has died or been seriously harmed and abuse or neglect is known or suspected
  - a child looked after has died (including where abuse or neglect is not known or suspected)
  - a child in a regulated setting or service has died (including where abuse or neglect is not known or suspected).
32. If a serious incident relates to a regulated social care setting, we may receive two notifications: the serious incident notification from the local authority and a notification from the setting concerned under the Care Standards Act 2000.
33. If any member of staff receives a notification relating to a regulated setting that fits any of the criteria above, they must contact the Ofsted Principal Officer, Safeguarding to inform them of the notification and check whether a local authority notifiable incident has been received.

## **2.3 Decision-making, case discussions and case reviews**

34. We make decisions about our next steps following the receipt of information that concerns us, or whether to take compliance action, within case discussions and case reviews. This forms a critical part of our decision-making process. From the point that we receive information about a setting to the closure of a

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<sup>10</sup> Formerly 'serious incident notifications'.

compliance case, case discussions and case reviews are the ways that we continually assess risk; make decisions about what we will do; monitor the outcomes of these actions; and consider new information. Case discussions are for decision-making about relatively straightforward issues or concerns, while case reviews are for making more complex or significant decisions about next steps with a provider.

35. Where we believe a case may result in statutory compliance or enforcement action, it is important that we seek legal advice as early as possible in the process. This helps to ensure that the action we take is legally compliant and less likely to be subject to challenge, particularly on points of law. See Annex B for further information.

### **Case discussion**

36. Case discussions are any conversations or discussions that we have about a compliance case or concern. Case discussions may include:
  - a meeting or conversation between an inspector and a RIM about the initial steps that we must take to safeguard children, young people and adult service users
  - a meeting or conversation between an inspector and a RIM to identify whether a case review is needed to make a significant decision
  - a conversation or discussion with any other person about the concern or case
  - a decision to close a compliance case.
37. We record and implement decisions from the case discussion as soon as possible after we make them.

### **Case reviews**

38. We use case reviews to make significant decisions about a case, including taking statutory action. The purpose of a case review is to consider all evidence and information about non-compliance, the options available to us, and to reach decisions about the action we will take.
39. The circumstances in which we hold a case review are set out in Annex B.
40. We keep formal minutes of our case reviews and store these on OfficeBase as part of the compliance case. The minutes should not be a verbatim account of the discussion but a summary of the concerns and a clear record of what action is proposed.
41. If no further action is required, the reasons for this must be recorded.
42. If further action is taken, the rationale for this must be recorded.

43. The SCCI and decision maker are responsible for the quality assurance of the minutes of the case review and to ensure that these are stored on OfficeBase in the documents section of the specific compliance case.
44. In addition, a high-level summary of the risks and concerns and next steps should be included in the 'case review' section of OfficeBase.

### **Participants in a case review**

45. The attendees of a case review will depend on the complexity and nature of the case. As a minimum, it must include a decision-maker and an SCCI, and should have a minute taker. We may include others, such as policy or legal colleagues where we consider it appropriate. Full details of what decisions we make at a case review or case discussion and the decision-maker are shown in Annex B. The decision-maker must sign any notice or letter that is issued as a result of a case review.

### **Roles in a case review**

46. The table in Annex C sets out the roles and responsibilities for participants in a case review.

### **Considerations in a case review**

47. A case review must consider all of the evidence before making a decision. We consider the following in making our decisions:
  - history – all compliance information from previous cases and information from inspections; any trends in non-compliance; the registration history of the registered person(s); information relating to any other setting registered to the provider or previous registrations of the manager
  - identifying issues – the key aspects of the concerns leading up to the case review, including any non-compliance with legislation, the risk of harm to children, young people and/or adult service users, or the fitness of an individual to be involved in providing or managing children's social care
  - information from other agencies – this may include information from the police, the local authority children's services, a Disclosure and Barring Service check or elsewhere
  - new information – new information gained during the course of the investigation. For example, information from the registered person or applicant, including any action that a person has taken to reduce the risk of harm

- robustness of evidence – challenging our evidence, checking that it is comprehensive and ensuring that it is sufficient to meet the ‘balance of probabilities’ or ‘beyond reasonable doubt’ test<sup>11</sup>
- managerial accountability – clearly identifying who is accountable for the breach and who we could/should take action against (registered provider and/or registered manager)
- compliance and enforcement options – full consideration of all options open to us and why these are appropriate or not. This may include using more than one form of action at the same time (where this is being considered, advice from the legal services team must be sought). We must consider the impact of our decision on service users and ensure that our decisions are proportionate
- referral to Disclosure and Barring Service – considering whether any person involved in the setting should be referred to the Disclosure and Barring Service. See chapter on ‘Making referrals to the Disclosure and Barring Service’ (page 109) for more information
- arrangements for serving of any notices – clarifying who will draft and serve notices and arranging legal review. See chapter on ‘Notice of proposal/notice of decision process’ (page 83) for more details
- timescales and actions – the necessary actions, who is responsible for each action and clear timescales for completion. We should ensure that we avoid drift or delay and take into account booking time with the legal team, preparing press or serious incident briefings and briefing senior managers
- further compliance or enforcement action – other action we may take if the person fails to comply
- monitoring visits – the arrangements for monitoring visits to check on the safety of service users and the registered provider’s compliance with our action
- communication – who needs to be notified about the outcomes of the decision (for example, local authorities, the Care Quality Commission, parents/carers)? This may include notifying a registered manager and/or responsible individual if we are taking action against the registered provider
- linked settings – consider related settings and any implications. There may be need to collaborate with Ofsted colleagues from other remits or other regions about the actions we are taking, or plan to take. The case review must identify these settings (OfficeBase details linked settings) and inform relevant colleagues, if this hasn’t been done already

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<sup>11</sup> The evidential test of ‘on the balance of probabilities’ relates to the level Ofsted must prove when taking civil enforcement action. ‘Beyond reasonable doubt’ is the evidential test relating to criminal enforcement action.

- date of, or trigger for, next case review.

### **Fitness of registered persons**

48. While our decision-making must focus on specific breaches of regulations and law, it is also important that we look at our evidence in a holistic manner regarding a registered person's overall fitness. This may include considering integrity and character, including whether the registered person (or where the registered provider is a corporate entity, the responsible individual):
- has attempted to keep information away from Ofsted that we should have been informed about (for example, failure to notify of significant events or significant change within the settings)
  - has been dishonest in the information they have provided (for example, copying a statement of purpose from a different setting, or making misleading statements in record-keeping)
  - has offered only limited or restricted information, rather than full and accurate information
  - has attempted to obstruct Ofsted staff in carrying out their duties
  - has been slow in providing information to Ofsted or responding to requests for information (for example, returning an action plan)
  - has insufficient knowledge of and compliance with the Acts, regulations and standards for the setting
  - has not demonstrated that the safeguarding of children, young people and adult service users is their utmost priority.
  - has not taken the 'Working together to safeguard children' into account in carrying on or managing the setting.<sup>12</sup>
  - has not taken other relevant guidance into account in carrying on or managing the setting, for example, 'Statutory guidance on children who run away or go missing from home or care'<sup>13</sup> and 'Safeguarding children and young people from sexual exploitation'.<sup>14</sup>

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<sup>12</sup> *Working together to safeguard children*, Department for Education, 2015; [www.gov.uk/government/publications/working-together-to-safeguard-children--2](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2).

<sup>13</sup> *Statutory guidance on children who run away and go missing from home or care*, Department for Education, 2014; [www.education.gov.uk/aboutdfe/statutory/g00222839/children-who-run-away-and-go-missing-from-home-or-care](http://www.education.gov.uk/aboutdfe/statutory/g00222839/children-who-run-away-and-go-missing-from-home-or-care).

<sup>14</sup> *Safeguarding children and young people from sexual exploitation*, Department for Education, 2009; [www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance](http://www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance).



## Managerial responsibility

49. In deciding what compliance action we will take, it is very important that we identify against whom we should be taking this action. The regulations set out clear duties and responsibilities for the persons connected to a setting, including the registered provider and registered manager (or manager for voluntary adoption agencies).
50. In considering our evidence, we must carefully look at who is responsible under the regulations and what evidence we have to show that their action or inaction contributed to the breach. The regulations state whether the 'registered person', 'registered provider' or 'registered manager' is responsible. In the majority of cases, the regulations make the 'registered person' responsible, which includes both the registered provider and the registered manager.
51. Where a breach of such a regulation has occurred, we must consider the role of both persons (and in the case of a corporate registered provider, the role of the responsible individual) in deciding what action we should take against whom. For example:
  - a children's home employs a member of staff who is not fit. Under the regulations, the 'registered persons' are responsible for the fitness of staff. We should, therefore, consider taking action against both the registered manager and the registered provider for the breach. We must ensure that our evidence demonstrates the involvement of both persons in the recruitment process and/or decision. For example, evidence that shows the registered manager was involved in sifting applications, interviewing and/or checking the person's referees and employment history.
52. Inspectors must check the setting-specific regulations to check which registered persons are responsible for meeting each regulation.
53. However, as a summary, the duties that are exclusive to the registered provider include:
  - appointing a suitable responsible individual, who is responsible for supervising the management of the setting
  - appointing a fit manager who is in charge on a day-to-day basis
  - maintaining financial viability of the setting and holding appropriate insurance.
54. Where a registered provider fails in any of the above, we must question their fitness and consider taking action against them.
55. There may be some occasions where we are taking serious action against a registered provider, such as cancelling their registration, but where we decide not to take action against the registered manager. This may occur where we have built up evidence over a period of time to suggest that the registered

provider is not fit, but where they have recently appointed a new registered manager. In this case, we may not feel that it is appropriate to cancel the manager's registration. Where this occurs, we must carefully record in OfficeBase our reasons for this. See 'Cancellation of registration' (page 68) for further details.

56. Responsible individuals are not registered with Ofsted, but are appointed by the registered provider. The legal duty lies with a registered provider to ensure that the person they appoint as the responsible individual is suitable to take on the role.
57. It may come to Ofsted's attention that a responsible individual is not suitable. Where this occurs, we must consider how this reflects on the registered provider's fitness as they appointed the person and considered them to be suitable when there is evidence to suggest they are not.
58. The setting-specific regulations contain a small number of regulations which place a duty directly on the responsible individual. This includes notifying Ofsted of any offences they have been convicted of. However, most regulations place a duty on the registered provider. This does not preclude us from considering the quality of the supervision and oversight provided by the responsible individual in determining a registered provider's ongoing fitness. Where there is evidence that a responsible individual has been neglectful in their supervision or that their action/inaction has contributed to a breach of regulations, we must take this into account when considering what action we will take against the registered provider. We cannot, however, take action against the responsible individual directly.<sup>15</sup>
59. A responsible individual can commit some offences found in the Care Standards Act 2000, such as obstruction. A responsible individual may also become disqualified. Where we cancel the registration of a provider and/or a manager of a children's home, any person who had a financial interest or was concerned in the management of the home at the time becomes disqualified. This extends to the responsible individual and will make them disqualified.<sup>16</sup> See chapter on 'Disqualification and written consent' (page 108) for further details.

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<sup>15</sup> Unless they commit an offence which we can prosecute any person for, such as obstruction. See chapter on 'Prosecution' (page 60) for more detail.

<sup>16</sup> Regulation 2(7)(c) of the Disqualification from Caring for Children (England) Regulations 2002.

## 2.4 Unregistered social care provision

### Introduction

60. A person may not provide or manage a children's social care setting in England without holding the appropriate registration with Ofsted, unless the setting is exempt from registration.<sup>17</sup> It is an offence to do so and we may prosecute.
61. Operating an unregistered social care setting may pose a significant safeguarding risk to service users.

### Exemptions from registration

62. There are some settings for children, young people and adults that do not require registration with Ofsted. The exemptions are set out in the Care Standards Act 2000 and setting-specific regulations.
63. Providers may provide accommodation for some young people aged 16 and over without registration. Whether the setting requires registration depends on the needs of the young people placed and the level of care they require. Settings of this nature come to Ofsted's attention most frequently. Settings which provide 24-hour staff support, which means that the young people cannot live there without constant care, probably need registration. Individual providers should read Ofsted's registration guidance and take their own legal advice about the requirement to register.<sup>18</sup>

### Responding to a report of an unregistered setting

#### *Initial response*

64. When we discover or receive a report that a person or organisation may be providing or managing a setting that requires registration with us, we check OfficeBase for any previous knowledge about the setting, individual or company. We look to see whether:
  - the person or organisation has submitted an application for registration
  - the person was previously registered or is known to Ofsted through acting in another capacity, such as being a registered provider, a responsible individual, or a manager of a different setting
  - we have previously investigated the person for providing or managing children's social care without being registered
  - we have previously refused the person registration.

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<sup>17</sup> These are set out in Section 11 of the Care Standards Act 2000 and associated regulations.

<sup>18</sup> *Guide to registration for children's social care services*, Ofsted, 2015;

[www.gov.uk/government/publications/guide-to-registration-for-childrens-social-care-services](http://www.gov.uk/government/publications/guide-to-registration-for-childrens-social-care-services).

65. A case discussion should be held and a decision made as to the action to be taken. This may include a visit to the setting, contacting the local authority, local health authority, the Care Quality Commission or any agency to establish whether they have any information about the setting or individual for more information.

### **Visits to potentially unregistered setting and/or managers**

66. These visits are not statutory inspections. Rather, we use our powers under section 31(2) of the Care Standards Act 2000 to enter and inspect these settings.
67. Inspectors should apply the following guidance when visiting a setting, which we believe may be being provided or managed without registration:
- visits to establishments should normally be unannounced, but may be announced where it is appropriate to do so, for example, in the case of some agencies or offices to enable best evidence to be collected
  - once at the premises, establish the identity of the person who is suspected of providing and/or managing the setting
  - if the person providing and/or managing is not on site, take full contact details for them and attempt to make contact immediately, informing them that you are at the setting. Invite them to attend at the earliest opportunity
  - obtain full details about the setting and provider; relevant questions in relation to the type of registered setting we consider they may be providing can include:
    - information about the nature of care or service provided
    - the age and needs of the children, young people or adults to whom services are being provided
    - detail of the services being provided, including the date the setting first operated
    - detail of any placing authorities and/or commissioner of services
    - any other information required to establish if this setting is operating within the law.
68. It may be necessary to seize evidence or take copies of documents in compliance with Code B of the PACE Act 1984.
69. Once the inspector has sufficient information or has exhausted all attempts to obtain information, they must leave the setting and advise that we will be in contact. Inspectors will not normally give a decision at this stage as to whether registration is required.

70. If the provider is present for the visit and the inspector has reasonable grounds to believe that they are operating a provision that requires registration, they will caution the provider so that we can:
- use any information they may give later if we decide to prosecute
  - ensure that the provider knows we suspect they are operating an unregistered setting and that anything they say is important and will be recorded.
71. If the inspector is in any doubt as to how to proceed, they should contact a RIM or SCCI for advice.

### **Safeguarding**

72. If the inspector considers that young people are at risk at the setting, irrespective of whether it should be registered or not, they must refer any information, partial or incomplete, immediately to the local authority children's services and/or the police.

### **Taking the investigation forward**

73. Following the visit, we assess the information gathered and decide which of the following apply:
- **the service provided does not require registration** with Ofsted. If this is the case we must confirm in writing to the provider and, where appropriate, the manager. Any correspondence must clarify that although we are of the opinion that the setting did not require registration at the time of our visit, it may in the future if the nature of care provided, or regulations, change. We should also clarify that it is the provider's responsibility to ensure that they remain up to date about whether registration is appropriate
  - **refer the information** to the local authority and/or police where we have child protection concerns
  - ask the provider and/or manager to **confirm in writing their intention to stop operating outside the law**, if they stated this intention at the visit
  - write to the person telling them that:
    - they must register
    - **they must submit an application**, preferably immediately but at most within 20 working days
    - they should cease operating/managing until a decision is made on the application
  - **conduct visits to the setting** to ensure that it has ceased operating. Where children and young people are already living at the service, we will

work closely with placing authorities and parents/carers to ensure the best possible arrangements for them.

74. Following a visit, we may decide that we want to interview a person suspected of carrying on or managing a social care setting without registration under the PACE Act 1984. We may use the evidence from this interview in any future prosecution. See chapter on 'Offences' (page 51) for further details.
75. Evidence required for prosecution includes:
- the identity of the person carrying on or managing the setting
  - the description and nature of the setting
  - the dates when offences occurred
  - where the offences occurred
  - demonstration of lack of registration
  - any evidence seized or copied (including screenshots), such as publicity material, leaflets and records of the setting, in compliance with Code B of the PACE Act 1984
  - all statements or exhibits from children and young people, staff, commissioners and publishers
  - the inspector's observations.
76. Matters to take into account when deciding on what action to take are:
- have we sufficient evidence to reasonably expect a successful prosecution
  - is it in the public interest to take forward a prosecution?
77. In all cases, where we believe a setting is operating without registration, we must inform any local authorities who have placed a child, young person or adult at the setting, and the local authority in the area where the setting is operating, about its unregistered status and the action we are taking.<sup>19</sup> Inspectors must share the information on the placing authorities involved with the relevant linked Senior HMI, Social Care.
78. Where we have previously informed a person that they must register with us and they have failed to do so, we must decide what enforcement action we should take, including whether to prosecute them. Only in exceptional circumstances should we provide them with a further opportunity to submit an application for registration to us.

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<sup>19</sup> Local authorities have the legal power to place children in unregistered setting in limited cases. If a local authority adopt such practice it must be made clear that such placing practices do not negate the need for a provider/manager to be registered under the Care Standards Act 2000.

## 2.5 Investigating concerns and evidence collection

79. When we receive information or allegations that suggest a breach of regulations or legislation, we need to check if service users are at risk of harm and/or whether a person is complying with the law. We may choose to investigate to gain further information and evidence before we make a decision about what compliance action, if any, we will take. We may do this by:
- conducting an inspection
  - conducting a monitoring visit
- or
- writing to the registered person(s) asking them to provide us with comprehensive information about the action they have taken or are taking. We will only use this option for low-risk concerns.
80. Each compliance case must include a record of the actions taken and the rationale in OfficeBase.

### **Requesting a provider to provide information about action in response to concerns**

81. Where we receive low-level concerns that do not suggest a risk to the safety or well-being of service users, and where the provider's compliance and inspection history does not give us cause for concern, we may ask a provider to submit information to us on how they have responded to a concern. In these instances, we write to the registered person(s), normally within five working days of the decision, asking them to provide us with a comprehensive report on the steps they have taken (which may be in the form of an action plan) in response to the concerns we have brought to their attention. The inspector and the RIM will make this decision, and record their reasons on OfficeBase. The registered person(s) is normally given seven working days from the date of our letter to respond.
82. On receipt of the registered person's response, the inspector assesses the information to determine if it adequately deals with the concern, normally on the day of receipt. A summary of the response, an analysis of its content and conclusion about whether it is deemed satisfactory must be recorded on OfficeBase by the inspector. RIMs must review the response and summary and sign them off on OfficeBase normally within two days.
83. If we do not receive a response to our letter within seven working days, the SCCI and RIM must decide on a course of action. This could be to conduct an immediate inspection or monitoring visit.
84. Where the response or action plan is inadequate, we must undertake an urgent inspection or monitoring visit normally within five working days of assessing the action plan.

85. Inspectors must also check that the actions are complete when they next inspect the setting.

### **Investigating a concern at inspection or at a monitoring visit**

86. There are four different types of visit Ofsted can conduct in relation to concerns about a provider.<sup>20</sup> These are:

- an inspection that includes an investigation into information received that suggests there may be a breach of regulations
- a monitoring visit to investigate information received that suggests there may be a breach of regulations
- a monitoring visit to monitor compliance with enforcement action – for example compliance with a restriction of accommodation notice or compliance notice
- a monitoring visit following an inadequate judgement (which may include monitoring of a compliance notice).

87. The decision to undertake a statutory inspection or a monitoring visit is made by the RIM or more senior manager via a case discussion or case review. See chapter on 'Decision-making, case discussions and case reviews' (page 12).

88. The decision will be made using the factors in Table 1 (page 10) and based on the level of risk and the inspector's professional judgement.

89. We may investigate a concern as part of a statutory inspection, for example, by bringing forward the inspection from its original scheduled date. We may do this where we need to find out if regulations have been breached or where we have concerns across a range of issues. If we decide to investigate a concern as part of an inspection, we must comply with our notice periods as set out in the 'Conducting the inspection' guidance for that type of setting. We cover all the elements that are usually considered and judged at a full or interim inspection and do not solely concentrate on the concerns raised. The inspection report should mention that the inspection was brought forward to address concerns and report any findings.

90. We will usually conduct a monitoring visit where:

- the independent fostering agency, voluntary adoption agency, adoption support agency, holiday scheme for disabled children or residential family centre has already had its inspection for the current inspection cycle

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<sup>20</sup> The power to inspect in all of these types of visits comes from section 31(2) of the Care Standards Act 2000.



- the children’s home has already had its two inspections in the current inspection cycle
  - we need to make a joint visit with another agency
  - concerns are numerous or potentially complex and would not allow sufficient time to explore them alongside the matters that we must look at and judge as part of an inspection
  - we assess that the risks to children, young people and where appropriate adults’ safety and welfare warrant a visit at any other time.
91. The case discussion or case review will determine the timescales for conducting the monitoring visit or inspection and can determine whether the visit should be announced or unannounced, irrespective of the usual practice at inspection for that service type. There may be circumstances where it is appropriate to give notice, for example, if it is important for the provider or manager to be on site to respond to our enquiries.

## **2.6 Planning an inspection or monitoring visit**

92. We plan carefully for a monitoring visit or for an inspection that includes an investigation of a concern. We record decisions and plans on OfficeBase. The planning should take account of the following:
- whether it needs to be a joint visit with another agency
  - whether we may need to take any action to protect children, young people or adult service users
  - whether to contact the person who raised the concern to gain further information
  - whether the visit should be announced or unannounced
  - whether to inform the registered person(s) or person in charge about the concerns we have received
  - what observations of practice we need to see
  - specific lines of enquiry that we need to consider
  - whether there are any concerns about the manager and the nature of those concerns
  - how involved the registered provider, responsible individual and registered manager are
  - how we will protect the identity of the complainant, where applicable
  - who needs to be interviewed
  - what documents need to be examined and/or seized, including whether seizure would be under the Care Standards Act 2000 and whether the PACE Act 1984 codes of practice apply

- what action may we need to take if the provider is non-compliant with relevant legislation
- whether it would be appropriate to take a witness statement and if so, from whom
- whether we may need to caution the registered person(s) under the PACE Act 1984 (see chapter on 'Offences' (pages 51) for further details)
- what to do if we are refused entry to the setting
- how work is divided if more than one inspector is conducting the visit, including who is leading the visit.

## **2.7 Working with other agencies when planning a joint visit**

93. On occasion, we may undertake a joint visit with a representative from a different agency, such as a local authority or the police. We must carefully plan such visits with the relevant agency so that before the visit both parties are clear and agree on the matters listed below:

- the purpose of the visit
- respective roles and legal powers
- questions to be asked and by whom
- any specific tasks to be undertaken at the visit or as a result of the visit
- the action to be taken if children, young people or vulnerable adults are found to be at risk of or being harmed, or the quality of care is not compliant with the relevant requirements.

94. At the outset of any joint visit, we must explain to the registered person(s) the reason for the joint visit and the respective roles of the agencies.

95. Ofsted's responsibility is always to determine whether the registered person is carrying on or managing the service in line with the regulatory requirements and continues to meet the legal requirements for registration. We gather our own evidence to help us reach that decision. We do not delegate the decision as to whether a registered person remains fit for registration to any other agency, nor do we rely solely on evidence gathered by other agencies to reach our decisions.

## **2.8 On site during an inspection or monitoring visit**

96. We inform the registered person(s) or person in charge at the time of the inspection or monitoring visit that we are investigating a concern, and of any information we have that suggests non-compliance. Where we relay our concerns to the person in charge instead of the registered person(s), we ask and record how they will inform the registered person(s) of what we have said.

97. There may be circumstances where it is not appropriate to share all the information about a concern, for example where the allegation is about the registered person themselves, or the person in charge, or where sharing the information could compromise an investigation being carried out by another agency, such as the police. Where this is the case, we must record the reasons in OfficeBase.
98. Inspectors should be careful about informing other staff, children, young people and other service users, or anyone else present at the inspection, about the concern. This may compromise the investigation and/or breach the privacy of the individual who is the subject of the concern.

## **2.9 Recording evidence under the Care Standards Act 2000**

99. We must ensure that we correctly collect evidence so it is admissible in court and/or the First-tier Tribunal. Regardless of what type of action we choose to take, from setting requirements to using statutory and non-statutory enforcement powers, our evidence must be reliable, rigorous and sufficient to meet, at a minimum, our evidence threshold of 'the balance of probabilities'.
100. Under the Care Standards Act 2000, we can record and seize evidence. Where our concerns suggest that a criminal offence may have been committed, we must ensure that we collect evidence in accordance with the PACE Act 1984 (PACE). This includes engaging the relevant codes of practice under PACE.
101. We must engage PACE to ensure that any evidence we rely on when taking criminal compliance action has the best possible chance of being admissible in any subsequent criminal proceedings. See chapter on 'Offences' (pages 51) for further details.
102. When we are collecting evidence under the Care Standards Act 2000, the inspector must make notes throughout the inspection or visit (see current guidance on OfficeBase). This includes recording evidence that demonstrates either that the registered person(s) is meeting requirements or that they are falling to comply with requirements.
103. The evidence collected is essential to ensuring that we make the right decision about our next steps, including any statutory or non-statutory compliance or enforcement action. The evidence must:
  - detail what time of day the visit commenced and ended
  - note who was spoken to and what they said
  - note the documents seen and provide an evaluation of their contents
  - contain analysis of any risks or potential risks to children, young people and/or adult service users' safety and welfare and what this means in relation to compliance or enforcement

- be sufficient in quality, quantity and range to evaluate the specific requirements subject to investigation
  - clearly state the source of all evidence
  - support any compliance or enforcement outcomes
  - provide a record, which underpins and secures the decisions and inspection judgements.
104. We must ensure that our evidence explores and demonstrates the involvement of people with managerial accountabilities for the breach. For example, it must show whether the action or inaction of the registered manager, the responsible individual and/or the registered provider contributed to the breach.
105. When we record evidence, we must be able to identify the person that provided it. For staff members, service users (children, young people and adults) and family members, we may record their name and job title (if applicable), where this is required. We may also record the name of people who are registered. It is necessary and reasonable for us to do this as it forms an important part of our evidence and will be required if we are challenged in court.
106. Where we are investigating a concern as part of a statutory inspection, the inspector should detail any breaches of regulations in the inspection report in the same way as they would record non-compliance found at any other statutory inspection, and raise requirements as necessary. If he or she considers that children or young people are at immediate risk, they must consult with a RIM. All other decisions regarding compliance action will be taken at a case review.

## **2.10 Recording evidence under PACE**

107. When we suspect a person has committed a criminal offence for which we are the prosecuting authority, we must consider whether to caution them under the PACE Act 1984 (PACE) codes of practice. See chapter on 'Offences' – pages 51
108. ). Inspectors should decide this in discussion with the RIM. In addition, we must secure and record evidence in accordance with the relevant PACE codes of practice.
109. Where inspectors need to seize and remove evidence during a visit to support compliance or enforcement action, they will seek to do so with the provider's cooperation. However, we have the power to do so without consent if necessary. When we seize evidence, we must make a written record of what has been seized, signed by an inspector, and the registered person(s) or person in charge who is given a copy. We must keep a detailed record in OfficeBase of all evidence we have received, including where from and when received
110. If inspectors and managers consider there may be a need to seize and remove any evidence, they must ensure that inspectors are supplied with the relevant

materials to use if necessary. These constitute the evidence pack on the Ofsted intranet and include:

- recording evidence guidance
- using photographic evidence guidance
- seizing evidence guidance
- SCC202 notice to person being interviewed under PACE caution
- SCC203 notice at conclusion of an audio-recorded interview under PACE caution
- code B notice
- cautioning guidance.

111. Inspectors must carry with them at all times a suitable notebook in which to record, date and sign the evidence gathered and to record if a PACE caution has been issued.

112. An inspector must not seize an item:

- to examine it later
- to see if it does provide evidence
- as part of a visit where we suspect non-compliance but have no evidence to support any suspicions.

113. Inspectors must record:

- that they have issued a PACE caution, and the name of the person, date and time that they issued it on
- a verbatim account of any significant statement the registered person makes after he or she has been issued with a caution under the PACE Act 1984
- any observations the inspector makes during the visit to a person that they suspect has committed an offence
- factual observations if they suspect a registered person is obstructing, or may be able to obstruct, an inspector
- any evidence a person provides for having 'reasonable excuse' for not complying (only where this is an acceptable excuse under the law for that offence)
- details of any photographic evidence taken, whether by phone or camera
- details of any other evidence seized.

114. When we seize an item as evidence, we must be able to prove to a court or the First-tier Tribunal that the item we produce is the actual item. We must be able

to show a continuous trail of what and how we have stored the evidence for all such items.

## **2.11 Providing feedback at the monitoring visit**

115. Inspectors must summarise the information at appropriate times during the inspection or visit, and share this with the registered person(s) or person in charge. This helps to consider matters as they emerge and to ensure inspectors fully understand, and note, the responses correctly. It also helps the registered person(s) to consider any other evidence they wish us to know about.
116. When giving feedback to the registered person(s) or person in charge, inspectors must:
- use plain language
  - be clear about whether we believe there are breaches of requirements, and on what evidence
  - be clear as to whether we consider that service users are being harmed or are at risk of harm
  - give a clear basis for any action the provider must take by identifying issues that are central to improvement and/or protection
  - write down their own response to any feedback provided by staff, registered person(s) or person in charge
  - explain Ofsted's options for further action, both non-statutory and statutory
  - explain that the inspector must review the evidence with colleagues before making a final decision on the next steps to take
  - give an estimated timescale in which the registered person(s) will receive a decision or update.

## **2.12 After the visit or inspection**

117. Inspectors must:
- record the information and evidence from the inspection or visit in OfficeBase, usually within 24 hours of the visit or inspection
  - advise and consult the RIM about the next steps to take, usually through the case review process
  - arrange to transfer any physical evidence to the ARC team, who will log and securely store it. It must be sent by special delivery, in-person or, if bulky, by courier. Inspectors must detail in their recording the special delivery or courier details. The case review will determine at which point this evidence is to be transferred.

118. If we receive a request for the disclosure of hard copy recordings, the inspector must consult the legal services and information management teams before making any disclosure.

## **2.13 'Inadequate' judgement at inspection**

119. Inspectors should refer to the 'Inspection handbook' and the 'Framework for inspection' for the relevant setting type to establish what they need to consider in the case discussion and case review, and for service-specific guidance on monitoring visits following inadequate judgements.

## **Part 3: Range of compliance and enforcement action**

### **3.1 Compliance and enforcement powers available to Ofsted**

120. The law gives us a range of powers to regulate children's social care settings. We use both statutory (compliance and enforcement action supported by law) and non-statutory (informal actions that are not set in an act of law) approaches to address non-compliance with the relevant legislation. The diagram below sets out the range of powers available to us. In all cases, our decision about action is firmly guided by our duty to ensure the safety and welfare of children, young people and vulnerable adults.

#### **Multiple compliance actions**

121. We can use more than one compliance action at the same time; the powers available to us do not have to be used consecutively or in any order. During our regular reviews and discussions of a case, we may, in light of new information, decide to change the compliance action that we are taking to a stronger, lesser or additional action.

122. Some compliance actions allow lengthy periods for representations and appeals before the action takes effect. A registered person is allowed to continue to provide or manage the setting while these actions are being effected. It may, therefore, sometimes be appropriate to combine such actions with shorter-term actions.

123. For example, while issuing a notice of proposal to cancel registration or impose conditions on a registration, we may also restrict accommodation, to provide immediate protection to children, young people and adult service users. Legal advice must be obtained when making such decisions about the implications of a mixture of compliance actions.

## 3.2 Statutory and non-statutory enforcement action

### Non-statutory enforcement actions

- **Make a requirement at inspection/monitoring visit:** including a requirement in an inspection report against the regulations.
- **Make a recommendation at inspection/monitoring visit:** including a recommendation for action in an inspection report against the national minimum standards or the 'Guide to the children's homes regulations', including the quality standards.
- **Issue a simple caution:** where a person admits an offence, but where we decide not to prosecute, a simple caution will be capable of being administered. This can also be taken into account if no offences are committed in the future and in future civil compliance action.<sup>21</sup>
- **Issue a warning letter:** where a person has committed an offence, but we do not feel that it is proportionate to prosecute or issue a simple caution.

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<sup>21</sup> Please consult the legal services team with regard to relevant time limits relating to the applicability of historic simple cautions.



## Statutory enforcement actions

Take emergency action to impose or vary conditions of registration

Emergency suspension of registration

Cancel registration

Suspend registration

Serve a compliance notice

Emergency cancellation

Restrict accommodation (children's homes, residential family centres and holiday schemes for disabled children)

Prosecute for an offence

Impose or vary conditions of registration

Refuse a registration

Refuse request to vary or remove conditions of registration

Grant registration with conditions not previously agreed with the applicant

## Non-statutory enforcement actions

Issue a simple caution

Issue a warning letter

Make a requirement at inspection

Make a recommendation at inspection

## Statutory enforcement actions

- **Prosecute for an offence:** we can prosecute a person for committing an offence. A person can appeal against a conviction through the criminal courts.
- **Impose or vary conditions of registration:** we do this through the notice of proposal/notice of decision route to impose or vary conditions of a person's registration. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Grant registration with conditions not previously agreed with the applicant:** we can grant registration with conditions not previously agreed by the applicant through the notice of proposal/notice of decision route. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Refuse a request to vary or remove conditions of registration:** a registered person can request that we vary or remove conditions of their registration. If we intend to refuse, we do this through a notice of proposal/notice of decision route. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Serve a compliance notice<sup>23</sup>:** the notice sets out an action that a person must perform by a set date where they are failing to meet a regulation. If the person does not complete the action in the timeframe, they have committed an offence which we can prosecute for. There is no right of appeal against a compliance notice.
- **Suspend a registration:** we can suspend the registration of a provider or manager through the notice of proposal/notice of decision route. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action. It is an offence for a person to fail to comply with a suspension.
- **Restrict accommodation:** we can issue a notice to restrict accommodation at a children's home, residential family centre or holiday scheme for disabled children. The notice takes immediate effect from the time it is served and prevents the setting from taking any new placements (children and young people currently residing at the setting may continue to do so). A person may appeal to the First-tier Tribunal against this action.<sup>24</sup>
- **Cancel a registration:** we may cancel a person's registration through the notice of proposal/notice of decision route. This will stop the person from carrying on or managing the service. It will also disqualify them from involvement in a children's home in the future. It is an offence for a person

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<sup>23</sup> A decision to issue a compliance notice may be subject to Judicial Review.

<sup>24</sup> These appeals are subject to our expedited appeals process. Please see 'Appeals to First Tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more detail.

to carry on or manage a setting after their registration has been cancelled. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action.

- **Refuse a registration:** we may refuse a person's application for registration through the notice of proposal/notice of decision route. A person may make representations to Ofsted and/or appeal to the First-tier Tribunal against this action. A refusal will disqualify a person from being able to carry on, be otherwise concerned in the management of or have a financial interest in a children's home in the future unless that person has secured Ofsted's consent.
- **Emergency suspension:** we may suspend a person's registration in an emergency by serving them with a notice. The suspension takes effect from the point of service. It is an offence for a person to fail to comply with the suspension. A person may appeal to the First-tier Tribunal.<sup>25</sup>
- **Emergency action to vary or impose conditions of registration:** we may apply to a Magistrate to impose or vary a person's conditions of registration. The order takes immediate effect. It is an offence not to comply with conditions of registration. The person may appeal to the First-tier Tribunal.<sup>26</sup>
- **Emergency cancellation of registration:** We may apply to a Magistrate to cancel a provider or manager's registration. If granted, the order takes immediate effect. It is an offence for the person to continue to provide or manage the service. The person will also be disqualified from the type of involvement detailed above in children's homes in future unless they have obtained Ofsted's consent. The person may appeal against the cancellation to the First-tier Tribunal.<sup>27</sup>

### 3.3 Compliance notices

#### Introduction

124. The aim of a compliance notice is to remedy a specific matter rather than to place a general obligation on a provider to continue to meet the relevant statutory framework. Compliance notices set out the steps a registered person must take by a certain date to meet the requirements imposed by the relevant regulations.

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<sup>25</sup> These appeals are subject to our expedited appeals process. Please see 'Appeals to First Tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more detail.

<sup>26</sup> These appeals are subject to our expedited appeals process. Please see 'Appeals to First Tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more detail.

<sup>27</sup> These appeals are subject to our expedited appeals process. Please see 'Appeals to First Tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more detail.

125. A registered person commits an offence if they do not complete the steps(s) set out in a compliance notice by the date specified.

### **Threshold**

126. We may serve a compliance notice if:

- we consider that the registered person is failing, or has failed, to comply with a requirement imposed on that person in relation to the setting and
- it is proportionate to do so, having regard to the seriousness of the non-compliance, the history of compliance of the registered person and other actions available to us.

### **Legal basis for serving compliance notices**

127. We serve compliance notices under section 22A of the Care Standards Act 2000.

128. This section specifies that the requirements that may be the subject of a compliance notice are those imposed by regulations made under:

- section 22 of the Care Standards Act 2000
- section 9 of the Adoption Act 1976
- section 9 of the Adoption and Children Act 2002.

129. We may issue a compliance notice against a registered provider or a registered manager of a/an:

- adoption support agency
- children's home, including a secure children's home
- residential holiday scheme for disabled children
- independent fostering agency
- residential family centre
- voluntary adoption agency.

### **Evidence required for a compliance notice**

130. We can only serve a compliance notice where we have evidence that the registered person is failing, or has failed to comply, with a legal requirement imposed on that person in relation to the setting i.e. the person has breached the relevant regulations.

131. We must have documentary evidence that shows the failure to comply. Examples of evidence include inspector's observation evidence (when evidenced by contemporaneous notes) an inspection report, an investigation report and/or

photographs and records from the setting (copies or originals). This evidence must demonstrate that, based on the balance of probabilities, the person has breached the regulation.

### **Making the decision to serve a compliance notice**

132. The decision to serve a compliance notice must be made in a case review, as set out in 'Decision-making, case discussions and case reviews' (page 12).
133. In making the decision, we do not have to set requirements before issuing a compliance notice. There may be circumstances where it is appropriate for us to serve a compliance notice where the breach is sufficiently serious and/or the risk indicates the need and/or the history of compliance by the registered person is of concern.
134. We must also carefully consider which registered person we should be serving the compliance notice on. That is, does evidence demonstrate that the breach of regulations relates to the actions or inactions of the registered provider, the registered manager or both?
135. When deciding whether to serve a compliance notice, we consider what action, if any, we will take if the registered person fails to comply with the notice. Failure to comply with a notice is both an offence and a ground for cancellation. If the matter is not serious enough to take any further action in the event of non-compliance with the compliance notice, such as prosecution, cancellation, suspension, or imposition/variation of conditions, it is not appropriate to serve a compliance notice.

### **Drafting a compliance notice**

136. When drafting a notice, we should ensure that the safety and welfare of children, young people and adult service users are given paramount consideration.
137. The inspector generates a notice from OfficeBase and drafts the content, which is reviewed by an SCCI. It is quality assured and signed off by the case review decision-maker. Where the compliance notice is being issued following a statutory inspection, the report must be sent at the same time as the compliance notice. The notice must not go out without the report. This process should usually take no longer than seven days.
138. Any compliance notices sent for review by the legal team, must be quality assured and reviewed by the RIM prior to submission.
139. Any notice must be drafted with the most important aspect of the concern first followed by a summary of the best evidence that illustrates the person's failure to comply.

140. For children's homes only, if the breach is a breach of a quality standard (regulations 5–14), each breach of the same regulation can be included on one notice. That is because failure to comply with any part of one quality standard means that the overall regulation has not been met.
141. For each failure to comply with any other regulation we draft a separate compliance notice for each regulation breached. Ideally, each notice should contain one action with only one timeframe.
142. Non-compliance with a compliance notice is a specific ground for cancellation.

### **Information to be included in a compliance notice**

143. There are specific minimum legal requirements that we must include in the notice. We must specify:
  - the registered person to whom the compliance notice applies
  - the setting to which the failure to comply with requirements relates
  - which regulation we believe the registered person is failing, or has failed, to comply with (the name, paragraph and sub-paragraph of the regulation)
  - how the registered person is failing, or has failed, to comply with that regulation
  - the steps the registered person must take to comply with the requirement or to prevent re-occurrence of the failure
  - the period of time in which the registered person must complete the steps
  - to the registered person that it is an offence to fail to comply with the steps set out in the notice, and that failure to comply with a compliance notice is a ground for cancellation and/or could lead to prosecution.

### **Setting the timeframe for a provider to complete the steps in a compliance notice**

144. We must set an appropriate timeframe for the completion of the steps set out in the compliance notice. The timescale for the registered person to comply with the notice starts from the date of the notice and not the date that we serve it (see chapter on 'Notice of proposal/notice of decision process' (page 83) for further details). This means that the date of the notice and the effective service date should be the same as far as possible, and served straightaway when a registered person is required to undertake urgent action.
145. Compliance notices can be served quickly to require a person to put matters right and comply with the law in a brisk timeframe. When we need a provider to take immediate and urgent action, we can set a timeframe of 24 hours where appropriate. Where urgent steps are required, we must consider delivering the notice by hand so that the registered person is able to comply

with the timescale set. Otherwise, the person may have failed to comply with the notice before we have served it, rendering the notice invalid.

146. As a general guide, no compliance notice should give a timescale for completion of more than three months. We may consider serving a compliance notice in conjunction with other compliance or enforcement action where we have wide-reaching concerns.

### **Serving a compliance notice**

147. We must serve a compliance notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 83).

### **Monitoring a compliance notice**

148. We conduct a monitoring visit or an inspection visit to assess compliance with a compliance notice. The purpose is to ensure that the registered person has met the specified action within the prescribed timescale.
149. It is good practice to monitor compliance with the notice the day after the date specified in the notice, but the visit must always be conducted within five working days from that date. Where we have served multiple compliance notices with different completion dates, we should schedule follow-up visits for each completion date. These visits can be combined if the dates are close together and as long as we do not exceed five days from the date of any notice.
150. Consideration should be given as to who is best placed to undertake a monitoring visit or second full inspection of a setting that has been judged inadequate. It is for the RIM to determine whether it most appropriate for the same inspector to carry out the inspection or whether it is preferable, that the RIM, SCCI or another inspector, who has not been previously involved with the setting, undertakes the visit.
151. The decision as to whether the monitoring visit will be announced or unannounced will be made on a case by case basis. The decision will usually be made as part of the case review, which should explore how evidence can best be obtained to assess compliance with a notice. Where it is decided that there should be a notice period, this should always be as short as is practically possible.
152. RIMs are responsible for ensuring that all actions and records of monitoring visits are accurately documented in OfficeBase.
153. During a monitoring visit, inspectors must:
- check that children, young people and adult service users are safe and well cared for

- check that the requirements for any compliance notices, whose completion timescales have passed, have been met
  - record the findings of the visit on OfficeBase.
154. During a monitoring visit, we may also find evidence that a registered person is failing to meet requirements other than those specified in our compliance notice(s). If this occurs, we should convene a case review and consider what further action we may take against these additional breaches of regulation. We may use a pattern of non-compliance as general evidence of lack of fitness for continued registration. This may form the basis for undertaking other enforcement action, such as issuing a notice of proposal to cancel the registration.
155. Where our policy on each social care remit allows this, we will send a report detailing the outcome following the monitoring visit. This report will be published on our website alongside the registered provider's inspection reports unless there are exceptional reasons not to do so.

### **Determining if a compliance notice has been met**

156. When following up the requirements on a compliance notice, we consider what action the registered person has taken, including any submissions they have made in respect to meeting the compliance notice. A registered person must fully comply with the steps set out in the compliance notice within the deadline specified. Partial completion of a step is not sufficient. The inspector conducting the visit recommends to the subsequent case review that the action has or has not been met. The decision will be made at the case review and noted in the case review record.
157. It is important to note that there are no exemptions or excuses provided in law for failing to comply with a compliance notice. This means that a person must meet the notice, even where they have applied to voluntarily cancel their registration and that cancellation has not yet taken effect, or where they have no current service users. In all instances where a person fails to comply with a compliance notice, they are committing an offence.
158. If we are satisfied that the compliance notice has been met, we tell the registered person this and confirm it in writing. We then consider whether to close the compliance case.
159. If we are satisfied that a compliance notice has not been met, an offence has been committed under section 22A(4) of the Care Standards Act 2000. A case review must be convened to consider what further action we will take.
160. If the registered person has complied with the requirements set out in the notice, but, during a visit we observe a different failure then this does not constitute a failure to comply with the notice.



## **Further compliance or enforcement action**

161. Where a compliance notice is not met, we convene a case review normally within two days of the failure to comply, or earlier if more urgent action is required.
162. If necessary, we should agree arrangements for interviewing the person under caution in line with the PACE Act 1984 (see chapter on 'Offences' – page 51). If an interview is agreed, no further decisions are made until after it is completed. A further case review should be organised within two days of the interview occurring.
163. The following actions are considered either after the interview or as part of the first case review if no interview is to take place:
  - writing to the registered person informing them that the failure is an offence – in exceptional circumstances we may allow a further period of time for the person to take steps to put matters right
  - issuing a simple caution (if the offence had been admitted) or a warning letter, in lieu of a prosecution
  - commencing prosecution of the provider for failing to comply with the compliance notice
  - issuing a notice of proposal to carry out civil enforcement action, such as to cancel, vary or suspend the person's registration
  - applying to a magistrate for an emergency order to cancel the person's registration, or impose or vary their conditions of registration.
164. If a registered person has complied with the requirements set in the compliance notice by the date specified but thereafter fails to comply on the same point in the future, we cannot prosecute them. In such circumstances, we will serve a new compliance notice or consider other forms of action.

## **3.4 Suspension of registration**

### **Introduction**

165. Ofsted has the power to suspend a registration under sections 14A and 20B of the Care Standards Act 2000. The power to suspend a registration applies to all regulated settings. This power allows Ofsted to suspend the registration of a registered provider and/or a registered manager. The decision to suspend a registration must be made at a case review and a record kept of the decision and decision maker.
166. It is an offence for a person to carry on or manage a setting while their registration is suspended. We may suspend through:

- emergency procedure under section 20B: where the notice of suspension takes immediate effect
- non-urgent procedure under section 14A: this uses the notice of proposal/notice of decision procedure and therefore attaches the same representation and appeals timeframe as within the Care Standards Act 2000.

167. Suspension enables:

- Ofsted to respond to serious instances where a setting is not operating according to the relevant legislative requirements
- an investigation to be completed (including investigations by other agencies) into any potential or real risk of harm to children, young people or adult service users
- where necessary, for action to be taken to reduce or eliminate the risk of actual harm to children, young people or adult service users.

168. The use of suspension is a serious step and will only be used in circumstances where suspension is considered to be the best way of responding to concerns about regulatory compliance and securing the safety of children, young people and adult service users.

169. The overarching aim of suspending a registration is to ensure the safety of service users so that the provider ceases operating until a full investigation is complete and a decision is made about the next steps.

### **Threshold for emergency procedure**

170. Section 20B of the Act enables Ofsted to suspend a registration in an emergency when it has 'reasonable cause to believe that unless it acts under this section, any person will or may be exposed to the risk of harm.'

171. A suspension made under the emergency procedure is an extreme step. It may have serious effects on the provider's livelihood but, most notably, it will affect the lives of children, young people or adults who use the setting.

172. The notice is effective from the time it is served.

173. Where Ofsted decides to suspend a registration in an emergency, we must communicate our intention to serve the notice, and our reasons for this, to the person/s on whom we will serve the notice. Decisions about who will notify the registered person/s should be made during the case review.

174. We will usually notify the registered person/s of our intention to suspend their registration by telephone, and record a summary of the conversation in OfficeBase. We also need to consider any feedback the person(s) may make in response to our intention to suspend. This feedback must be assessed in terms of whether it removes the need for us to proceed with serving the notice.

## **Threshold for non-urgent procedure**

175. A suspension under the non-urgent procedure is subject to the notice of proposal, representations, notice of decision, and appeal process. A suspension will not take effect until the 28-day period for lodging an appeal against the notice of decision with the First-tier Tribunal has passed, or where an appeal has been lodged and the tribunal has heard and dismissed the appeal.
176. Ofsted can suspend a registration under this procedure where it can demonstrate that the 'establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements'.
177. Ofsted will suspend a registration using the non-urgent procedure where this is the only reasonable option to deal with the regulatory breaches found and to secure children, young people and adult service user's safety and well-being. The action must be proportionate to the concerns identified.

## **Serving a suspension notice**

178. We must serve the notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 83).

## **Drafting the notice to suspend registration**

179. We must include as much information as possible in the notice to explain the reasons for our decision. However, there may be occasions where we are not able to provide full information as it may compromise the investigation of another agency, such as the police. In these cases, inspectors must record on OfficeBase the reasons for withholding any information. We must ensure that any information we share is in accordance with the Data Protection Act 1998.
180. Emergency procedure – the notice of suspension must:
- state that it is given under section 20B(4) of the Act
  - state Ofsted's reasons for believing that the circumstances fall within section 20B(1)(b) of the Act
  - specify the period (or extended period) of suspension (section 20B(4)(c))
  - explain the right of appeal conferred by section 21 of the Act.
181. Non-urgent procedure – the notice of proposal to suspend registration must:
- state that it is given under section 17 (4)(aa) of the Act
  - state Ofsted's reasons that the circumstances fall within section 14A(2) of the Act
  - specify the period (or extended period) of suspension (Section 17 (4)(aa) of the Act
  - explain the right to make representation under Section 18 of the Act.

182. Non-urgent procedure – the notice of decision to suspend a registration must:

- state that it is given under Section 19 (3) of the Act
- re-state the reasons for believing that the circumstances fall within sub-section 14A(2) of the Act
- specify the period (or extended period) of suspension (Section 19 (4)(ba) of the Act, and
- explain the right of appeal conferred by Section 21 of the Act.

### **Issuing a further suspension of either type**

183. Ofsted will consider issuing a suspension for a further period if:

- there is insufficient evidence that the setting will be conducted in accordance with the relevant regulations or that the safety of children, young people and adults can be secured or their welfare promoted
- the registered person(s) has/have not taken appropriate steps to reduce the risk of harm to children, young people or adults
- another agency is still conducting an ongoing investigation and a risk to service users remains.

184. Where a further period of suspension is to be imposed, the notice must comply with all the detail required in the original notice of suspension. In addition, the notice must clearly set out:

- the reasons for continuing to suspend a registration
- why any action the registered person has taken has not reduced the risk of harm to children, young people and adult service users
- the date the notice will cease to have effect.

### **Reviewing the decision to suspend a registration**

185. The suspension decision must be reviewed:

- before the period expires, or earlier where there is evidence that the suspension should be lifted
- or
- when Ofsted receives an application from the person whose registration is suspended to vary or remove the suspension.

186. We must convene a case review to decide whether to impose a further period of suspension or remove a suspension of a registration. The review must consider:

- if children, young people or adults continue to be at risk of harm and, if so, the level of that risk, including whether emergency cancellation would be appropriate
- whether the grounds identified in the suspension notice still apply
- what other or alternative action is appropriate and proportionate.

187. Ofsted must issue a new suspension notice for any further suspension period it decides to apply. Depending on the level of concern and the facts of the case, Ofsted can use the non-urgent or emergency procedure.

188. Only in exceptional circumstances should we continue to apply suspension beyond 12 weeks.

### **Notifying local authorities of the suspension**

189. Ofsted must send a notification to every local authority in England and Wales when<sup>28</sup>:

- issuing a notice to suspend registration (emergency procedure)
- issuing a notice of decision to suspend (non-urgent procedure)
- issuing a further notice to suspend
- lifting a suspension
- the registered person appeals against a suspension, including the outcome of any such appeal.

### **Application to remove or vary a suspension made under the non-urgent or emergency procedures**

190. Registered persons can apply to remove, or vary, the period of suspension under section 15(1)(c) of the Act. They can do so by writing to Ofsted outlining the reasons why the risks to children, young people or adult service users have been removed. There is a requirement for the application to be accompanied by a fee. At present, the relevant fee level has not been determined by the Department for Education. Therefore, until the fee has been determined, an application should be accepted without an accompanying fee.

191. We must convene a case review within three working days of receipt of the application to decide whether to grant or refuse the application.

192. If Ofsted decides to grant the application, a notice outlining the decision is served in writing on the applicant (stating, where applicable, the new timescale for the suspension).

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<sup>28</sup> Section 30A of the Care Standards Act 2000.

193. If Ofsted refuses to grant the application, we serve a notice in writing of the decision to the applicant, giving our reasons why this decision has been taken.

### **Representations and appeals against a notice to suspend registration**

194. A registered person, who is subject to an emergency suspension under section 20B, has no right to make representations to Ofsted but can appeal to the First-tier Tribunal once the suspension takes effect. The registered person has 28 days from receipt of the notice served under section 20B to make such an appeal. An expedited process applies to appeals against emergency suspension.<sup>29</sup>

195. The registered person who has been served with a notice under the non-urgent procedure has the right under Section 21 of the Act to make an appeal against the suspension to the First-tier Tribunal before the decision to suspend takes effect. The registered person has 28 days from the date the notice of decision is served to make an appeal. See chapters on 'Representations' (page 89) and 'Appeals' (page 96) for further details.

## **3.5 Restriction of accommodation**

### **Introduction**

196. Under section 22B of the Care Standards Act 2000, we have the power to serve a notice to restrict accommodation only at a children's home, a residential family centre or at a holiday scheme for disabled children .

### **Legal basis for a notice restricting accommodation**

197. A notice restricting accommodation in effect prevents a children's home, residential family centre or holiday scheme from accepting any new placements, while allowing those service users who were residing at the home, centre or scheme at the time the notice was served, to remain.

198. Section 22B states:

'The requirement [of the notice] is to ensure that no child is accommodated at the establishment unless the child:

- (a) was accommodated there when the notice was served; and
- (b) has continued to be accommodated there since the notice was served.'

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<sup>29</sup> Please see 'Appeals to First Tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more detail.

## **Threshold**

199. Section 22B of the Care Standards Act 2000 does not set a statutory 'test' or threshold to be met in order to restrict accommodation.
200. We only serve a notice restricting accommodation where we reasonably believe that a child, young person or adult may be at risk of harm if we allow further admissions and do not restrict accommodation. We take into account the individual circumstances of each case when deciding whether restricting accommodation is the appropriate action to take.
201. The purpose of restricting accommodation is normally to allow time for:
- an investigation into the risk, including by another agency, to be carried out and/or
  - steps to be taken to reduce or eliminate the risk of harm to children, young people or adults.
202. There may be limited circumstances when we restrict accommodation for other reasons that do not fit the above criteria, provided we reasonably believe there is a risk of harm.
203. In all cases where a local authority is conducting an investigation under section 47 of the Children Act 1989, in relation to a child or young person at a home, family centre or holiday scheme that relates to either conduct of staff or the actions of other young people or adults in the setting, we must consider whether there is a reasonable belief of risk of harm and, if so, whether it is appropriate to issue a notice restricting accommodation.

## **Making the decision to serve a notice restricting accommodation**

204. We make the decision to serve a notice restricting accommodation in a case review.
205. A restriction of accommodation notice takes immediate effect from the point that it is served. We may use this power in conjunction with other compliance or enforcement action, such as varying or imposing conditions of registration or issuing a notice of proposal to cancel registration. For example, if we issue a notice to reduce a provider's registered numbers at a children's home, it will not take effect until the time limit for representations and any subsequent appeal against our decision has passed. However, to safeguard the welfare of children and young people in the interim, it may be appropriate to prevent the provider from admitting other children to the home immediately by restricting accommodation.

## **Drafting the notice restricting accommodation**

206. We must create a notice restricting accommodation for both registered person(s): the registered provider and the registered manager. The Act specifies the information that we must include in the notice restricting accommodation:
- explain the requirements imposed by the notice
  - specify the establishment or holiday scheme the restriction applies to
  - give our reasons for serving the notice
  - explain the person's right of appeal under section 21 of the Care Standards Act 2000.
207. The law does not require us to impose a period after which the notice shall cease to have effect. However, our policy is to include a time period in all notices restricting accommodation to ensure that we are taking proportionate action and do not allow the notice to continue without monitoring and review. The length of each period of restriction should be based on the individual facts of the case. As a general rule, the maximum period of restriction will not exceed more than six weeks at any one time, though a further notice can be issued.
208. We must provide full information in the notice that makes clear to the registered person the reasons for restricting the accommodation, why we reasonably believe there is a risk of harm to service users and the potential impact if we do not take such a step.
209. There may be occasions where we are not able to provide full information at the time of issuing the notice as it may compromise the investigation of another agency, such as the police. In these cases, we give as much information as possible, ensuring that any information we withhold is both necessary and proportionate. Inspectors must record on OfficeBase the reasons for withholding any information. We must ensure that any information we share is done in accordance with the Data Protection Act 1998.
210. The inspector generates a notice from OfficeBase and drafts the content as quickly as possible and within no more than two days of the case review. The notice is reviewed by an SCCI normally within no more than a further two days and signed off by the decision-maker from the case review normally within one day. The inspector may also ask legal advisors to review the notice.

## **Serving the notice restricting accommodation**

211. Prior to serving the notice, the inspector should inform the registered persons, usually by telephone, of the action we are about to take and the reasons for such action. This gives the registered person(s) time to contact their solicitor,



to notify placing authorities and/or to provide any additional information, which may be relevant to our decision to take this action.

212. A restriction of accommodation takes immediate effect at the time of service. We must follow our procedure in 'Notice of proposal/notice of decision process' (page 83).

### **Notifying local authorities of the restriction**

213. We must send a notification to every local authority in England and Wales when:

- we issue a notice to restrict accommodation
- we issue a further notice to extend the restriction of accommodation
- we lift a restriction of accommodation
- the registered person appeals against a restriction of accommodation, including the outcome of any such appeal.

### **Reviewing the decision to restrict accommodation and progress**

214. If necessary, we can restrict accommodation for a second period. Again, there is no legal restriction on timing, but our policy would usually be a period of up to a further six weeks. Where a third or further period is being considered, other options must be considered to avoid using an urgent power for a protracted period.

215. While a restriction is in place, we must review whether the reasons for the restriction continue to apply whenever relevant new information comes to our attention and, in any case, at least once in each period of restriction. The SCCI records on OfficeBase:

- the reasons for continuing to restrict accommodation
- any alternative action considered during the case review and details of any additional action taken
- details about who has made the decision to extend the restriction of accommodation.

216. Only in exceptional circumstances should we restrict accommodation beyond two six-week periods (see below). However, if we decide to do so, the case review should also consider whether additional and/or alternative action, such as imposing conditions of registration or issuing a compliance notice, or taking steps to cancel may be more appropriate.

217. A registered person does not have a right to make representations to Ofsted against the notice or to make an application to have the restriction lifted. A registered person subject to a notice restricting accommodation has a right of appeal to the First-tier Tribunal. However, they can provide us with any

information that they believe could influence our decision to restrict accommodation at any time. We consider this information to determine whether the restriction of accommodation continues to be an appropriate step.

### **Restricting accommodation beyond 12 weeks**

218. We should only consider restricting accommodation beyond 12 weeks, if:

- the registered person has not taken appropriate steps to reduce the risk of harm to service users to an acceptable level. This may occur, for example, where there is partial damage to a property and repairs are not complete, or there are building works underway at the premises

or

- there is an ongoing section 47 or police investigation and insufficient evidence to suggest the risk of harm has been reduced to an acceptable level.

219. The decision to extend the restriction beyond 12 weeks must be made in accordance with our decision-making table in Annex B.

### **Drafting a notice for a further period of restriction of accommodation**

220. Where we decide on a further period of restriction of accommodation, we draft a new notice, which must clearly set out:

- the reasons for continuing to restrict accommodation
- why any action the registered persons have taken has not reduced the risk of harm to an acceptable level
- the date the notice will cease to have effect
- the person's right of appeal.

### **Lifting the notice**

221. Section 22B(4) of the Care Standards Act 2000 sets the circumstances when a notice restricting accommodation ceases to have effect. These are:

- at such time as may be specified in the notice
- when we serve a notice stating that the restriction is lifted

or

- at the First-tier Tribunal's direction under section 21(4A) or (4B).

222. While there is no legal requirement for a notice to have an expiry date, we will review the reasons for the notice prior to our given expiry date.

223. In all cases where we decide to lift the restriction of accommodation, we draft a notice to this effect.

224. We must inform all local authorities in England and Wales when we lift the notice restricting accommodation.

### **Compliance with a restriction of accommodation**

225. We must monitor that a registered persons is complying with such an order by carrying out an unannounced visit to the setting at least once during each restriction.

226. It is not a criminal offence for a registered person to fail to comply with a notice restricting accommodation. However, where a registered person does not comply, this is evidence that they are not acting in accordance with their registration and in a case review we should consider:

- whether this impacts on their fitness to provide or manage children’s social care provision
- whether other enforcement action is appropriate, such as cancellation.

### **Making an appeal**

227. A registered person has the right of appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against a notice restricting accommodation within 28 days of the day we serve the notice.<sup>30</sup> The tribunal applies an expedited process to these appeals.<sup>31</sup> See chapter on ‘Appeals to First-tier Tribunal, Health, Education and Social Care Chamber’ (page 96) for further details.

228. Where we restrict accommodation as well as take other enforcement action, such as imposing or varying conditions of registration, the First-tier Tribunal may hear the provider’s appeals against both of these actions at the same time.

## **3.6 Offences**

### **Introduction**

229. We have the power to prosecute settings that should be registered with us but are not (unregistered settings) or for certain offences relating to registered settings.

### **Range of offences**

230. Ofsted is the prosecuting body for the following offences:

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<sup>30</sup> Section 21 Care Standards Act 2000

<sup>31</sup> *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber (HESC)*, Ofsted, 2014; [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

## **Care Standards Act 2000**

- any person who carries on or manages an establishment or an agency of any description without being registered in respect of it (offence under section 11(1))
- failure to comply with a compliance notice (offence under section 22A(4))
- failure without reasonable excuse to comply with conditions of registration (offence under section 24)
- carrying on or managing a setting while the person's registration is suspended (offence under section 24A)
- naming, describing or in any way holding out an unregistered premises, undertaking or organisation to be an establishment or agency with intent to deceive (offence under section 26(1))
- holding out an establishment or agency as being able to provide a service or do something that would be in breach of a condition of registration, with intent to deceive (offence under section 26(3))
- knowingly making a statement which is false or misleading in a material respect in an application for registration or for a variation of a condition (offence under section 27)
- failure to display a certificate of registration (offence under section 28).
- intentional obstruction of a person exercising any power under sections 31 and 32 (offence under section 31(9)(a))
- failure, without reasonable excuse, to comply with any requirement under sections 31 or 32 (offence under section 31(9)(b))

## **The Adoption and Children Act 2002**

- a breach of section 92(1) of the Adoption and Children Act 2002 (performing certain adoption activities without registration) is an offence under section 93.

## **Other adoption offences**

231. For settings other than voluntary adoption agencies, most breaches of regulation are not standalone offences. Rather, the offence is non-compliance with the relevant compliance notice. However, there are specific offences within adoption legislation which, when breached, Ofsted can commence proceedings on without having first served any form of notice.

## **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005**

- disclosing information in contravention of regulation 7 without reasonable excuse (regulation 17, The Adoption and Children Act 2002)

- disclosing information in contravention of section 57 is an offence pursuant to regulation 21 of the Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005.

232. It is also an offence to contravene or not comply with the following:

- The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005
- regulations referred to in regulation 29.<sup>32</sup>

233. Before we can prosecute for a breach of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, we must issue a notice to the registered person/s detailing the following:

- why we are of the opinion that the registered person has violated or is violating any of the regulations, or has failed or is failing to comply with the requirements of any of the regulations
- what action the registered person should take to comply with any of those regulations
- the period, not exceeding three months, within which the registered person should take action.

234. Before we can commence a prosecution for the offence, we must be satisfied that:

- the registered person has not made any representations to us within the period specified in the notice
- the registered person failed to complete the actions set out in the notice in the time period specified.

### **Who we can prosecute**

235. We can prosecute any person who commits an offence where we are the prosecuting authority.

236. We may prosecute people who are or were registered with us and in some instances, people who are not required to register with us. For example, if a member of staff obstructs an inspector in carrying out their functions, we can prosecute the person as an individual under the Care Standards Act 2000, section 31(9). See chapter on 'Prosecution' (page 60).

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<sup>32</sup> Regulations 5(1) to (7), 6, 7(1) and (4), 8(2), 9(1), 10, 11, 12(1) and (2), 13, 14, 16 to 18, 19(1), 20, 21(1), 22, 23, 24(1) and (2), 25, 26 and 27(1)

## Investigating a suspected offence

237. When we suspect an offence is being or has been committed, we should advise the person that we have the power to prosecute if the offence is proven. We must then decide whether to investigate the suspected offence further.
238. In deciding whether to investigate further into the suspected offence, we consider:
- the impact of the breach, including the risk of harm to children, young people and adult service users
  - whether there was a deliberate intention to avoid compliance
  - any excuse or explanation the person has (only for offences that have the 'reasonable excuse' defence).
239. The decision may be that it is not appropriate to consider prosecuting the person. In these cases, the inspector does not need to caution the person. However, the provider should be notified in writing that they have committed an offence but that, given the circumstances, we have decided not to take action and that, should the provider commit a further offence, this earlier matter will be taken into account.

## PACE Act caution

240. Ofsted staff have the power to caution a person. We must advise the person that we believe they have committed an offence and caution them in line with the PACE Act codes of practice before asking any further questions. We must caution any person as soon as we become aware that the person may have committed the offence. This is not a 'sanction' but is required so that people are aware of their rights in these circumstances and assists in securing the evidence if any criminal proceedings are brought.
241. The wording of the caution is as follows:
- 'You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.'
242. We caution for two reasons. First, the caution advises the person about his or her rights, if asked to explain his or her actions or omissions. Second, evidence we gather before cautioning, including any record of what is said by suspects may not be admissible in court as part of a prosecution case.
243. Immediately after giving the caution, inspectors must take a word-for-word written record of anything significant that is said in a notebook.
244. Where we intend to search the premises and/or seize property, we must give notice to the person that we are now conducting a criminal investigation. We

must use these powers fairly and responsibly with respect for the persons who occupy the premises. The notice, Notice of Powers and Rights, sets out the person's rights in respect of any search that we may do of the premises and their rights relating to seized property. We must do this to comply with Code B of PACE Act. If we fail to do this, the evidence that we seize may be inadmissible in court. A blank Code B notice template is available for inspectors to use.

245. After cautioning and providing the Code B notice to the person, the inspector must follow our procedures in 'Recording evidence under PACE' on what information they must record.
246. We record all statements on the witness statement form. A court will require the original statement (rather than a copy of it) so we must keep this.<sup>33</sup>
247. Inspectors must preserve, and securely store, any evidence of the offence committed that they gather at the visit and adopt the PACE Act revised Codes of Practice procedures by recording evidence in hard copy, dated and signed for evidence. They must also record details of any evidence seized on the Code B notice given to the person.
248. Inspectors must collect, store and record all other evidence on OfficeBase. Inspectors must keep original documents rather than photocopies of documents.
249. If we uncover evidence of a separate offence during an interview under a PACE Act 1984 caution, we must caution the registered person again before asking any questions about that separate offence. We must also issue another Code B notice, detailing which offence we are now searching the premises or seizing evidence for. If necessary, we can conduct a separate interview under caution about the separate offence at a later stage.

### **Recorded interviews under a PACE Act caution**

250. We must interview suspects separately. This ensures that we do not compromise statements, and that the evidence of one suspect does not taint the evidence of another.

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<sup>33</sup> A witness statement form is a standard template we use to record evidence from a person we have spoken to, which that person signs to confirm that the contents of the statement are true. In general, the statement should only contain information on what the witness saw and not what others have said to him or her. It is important to record anything that may open a new line of investigation or help corroborate other information. We must provide original witness statements in any court or tribunal hearing. This template is available on the Ofsted intranet.

251. We must record on tape or disc any interviews we conduct under a PACE Act 1984 caution. We must tell the person subject to the interview how we will store the records of that interview.
252. Inspectors usually carry out those interviews conducted under a Police and Criminal Evidence Act 1984 caution. A colleague who has received the relevant professional training must be present throughout the interview.
253. We must follow the spirit of Code E of the PACE Act 1984 revised codes of practice when carrying out a tape or disc-recorded interview under caution.

### **3.7 Warning letters**

254. Warning letters are a non-statutory action. We may issue a warning letter where a person commits an offence and has admitted this to us in an interview carried out under PACE, but where we decide that it is not appropriate to issue a simple caution or to prosecute them.

#### **Drafting a warning letter**

255. A warning letter must state:
- the offence that we investigated
  - the actions or omissions that constituted the offence and what the person needs to do to remedy the position
  - the fact that we interviewed the person in connection with the offence
  - the fact that the person admitted the offence
  - that, on this occasion, we will not pursue a prosecution for the offence
  - that if the person should commit the same offence, or another offence, in the future, we may pursue a prosecution
  - that the details of the matter will remain on our files and we will take it into consideration in future when deciding whether to take enforcement action.

### **3.8 Simple cautions**

256. We may offer and issue a simple caution where we have sufficient evidence to secure a prosecution and the person has admitted committing the offence but we decide not to prosecute because it is not in the public interest to do so. A simple caution is one of the ways we can address the commission of a criminal offence and is issued in line with Ministry of Justice guidance.<sup>34</sup>

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<sup>34</sup> *Simple cautions for adult offenders: guidance for police officers and Crown Prosecutors*, Ministry of Justice, 213; [www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors](http://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors).



257. We may issue a simple caution against any person, whether registered with Ofsted or not, who commits an offence for which we are the prosecuting authority.
258. It is important to recognise that simple cautions are different from a PACE Act 1984 caution, which we administer where we suspect a person has committed an offence prior to questioning the person about the offence(s).

### **Threshold**

259. We may issue a simple caution if all of the following apply:

- the person admits the offence
- there is a realistic prospect of a conviction
- the offender understands the significance of a simple caution and gives informed consent to being formally cautioned
- other compliance action is unlikely to be effective
- prosecution would not be in the public interest.

### **Making the decision to issue a simple caution**

260. When a person admits an offence, we must first consider if we have sufficient evidence to secure a prosecution. The admission has to be genuine and we do not use the possibility of a simple caution to obtain an admission. We must also be confident that we could secure a conviction if the case went to court and the person pleaded 'not guilty', contrary to any earlier admission under a PACE Act 1984 caution. See chapter on 'Offences' (page 51) for further details.
261. If a person has previously received a simple caution, we should not normally consider a further simple caution. However, if there is a sufficient lapse of time to suggest that a previous caution was a significant deterrent (two years or more), or the subsequent offence is unrelated, we can administer a further simple caution.

### **Evidence for issuing a simple caution**

262. We must interview the person under a PACE Act 1984 caution to gather evidence, which may help to determine whether a prosecution is appropriate. We consider the evidence at a case review. In making the decision to offer a simple caution, we must have decided that if we offer the caution and the person refuses to accept it, we are prepared to pursue a prosecution.
263. If we are not prepared to pursue a prosecution, we should not offer a simple caution and should instead consider taking alternative action.

## **Offering a simple caution**

264. We inform the person who committed the offence in writing that we have grounds for prosecuting them, but that we are willing to offer a simple caution as an alternative, if they accept. Our letter must set out the consequences for the person if they accept the simple caution and that we will prosecute if they do not accept it. Inspectors must seek advice from the legal services team when drafting the letter to ensure that it contains all the necessary legal information.
265. If the person agrees to accept a simple caution for the offence, a RIM (or senior HMI) will meet with them to issue the simple caution.
266. If not accompanied by a legal representative, the person may bring a support person who is not permitted to take an active role in the cautioning process.

**Table 2: Administering a simple caution**

- Check the simple caution before the meeting and print two copies.
- Hold the meeting in one of Ofsted's offices, or an appropriate alternative venue, but not at the person's home or the registered setting.
- Record the meeting on a tape recorder or record it in a hard copy format.
- Introduce yourself and the accompanying officer – where applicable – explaining that the officer will make a record of the meeting.
- Confirm the person's name, address and, if appropriate, his or her registration details.
- If the person is attending with a legal representative, confirm the name and details of that person.
- If the person is not attending with a legal representative, confirm with the person that it is their obligation to seek legal advice on the consequences of a simple caution. If they have chosen not to seek legal advice, this is specifically confirmed by the person at the interview.
- Confirm that the meeting may be adjourned in the event that a person wishes to seek legal advice on the issue of accepting the simple caution.
- Explain the actions or omissions that constituted the offence and why it is an offence. If necessary, explain why we did not believe that any excuse given was reasonable.
- Caution the person under the PACE Act 1984 and ask them to confirm, once again, that he or she admits the facts and the offence.
- Ask the person to confirm that they are prepared to accept the simple caution instead of being prosecuted. Point out that if the person chooses to decline the simple caution they will have an opportunity in court to defend themselves against the allegations.
- Warn the person that if he or she commits a similar offence in the future, the fact that he or she has received this simple caution for this offence will carry weight when we make any decision about whether to pursue a prosecution for the future offence.
- Warn the person that Ofsted will consider the simple caution when considering any future compliance action and may use it as evidence in an appeal to the First-tier Tribunal.
- Point out to the person that if a court finds him or her guilty of a similar offence, we may inform the court of this offence, and of the simple caution, before it passes sentence.
- Advise the person that, although we will retain the information about the offence and simple caution, we do not consider this a conviction and it will not show on any subsequent Disclosure and Barring Service check.
- Present the person with two copies of the notice of the simple caution, and ask the person to read the notice and sign both copies.
- Countersign both copies as the officer administering the simple caution and ask your colleague to sign as the witness.

267. If the person does not agree to accept the simple caution, we would usually proceed to prosecution.

## **Recording and storing a simple caution**

268. We record the simple caution on OfficeBase, noting the day, date, venue and colleagues involved in issuing it. A signed copy of the simple caution is scanned and saved onto OfficeBase.

## **Making a referral to the Disclosure and Barring Service**

269. Where we issue a simple caution, we must consider whether the threshold is met to refer the person to the Disclosure and Barring Service. See chapter on 'Making referrals to the Disclosure and Barring Service' (page 109) for more details.

## **Future consideration of the simple caution**

270. Under the provisions of the Rehabilitation of Offenders Act 1974, a simple caution is deemed to be a spent conviction as soon as it is administered. However, due to the link between the simple caution and the sector to which it relates (involving working with children and vulnerable adults), we take the simple caution into account for five years, from the date we issue it, when making any future judgements about a person's registration, including their fitness to be registered. We also consider the caution where relevant when making further decisions about whether or not to pursue a prosecution in future.

271. If we subsequently prosecute a person who has previously accepted a simple caution, we cannot offer this as supporting evidence to demonstrate that the offence for which we are prosecuting has been committed. However, if a court finds the person guilty of a similar offence, we can advise the court before it passes sentence about any previous similar offences or instances where that person has accepted a simple caution.

272. We may use the simple caution as part of any evidence we submit to the First-tier Tribunal if a person appeals against any action that we take in future in respect of his or her registration.

## **3.9 Prosecution**

273. The decision to prosecute and the way we pursue a prosecution will vary depending on the offence and any actions that we must take before a prosecution can commence. Prosecution for some offences can only be brought if certain procedural steps have first been taken. For other offences, there are no specific procedural steps to commence a prosecution. If a prosecution is being considered, inspectors must engage early with the legal team to ensure that any procedural steps are correctly followed.

274. Securing a prosecution sends a clear message that a situation is unacceptable. Prosecution may be used in conjunction with other actions or brought as a single action.

## Who we can prosecute

275. We can prosecute any person who commits an offence where we are the prosecuting authority. This includes the prosecution of:

- an individual
- a corporate body
- an unincorporated association.

276. We may prosecute people who are registered with us and people who are not required to register with us. For example, if a member of staff obstructs an inspector in carrying out their functions, we can prosecute the person as an individual under the Care Standards Act 2000, section 31(9).

277. If a registered person is a body corporate, and we decide to prosecute it for an offence, we prosecute the organisation, and not an individual person who is a member or an officer of the organisation.

278. However, under certain circumstances, we are able to prosecute both an individual, who is an officer or member of the organisation, and the organisation. If the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager or secretary of the body corporate, or any person acting in such capacity, the individual as well as the body corporate shall be guilty of the offence.

279. Where prosecution is being considered, legal advice should always be sought to ensure that legally sound decisions are made about the subject of any prosecution action.

## General prosecution thresholds

280. Proceedings must be started within six months of the date on which we find evidence that an offence has been committed, which is sufficient in our opinion to warrant the proceedings.<sup>35</sup>

### *The evidential stage*

281. To bring a prosecution, we must have sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. The finding that there is a realistic prospect of conviction is based on our objective assessment of the evidence, including the impact of any defence, and any other information that the suspect has put forward on which they might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge

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<sup>35</sup> Six months relates to offences under the CSA, if a prosecution is being brought under a different act legal advice should be sought on the applicable time constraints.

hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

### *The public interest stage*

282. In every case where there is sufficient evidence, we must consider whether a prosecution is required in the public interest. A prosecution will usually take place unless we are satisfied that public interest factors against a prosecution outweigh those in favour.
283. An example of a factor that would meet the public interest would be where a conviction would set a wider example in the sector.
284. Where evidence of the commission of a historic offence comes to our attention, we cannot bring proceedings more than three years after the date on which the offence occurred. However, in these cases, we will consider how the information impacts on a person's ongoing fitness to be registered.
285. With regards to the timeframes above, the proceedings start when we lodge the relevant documents with a court.

### **'Without reasonable excuse'**

286. As noted above, several offences carry the 'without reasonable excuse' defence. There is no definition of reasonable excuse and it will depend on the particular circumstances of each case.
287. Generally speaking, reasonable excuse means an excuse that an ordinary and prudent member of the community would accept as reasonable in the circumstances. The failure to do something must not simply be a deliberate act of non-compliance. If the circumstance that prevented a person from meeting the requirement was unforeseeable or outside the person's control, it may provide a reasonable excuse. Ignorance of the law will not be accepted as a reasonable excuse.
288. If a person claims that they have a reasonable excuse whether they tell us during an inspection or, subsequently, at an interview, we should ask them to tell us what it is. They may decide not to tell us, in effect exercising their right to silence, in which case we will need to make our decision on whether to prosecute on the evidence we have available to us. If they tell us their reasonable excuse, we should carefully consider whether it is reasonable. We may require further information or need to carry out further enquiries in order to make our decision.
289. Whether such matters amount to a reasonable excuse will depend on the facts of the specific case. We should seek advice from our legal advisors in making this decision.

## **Making the decision to prosecute**

290. We must consider the evidence of the breach and make our decision via case review. The decision is made by a Senior HMI, Social Care in consultation with the regional director. We will first hold a case review to determine the arrangements for interviewing the person under PACE and what further evidence we need to obtain. We must write to the person inviting them to attend the PACE interview. The letter must include:
- the precise section of the Act or regulations that we allege has been breached
  - the name and address of the setting that the alleged offence is related to
  - the person's rights with regards to the invitation, including their right to refuse to attend the interview and to have legal representation
  - the arrangements for holding the interview, including the proposed date and location.
291. If a person fails to attend an interview under caution, or refuses to attend, this will not prevent us from prosecuting the person. In these cases, we must be able to demonstrate to the courts the action we have taken to try to carry out the interview.
292. In the event that a person attends an interview under caution but denies committing the offence does not mean that we have insufficient evidence to pursue a prosecution. We must consider all the evidence we have to determine if we have a realistic prospect of conviction.
293. After gathering all our evidence, including any interviews under caution, we will hold a second case review to determine what action we should take and whether to pursue a prosecution. We record our reasons for this, including whether the general prosecutions thresholds are met, including reasons why the public interest test is/is not met. We must seek legal advice in making this decision.
294. At the appropriate stage, we will provide a briefing for the clerk to the justice on our powers and statutory duties. This is likely to be done via Ofsted's legal representative handling the case.

## **Consequences of a conviction**

295. The penalties that the court can impose on a person found guilty of an offence differ for each offence and are set out in the legislation. For the bulk of proceedings, the guilty person will receive a summary conviction with a fine, not exceeding level 5 on the standard scale. Other offences may result in larger fines or imprisonment.
296. A conviction for certain offences in relation to an establishment or agency may also become a ground for cancellation of a person's registration.

297. See 'Cancellation of registration' (page 68) for further details. It may also trigger disqualification from certain involvement in children's homes.
298. We also consider any conviction in determining a person's ongoing fitness and deciding if any other action is necessary.

### **3.10 Refusal to grant registration**

299. The 'Social care registration handbook' sets out the process that we follow in considering a provider's or manager's application to register with us. That handbook sets out the factors we consider and who has the power to make recommendations about refusing a registration.
300. We may have concerns about an application for registration early on in the application process. This may include, for example, receiving a statement of purpose that is not sufficiently detailed or tailored to the setting, or a Disclosure and Barring Service (DBS) disclosure that indicates that a person has been convicted of an offence. Where an inspector first encounters concerns about an application for registration, they should discuss this with their RIM and record a summary of the discussion and any actions or approach agreed, as part of a compliance case, in OfficeBase.
301. The inspector still retains overall responsibility for the application and they should continue to process checks and other information while considering our action in response to our concerns. We may decide to request further information from the applicant, or prepare lines of inquiry to explore with them at interview. The inspector should consider any new information that they receive in a case discussion.
302. If, after completing the check, the inspector recommends that the registration be refused, we must convene a case review.

### **Factors to consider in making decisions about registrations**

303. In making the recommendation or decision to refuse a registration, we must remember that the purpose of the registration process is for a person to demonstrate to Ofsted that they are capable of complying with the legal requirements attached to registration under the Care Standards Act 2000, including being fit to provide or manage a social care setting.
304. There are numerous factors that inspectors must consider in making a recommendation about a registration. These are detailed in the 'Social care registration handbook'. The case review must consider these issues.
305. Where we decide to refuse a registration, we proceed through the notice of proposal and notice of decision route to ensure that:



- a person who has applied for registration and been refused is disqualified unless they are granted written consent. See chapter on 'Disqualification and written consent' (page 108)
- there is a clear record of our concerns and our reasons for refusing registration that we can refer to if the person seeks registration again and/or in assessing a person's ongoing fitness if they hold other registrations with us.

### **Representations and appeals against a notice to refuse registration**

306. A registered person has 28 days from receipt of the notice of proposal to make representations to Ofsted.
307. The registered person who has been served with a notice of decision to refuse registration is entitled to make an appeal to the First-tier Tribunal before the decision takes effect. The registered person has 28 days from the date the notice of decision is served to make an appeal. See chapters on 'Representations' (page 89) and 'Appeals' (page 96) for further details.

### **Withdrawal of an application for registration**

308. An applicant may withdraw their application for registration at any point up until either:
- a notice of decision to refuse registration has taken effect
- or
- an appeal to the First-tier Tribunal has been heard.
309. There may be occasions where we have concerns about an applicant and they withdraw their application. This may occur before or after we have served a notice of proposal or notice of decision to refuse registration. The law does not prohibit a person from making such an application (unless one of the above events has occurred). So, where a person withdraws their application, we cannot continue with our action to refuse their registration. In these cases, we must summarise the concerns that we have about the applicant in the compliance case summary on OfficeBase before closing the case. This information will be retained and may be referred to if the person seeks registration with us again or in assessing their ongoing fitness if the person holds other registrations with us.

### **Impact of the withdrawal of a manager's application or change to a responsible individual on a provider's fitness**

310. There may be occasions where a manager withdraws their application or where the provider applying changes the person that they have nominated to be the responsible individual, where there are concerns about the suitability or fitness of these people.

311. There may be occasions where we discover that a provider has made full checks on the person that they put forward as the manager or responsible individual, but where the information proves to be incorrect or incomplete. For example, where a previous employer provides a false or misleading reference. In these cases, it is unlikely that this will reflect negatively on the provider's fitness. However, we must look into the fitness of the employer who provided the false or misleading reference if they are registered with us.
312. We make these considerations in a case review and keep a detailed record of our decision and reasons on OfficeBase.

### **3.11 Granting registration with conditions not agreed by the applicant**

313. There may be occasions where, as part of granting a registration, we grant it subject to conditions. In the bulk of cases, we will discuss these conditions in advance with the applicant and gain their agreement to these in writing. The process that we follow for this is detailed in our 'Social care registration handbook'.
314. However, there may be occasions where the applicant does not agree to the conditions that we are proposing but where we decide that we will only grant registration subject to these conditions. We will do this where we believe it is necessary to safeguard and protect service users or to address specific issues relating to that setting type. It is an offence not to comply with a condition of registration without reasonable excuse.

#### **Drafting the notice of proposal**

315. Following the decision at the case review, the inspector must draft the notice of proposal to grant registration with conditions, normally, within five days of the decision. The inspector must ensure that the conditions that we are proposing are worded in line with our guidance in Annex I and Annex M of the 'Social care registration handbook'.
316. We must serve the notice of proposal in line with our procedures in 'Notice of proposal/notice of decision process' (page 83).
317. The applicant has the right to make representations against our notice of proposal. They must make these within 28 days of the serving of our notice. See chapter on 'Representations' (page 89) for further details.

#### **Notice of decision and issuing the new certificate of registration**

318. Where we issue a notice of decision to grant registration with conditions that were not agreed by the applicant, the applicant has 28 days to appeal against our action to the First-tier Tribunal. Once the 28-day period has lapsed, or the First-tier Tribunal has heard and dismissed the appeal, the decision will take effect.

319. At this point, we write to the applicant informing them that their registration has taken effect and send them their certification of registration with the relevant conditions.

### **3.12 Imposing, varying or removing conditions of registration**

320. We have powers to impose, vary or remove conditions of registration as part of our compliance action.<sup>36</sup> We can do this through two processes:

- by a notice of proposal and notice of decision  
or
- by application to a magistrate. Detailed information on this emergency process for imposing, varying or removing conditions of registration is available at the chapter on 'Emergency action' (page 80).

321. Section 13(5)(a) of the Care Standards Act 2000 does not provide a threshold for the removing, varying or imposing of conditions by notice; it is at Ofsted's discretion to use this power as it sees fit. The threshold, for imposing, varying or removing conditions of registration, is where we believe that this is the most appropriate way forward, taking into account the other compliance options available to us, with a view to promoting the welfare and development of service users.

322. We must ensure that we do not impose a condition of registration that is already covered elsewhere by the requirements for registration. This is because, where there is an existing avenue to deal with non-compliance, we should pursue that avenue rather than duplicating a legal obligation by other means.

#### **Drafting a notice of proposal to impose, vary or remove conditions of registration**

323. Following the decision at the case review, the inspector must draft a notice of proposal to impose, vary or remove conditions of registration. Inspectors and SCCI must finalise the notice normally within five working days of making the decision.

324. The inspector must ensure that the conditions we are proposing to vary or impose are worded in line with our guidance; for example, do not name individuals and follow on from the existing text on the certificate (for example, 'The children's home ...').

325. We must serve the notice of proposal in line with our procedures in 'Notice of proposal/notice of decision process' (page 83).

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<sup>36</sup> Section 13(5) Care Standards Act 2000

326. A registered person has the right to make representations against our notice of proposal. They must make these within 28 days of the serving of our notice. See chapter on 'Representations' (page 89) for further details. It is an offence not to comply with a condition of registration without reasonable excuse.

### **Notice of decision and issuing the new certificate of registration**

327. When we issue a notice of decision to vary, impose or remove conditions of registration, the registered person has 28 days to appeal against our action to the First-tier Tribunal. Once the 28-day period has lapsed without an appeal being lodged, or the First-tier Tribunal has heard and dismissed the appeal, the decision will take effect.
328. At this point, we write to the registered person informing them that the decision has taken effect and issuing them with their new certificate of registration containing the amended conditions. We request the person to return their old certificate of registration at this time.

### **3.13 Refusing a request to vary, remove or impose conditions of registration**

329. A provider may apply to Ofsted to vary, remove or impose conditions of their registration but there may be circumstances where we do not agree to their request.
330. Following the receipt of information from the provider and/or a visit to the setting where there are concerns, the SCRI must discuss these with the RIM and open a compliance case and convene a case review.
331. If we decide at the case review to refuse the request, a written response will be sent to the provider giving reasons for our decision.
332. The provider has a right of appeal to the First-tier Tribunal if we refuse a request to vary, remove or impose a condition of registration. See chapter on 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 96).

### **3.14 Cancellation of registration**

333. Please note that this guidance on cancellation of registration does not apply to cancelling registration due to non-payment of fees. Please see the 'Social care registration handbook' for further information on this.<sup>37</sup>

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<sup>37</sup> *Social care registration handbook*, Ofsted, December 2015;  
[www.gov.uk/government/publications/social-care-registration-handbook](http://www.gov.uk/government/publications/social-care-registration-handbook).

## **Our powers to cancel registration**

334. We have two ways of cancelling a provider's and/or a manager's registration:

- section 14 of the Care Standards Act 2000 – cancellation by notice. This involves a two-step process: a notice of proposal to cancel and a notice of decision to cancel
- section 20 of the Care Standards Act 2000 – cancellation by urgent procedure (emergency cancellation).

335. A registered provider or manager may also apply to Ofsted for the cancellation of their registration.<sup>38</sup> Where this occurs and we do not have concerns about the provider or manager, we must follow our processes in the 'Social care registration handbook'.<sup>39</sup> However, where we have concerns or are in the process of taking compliance action against the person, we must follow the guidance in this handbook.

336. If a person whose registration is cancelled carries on or manages a social care setting they will be committing a criminal offence.<sup>40</sup>

## **Grounds and threshold for cancelling registration**

337. The Care Standards Act 2000 and associated regulations set out the grounds for cancelling a person's registration. The Act gives us the power to use discretion as to whether we cancel.

338. The grounds at our disposal to cancel a registration are that:

- the registered person has been convicted of a relevant offence
- any person is convicted of a relevant offence in relation to the establishment or agency
- the agency or establishment is being, or has at any time been, carried on or managed otherwise than in accordance with the relevant requirements
- the registered person has failed to comply with a compliance notice
- the registered person has failed to pay a prescribed fee
- the registered person has made a statement which is false/misleading in a material respect or provided false information in an application for registration or in an application for the variation or removal of a condition of registration

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<sup>38</sup> Section 24 of the Care Standards Act 2000.

<sup>39</sup> *Social care registration handbook*, Ofsted, December 2015;  
[www.gov.uk/government/publications/social-care-registration-handbook](http://www.gov.uk/government/publications/social-care-registration-handbook)

<sup>40</sup> Section 11 Care Standards Act 2000.

- the establishment or agency has ceased to be financially viable, or is likely to cease to be so within the next six months.

339. When using the above grounds for cancellation, we also apply the following thresholds. Whether:

- a child, young person or adult service user has been exposed to, or has suffered, serious harm or injury
- cancellation is the only way to assure the safety and well-being of children, young people or adult service users due to risk of harm or potential risk of harm
- other compliance action is inappropriate or has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale
- there is minimal evidence to suggest that the registered person is acting purposefully to resolve the matter within a reasonable timescale.

### **'Relevant requirements'**

340. The relevant requirements referred to in section 14(1)(c) of the Care Standards Act 2000 are:

'any requirements or conditions imposed by or under Part II of the Care Standards Act 2000 the requirements of any other enactment which appear to us to be relevant.'

341. This includes the setting-specific regulations and the registration regulations.

342. It is on this ground that we may cancel a provider's or a manager's registration where we consider that they are no longer fit for registration. For example, where they have failed to satisfy any of the legal requirements or have persistently been in breach of the remit-specific regulations, which renders them unfit.

### **Offence grounds for cancellation**

343. The offences for which we may cancel a registration are:

- any offence under Part II of the Care Standards Act 2000 or regulations made under it
- any offence under the Registered Homes Act 1984 or regulations made under it
- any offence under the Children Act 1989 or regulations made under it
- an offence under the regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999
- an offence under the Adoption and Children Act 2002 or regulations made under it

- an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part.

### **Making the decision to cancel a person's registration**

344. Cancellation is our strongest enforcement power and we only use it where we have ruled out lesser options as a way of ensuring compliance with the regulations.
345. In some cases, we may take other action before taking steps to cancel a registration with the intention of encouraging the registered person to put matters right. However, where a registered person has failed to do this and/or where we have lost confidence in their ability to make and sustain improvements to meet regulations, we may decide to cancel their registration.
346. We may also move to cancel a registration without taking any previous action where service users are at risk of harm. We will consider cancelling a provider's and/or a manager's registration at a children's home where the home has been judged 'inadequate' for overall effectiveness at the last two full inspections.
347. In making our decision, we are mindful that cancelling the registration of a children's home provider will result in children and young people losing their home, possibly affecting contact with family and friends, and their place in school or college. When we are considering cancellation, we must maintain an open dialogue with placing authorities to ensure that our action has the least detrimental impact on service users.
348. We make decisions about cancelling a registration at a case review. See chapter on 'Decision-making, case discussions and case reviews' (page 12) for full details. We must ensure that the case review carefully considers:
- managerial accountability (consideration of whose registration we should be cancelling)
  - twin-track cancellation.
349. Our evidence must show 'on the balance of probabilities' that our decision to cancel a person's registration is justified.
350. Where we are considering cancelling a registration, we maintain a full audit trail of our evidence, decision-making and communication with the registered person during the cancellation process.

### **Twin-track cancellation**

351. A twin-track cancellation is where we serve a notice of proposal to cancel and apply for an emergency order from a magistrate to cancel the registration at the same time. Where this is being considered, legal advice must always be sought.

352. We may adopt the twin-track approach to cancellation where we believe that not only is there a serious risk to the life, health or well-being of a service user, but that the registered person is also no longer fit for registration. This is because, in the event of the registered person successfully appealing the emergency cancellation, we believe that the registered person is no longer fit for registration.

### **Managerial responsibility**

353. We must consider which person registered in respect of the setting we should be cancelling. We may cancel the registration of the registered provider, the registered manager or both.

354. In making this decision, we must consider which regulations or requirements have been breached and on whom the legislation places responsibility to meet that regulation or requirement, or who has committed the specific offence which forms the ground for cancellation. As detailed in 'Decision-making, case discussions and case reviews' (page 12), the regulations will often make the 'registered person' responsible. This is both the registered provider and the registered manager.

355. We must carefully consider the action or inaction of both persons in the breach/es and how this affects their overall fitness. Where a registered manager has been trying to rectify the situation but has been overruled by the registered provider, this may affect our decision.

356. In all cases, we must carefully record in OfficeBase our discussion about managerial responsibility, the reasons for our decision as to whom we are taking cancellation action against and why.

### **Drafting the notice of proposal to cancel**

357. We serve notices of proposal to cancel registration in writing using our standard notice format.

358. The inspector must draft the notice, normally within two working days of the case review. The notice of proposal must include:

- the reason(s) for the proposal
- the exact part of the Care Standards Act 2000 and/or relevant regulations that have been breached, or the offence committed
- an overview of the evidence to support our action
- the consequences of cancellation (disqualification for certain individuals in respect of children's homes)
- the registered person's right to make representations, in accordance with the Care Standards Act 2000, section 18(1).



359. Once the notice is drafted, the inspector must ensure its review by an SCCI and our legal advisor. The final version of the notice is signed-off by the decision-maker normally within one day of receiving it. The review and any redrafting of the notice must be completed normally within one week of making the decision to cancel.

### **Serving the notice**

360. We must serve the notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 83).

### **Registered persons applying to cancel their registration**

361. Registered person(s) may apply to Ofsted to cancel their registration under section 15(1)(b) of the Care Standards Act 2000 (a voluntary cancellation). Where a registered person applies to do this, and we do not have concerns about them, we should consider their request in line with our procedures in the 'Social care registration handbook'.

362. However, where we have concerns about the person and/or are taking compliance action against them, we must carefully consider whether it is appropriate to accept their request.

### **Voluntary cancellation request made before the serving of a notice of proposal to cancel**

363. Where a person requests to voluntarily cancel their registration before we serve a notice of proposal to cancel, we must consider their request carefully in a case review.

364. Where we have serious concerns about the person, we may (in rare circumstances) decide to refuse to accept the person's application for voluntary cancellation and serve a notice of proposal to cancel their registration under section 14 of the Care Standards Act 2000 instead. We must be very clear of our reasons for doing this. For example, where the person is registered in relation to a children's home, we may cancel their registration under section 14 because we strongly believe that they should become disqualified from future involvement in children's homes, childcare and childminding. Any such notice of proposal must be served urgently.

365. In such situations, we must consider whether any additional information submitted with the registered person's application will undermine our own case to a point where we no longer believe that on the balance of probabilities we have sufficient evidence to support our decision and cannot justify our position at a subsequent Tribunal hearing. The desire for a person to be disqualified is not, in itself, a ground for cancellation. In any event, we should always consider whether we have sufficient evidence to refer someone to the DBS.

366. Where we do not believe that we can justify cancelling a person's registration under section 14 after they have submitted an application for voluntary cancellation, we must accept the voluntary cancellation application under section 15. However, before we close the compliance case, we must record a summary of our concerns at the point of the voluntary cancellation. We may refer to this information in future in the event that the person seeks registration with us again. We may also share this information with another agency, such as the Care Quality Commission, if the person holds a registration with them.
367. Where the person holds other registrations with us, we must convene a case review to consider how the concerns impact on the person's fitness in relation to those registrations. If the registrations relate to settings in other regions, we must refer the information to colleagues in those regions for their consideration.

### **Voluntary cancellation requests made after the serving of a notice of proposal or notice of decision to cancel registration**

368. Under section 15(2), a registered person is not permitted to apply to voluntarily cancel their registration after Ofsted has served a notice of proposal to cancel registration, unless we have decided not to take that step.
369. However, where a person does this, we cannot simply return their voluntary cancellation application on the grounds that they have no right to make it. Rather, we must consider their request in a case review.
370. Where a notice of decision has been served, we must consider the following factual issues in terms of whether we should accept the application:
- has the timeframe for making an appeal against the notice of decision lapsed without the person lodging an appeal? If so, the cancellation will have taken effect
- or
- has the person made an appeal to the Tribunal that it has not yet determined?
371. If either of the above applies, the registered person is not permitted to make an application for voluntary cancellation and we must return the application to them. We send a letter with the returned application, explaining that we cannot consider it because of the timescales above.
372. Where an application is received after we have served a notice of proposal to cancel, we must decide whether we will continue with the proposal or not. We must make this decision in a case review and record our reasons. When making such a decision, we consider any additional information we have about the registered person along with any information provided in the application to voluntarily cancel. We must be able to demonstrate we have done this before refusing an application to voluntarily cancel as voluntary cancellation has the

potential to achieve the same outcome as we are seeking through our cancellation by notice.

373. There may be circumstances where we feel it is appropriate to accept the person's request for voluntary cancellation, for example, where we are cancelling a provider's registration solely because they have ceased to be financially viable. In this case, an appropriate outcome is achieved by accepting the voluntary cancellation.
374. In other cases, we may consider it appropriate to continue with the proposal to cancel under section 14 due to the seriousness of the breaches involved and/or the poor quality of care provided and/or because of other registrations they hold with us or with another regulator, such as the Care Quality Commission. Where the person is registered in relation to a children's home, we may consider it appropriate to cancel their registration under section 14 to render them disqualified.
375. In such situations, we must consider whether any additional information submitted with the registered person's application will undermine our own case to a point as the desire for a person to be disqualified in itself is not a ground for cancellation.
376. Following the decision, we will write to the registered person informing them of our decision and reasons.

### **Issuing a further notice of proposal following new concerns**

377. In some cases, after issuing a notice of proposal to cancel a person's registration, we may receive further information that strengthens our reasons for cancelling. If we wish to use this additional evidence, we must issue a new notice of proposal that sets out the additional reasons for the cancellation. The timescales for making representations will start afresh from the date of serving this new notice of proposal.

### **Making representations**

378. Once we have served a notice of proposal to cancel, a registered person is entitled to make written representations and to have these considered before we make our decision. See chapter on 'Representations' (page 89) for further details.

### **Monitoring visits once we have served a notice to cancel**

379. When we decide to cancel a registration, we must consider the safety and welfare of those people who may continue to receive services from the registered person during the period between serving the notice of proposal and the cancellation taking effect. These considerations include whether it is in the best interests of service users for us to conduct monitoring visits using our powers of entry during this interim period.

380. We consider the evidence gathered after each monitoring visit to identify any significant change that may require further action or stopping the cancellation process. There may be occasions when the quality of services has deteriorated to a level where we believe there is a serious risk to service users. Where this happens, we must convene a case review on the day of the monitoring visit and take immediate action to secure the welfare of service users.
381. Where our test for emergency action is met, we may apply to a magistrate for an emergency order to cancel, vary or impose conditions on the person's registration. Where this is granted, it is effective immediately but is still subject to appeal. We must, therefore, continue to process the cancellation via a notice of proposal and notice of decision until the relevant appeal period for the emergency cancellation has expired.

### **The notice of decision to cancel**

382. We issue the notice of decision after the period for representations has passed or after the representations have been heard.
383. A notice of decision issued after a representation will include information on why we have decided to take the step, including any matters considered during the representation. The notice must also include information about the person's right of appeal against our decision to the Tribunal. We use a standard format for notices of decision.
384. The notice of decision is sent to the legal team for review. We usually serve the notice of decision to cancel within five days of the time period for representations passing or, where the person made representations, within 10 working days of hearing the representations. We must act promptly to show the seriousness of our concerns leading to the decision to cancel registration.
385. The inspector must also draft the associated letters notifying other persons identified in the case review about our decision to cancel registration. This may include the responsible individual and/or registered manager. These should be completed after the notice of decision is finalised, as that document takes priority.
386. Under section 30A of the Care Standards Act 2000, we must notify every local authority in England and Wales when we issue a notice of decision to cancel registration.

### **Improvements made by a provider following a notice of decision to cancel**

387. If we find evidence on a monitoring visit that the registered person is making significant progress, we will consider whether cancellation of the registration is still appropriate. The Tribunal may uphold an appeal where the person has made improvements between the issuing of the notice of decision and the appeal which suggests the cancellation is no longer justified.

388. However, in cases where, for example, a breach has resulted in serious harm or injury to a service user, or there is a history of improvement followed by decline, the progress may not lead us to withdraw our action.
389. Where we decide that we will no longer pursue a decision to cancel or defend the registered person's appeal, we must inform the registered person and, if appropriate, the Tribunal of the reasons for our decision, and that the proposal/decision to cancel registration is no longer appropriate. We must send a letter to the registered person and, where applicable, the Tribunal confirming our action and decision.

### **Appeals against a notice of decision to cancel**

390. Registered persons may appeal to the Tribunal against our decision to cancel their registration. The Tribunal gives weight to evidence that demonstrates we have made efforts to work with the registered person to deal with problems. It assesses whether our step to cancel is proportionate and appropriate. See chapter on 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 96) for further details.
391. When a registered person appeals against our notice of decision to cancel, we must send a notification to every local authority in England and Wales.

### **Appeals involving 'twin-track' cancellation**

392. If a person appeals against a notice of decision to cancel and an emergency cancellation, the Tribunal will hear the appeal against the emergency cancellation under its expedited appeals procedure.

### **When a cancellation takes effect**

393. A person remains registered until 28 calendar days after we have served the notice of decision or, where the person appeals, until the appeal is determined. The cancellation may take effect sooner if the registered person notifies us within the 28 days that they do not intend to appeal against our decision to cancel.<sup>41</sup>
394. Once the cancellation has taken effect, the inspector must send a letter to the person informing them that:
- the cancellation has taken effect
  - they will be committing an offence if they continue to carry on or manage the setting
  - they must return their certificate of registration to Ofsted

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<sup>41</sup> In such circumstances the cancellation takes effect on the date we receive such confirmation.

- if they are an individual cancelled in respect of a children's home, the cancellation renders them disqualified from carrying on, being concerned in the management of or having a financial interest in a children's home, and from involvement in childminding and child care under section 65 of the Children Act 1989.

395. When a cancellation takes effect, the inspector must arrange for a supplementary notification to be sent to every local authority in England and Wales notifying them of this fact.

### **Consequences of cancellation**

396. When we cancel a person's registration, we will consider the factors that gave rise to the cancellation in determining the person's ongoing fitness in relation to any other registrations that they hold with Ofsted. We will also consider this information in any future applications that the person makes for registration with us. Where the person holds a registration with another regulator, such as the Care Quality Commission, we may share information with them about the cancellation.

397. Where the cancellation relates to a national provider, the inspector must ensure that the RIM responsible for that national provider is fully briefed on the compliance action taken.

398. Where an individual has their registration cancelled in respect of a children's home, they and any other person involved in the management of that children's home becomes disqualified from carrying on, managing, having a financial interest in or working at a children's home in the future. They also become disqualified from child minding and childcare. See chapter on 'Disqualification and written consent' (page 108) for more details.

### **Impact of a provider's cancellation on a manager's registration**

399. There may be occasions where we decide it is appropriate to cancel a provider's registration, but not the manager's, in respect of a setting. This may occur where we have concerns about a registered provider over a period of time and have decided to cancel their registration, but where they have recently appointed a new registered manager, or where we have no concerns about the fitness of the registered manager that would satisfy cancellation.

400. In these cases, when the cancellation of the provider's registration takes effect, the manager's registration does **not** end at the same time. Rather, the manager still remains registered in respect of the setting. However, the manager cannot carry on the setting under their registration as a manager as they will be committing an offence of operating an unregistered setting if they do.

401. In these circumstances, we must write to the manager, enclosing/attaching a voluntary cancellation form and inviting them to apply to us to voluntarily

cancel their registration under section 15 of the Care Standards Act 2000 (voluntary cancellation). This will allow us to accept their application and end the registration.

402. If the manager refuses to do this, we must take action to cancel their registration. We will do this by issuing a notice of proposal to cancel under section 14(1)(c) of the Care Standards Act 2000 and must consult with the legal services team.

### **Managers registered in respect of children's homes**

403. In addition to the above, where a manager is registered in respect of a children's home, the manager will become a disqualified person when the cancellation of the registration of the children's homes' provider takes effect. See chapter on 'Disqualification and written consent' (page 108).
404. If the manager refuses to apply to voluntarily cancel their registration, we must follow the procedures outlined above to take steps to cancel their registration under section 14 of the Care Standards Act 2000.

### **Concerns received late about the registered manager**

405. Where we decided not to take cancellation action against the manager in our original decision-making, but evidence subsequently comes to our attention that the manager had not been meeting the relevant registration requirements, we can still take action against them at a later stage. Where this action is to cancel, rather than inviting the manager to apply to voluntarily cancel their registration, we must issue a notice of proposal to cancel their registration under section 14 of the Care Standards Act 2000 instead.
406. Where we successfully cancel the registration of a manager of a children's home under section 14, they become disqualified from carrying on, being concerned in the management of, or having a financial interest in, a children's home in the future. They also become disqualified from involvement in childminding and childcare.

### **Taking action against a registered manager when they are no longer employed by the provider**

407. There may be occasions where a manager registered in respect of a setting is no longer employed by the provider of that setting. This may occur where the registered manager resigns or where they are dismissed by the provider. In these circumstances, the registration of the manager does not automatically lapse as they hold a separate registration from that of the provider.
408. Where this occurs and we do not have concerns about the registered manager, or where our concerns are not sufficient to justify cancelling their registration under section 14, we must write to the registered manager and invite them to apply to voluntarily cancel their registration.

409. Where we have serious concerns about the manager (for example, in circumstances where they are dismissed for gross misconduct which placed service users at risk) we must consider cancelling their registration under section 14.

### **Visits following a cancellation taking effect**

410. We do not routinely carry out a visit after a cancellation has taken effect but will do so if we have identified a cause for concern. This may include:

- where the person has indicated that they intend to continue operating
- where a children's home, holiday scheme for disabled children or residential family centre prior to cancellation had been subject to a notice restricting accommodation which was breached, giving us cause to suspect they may operate without registration
- where we receive information that suggests the person is providing or managing a social care setting which requires registration.

## **3.15 Emergency action**

### **Introduction**

411. Section 20 of the Care Standards Act 2000 allows us to make an application to the magistrates' court for an emergency order to take action in relation to a person's registration. We may ask a magistrate to grant an order to:

- cancel a provider's or manager's registration – this is the strongest enforcement power we have
- impose, vary or remove conditions of registration.

### **Emergency suspension**

412. We may also suspend a person's registration in an emergency; however, we do not need to apply to a magistrate to do this. See chapter on 'Suspension of registration' (page 41) for further details.

### **Threshold**

413. We may seek an emergency order from a magistrate, if:

- we have evidence to show that unless an order is made, there is or will be a serious risk to a person's life, health or well-being
- any other action is unlikely to reduce the risk to a person's life, health or well-being
- the immediate risk outweighs any other detrimental effects to children, young people or adult service users, for example children and young people having to move out of their home.



## **Making the decision to take emergency action**

414. Any decision to seek an emergency order must be made through a case review. If we decide to take emergency action, we must work closely with the legal services team.

## **Seeking an order**

415. Once we have decided to seek an emergency order, we must act quickly because of the urgent nature of the matter. It is important that the court considers the application as quickly as possible, in order to remove the risk to children, young people and adults.

416. We can approach a magistrate at any time – day or night – to take emergency action. However, only in extreme cases do we make an application ‘out of hours’. The clerk to the court provides advice on how to do this. We make an application to the court and submit statements based on evidence, which:

- demonstrates that the risk of harm to the children, young people and adults who use the setting exists and that the consequences for them are serious
- demonstrates that we have considered alternative action and ruled it out as having failed to reduce, or being unlikely to reduce, the serious risk identified
- complies with our duty to provide full and frank disclosure to the court – we disclose all material evidence to the court, including any that does not support our case. Our witness statements contain a statement that the writer understands and has complied with their duty of full and frank disclosure to the court.

417. A magistrate only grants such an order if it appears to them that the evidence meets the threshold for an emergency order.

418. The clerk to the justices provides any necessary forms to support an application, and is responsible for arranging for a magistrate to hear the application. We direct the clerk to the appropriate legislation, namely the Care Standards Act 2000, section 20, showing Her Majesty’s Chief Inspector’s power to make the application, and we provide a briefing about our powers, where this is necessary.

## **Inter parte<sup>42</sup> and ex parte<sup>43</sup> applications**

419. We usually make an application to a magistrate, in the area where the registered person operates, so that it is easier for them to attend.
420. We seek to make these applications (even those made out of hours) inter parte (having given the registered person notice of the application and our reasons for making the application). If the registered person refuses to attend, does not attend or delays attendance, we must demonstrate and record the steps we have taken to facilitate their attendance.
421. We only make an ex parte application in exceptional circumstances, where:
- the risk is so serious that the application must be made straightaway and there is no time to notify the other party
  - notifying the other party would risk that they would destroy evidence
  - notifying the other party would place children, young people or adult service users at risk of harm
  - we are unable to contact the registered person despite making a thorough effort to do so (we must record all attempts that we have made to contact the person).
422. Where we make an ex parte application, we carefully record the reasons why we have done so in OfficeBase.

### **Note of the hearing**

423. If it is an ex parte application, we take a note of the application hearing, including details of the submissions made to the magistrate, questions asked and answers provided, and evidence used in support of the application.
424. The note is not a verbatim record of the hearing, but as full a summary as possible. We decide in the case review who will take the note.

### **The magistrate's order**

425. If the magistrate decides to make the order, the court writes out the order and passes it to us. The order is effective from the time the magistrate grants it.
426. The provider may appeal to the First-tier Tribunal (Health, Education and Social Care Chamber). However, the order remains in place until the appeal is

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<sup>42</sup> Where the registered person who is subject to the proceedings has been notified of our intention to seek an order.

<sup>43</sup> Where the registered person subject to the proceedings has not been notified of our intention to seek an order.

determined. The Tribunal operates an expedited process for appeals against a magistrate's orders. See chapter on 'Appeals to First-tier Tribunal' (page 96) for more details.

427. If the decision of the magistrate is to vary or add conditions to the registration, we check that the wording of any varied or new condition excludes named individuals. The wording of any conditions must follow on from the existing text on the certificate (for example, follow on from 'The children's home ...'). If the wording does not fit with this, we must raise this with the magistrate.

### **Serving the magistrate's order on the registered person**

428. We serve the registered person with a copy of the order, a copy of the written statement that supported the application and a notice of the registered person's right to appeal to the Tribunal against the decision, as soon as is practicable after the hearing.
429. If the application was ex parte, we also serve the registered person a copy of the note of the hearing and copies of all evidence and documentation relied upon to grant the order, unless to do so would prejudice an investigation into whether children, young people and adults are at risk. Where the emergency action relates to variation, removal or imposition of conditions of registration, we also issue a new certificate of registration.

### **Notifying local authorities and others**

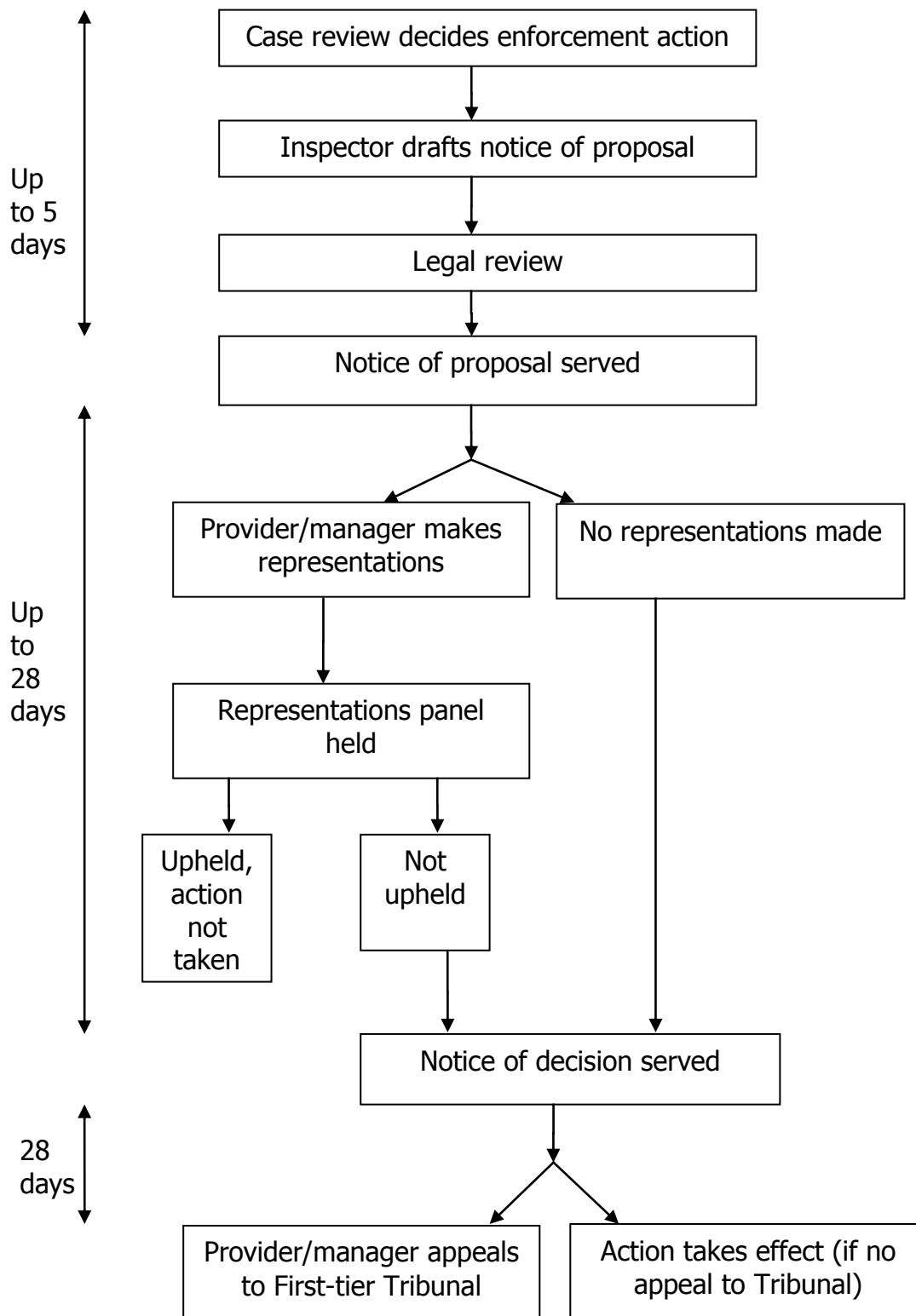
430. We must inform the appropriate authorities immediately after making an application for emergency action. The appropriate authorities are:
- the local authority in whose area the setting is situated
  - any statutory authority that we think it appropriate to notify.
431. This should include any local authority that has a child, young person or family placed with the setting.
432. We record details of who we notified and reasons for this in OfficeBase.
433. We should also consider whether a referral to the Disclosure and Barring Service is appropriate. See chapter on 'Making referrals to the Disclosure and Barring Service' (page 109) for further details.

## **3.16 Notice of proposal/notice of decision process**

434. As outlined above, many of our enforcement actions take place through the notice of proposal and notice of decision process. We must continue to monitor compliance with the relevant legal requirements and, importantly, the risk to children, young people or adults using the service throughout this process.
435. The steps involved in this process are:

- case review and decision to take enforcement action
- drafting notice of proposal: we usually finalise the notice within five days of the case review. The notice must be reviewed by a legal adviser
- serving of the notice: we must lawfully serve the notice on the correct registered persons connected to the setting or applicant for registration. See chapter on 'Notice of proposal/notice of decision process' (page 83)
- hearing representations: a person has 28 calendar days from the time the notice of proposal has been served to make representations to us. See chapter on 'Representations' (page 89) for further details
- notice of decision: if we decide not to uphold a person's representations, or the person does not make representations, we write a notice of decision telling the person why we have decided to take this action and detailing the evidence that we have. We serve the notice of decision according to our procedures in 'Notice of proposal/notice of decision process' (page 83)
- appeals to the First-tier Tribunal: in most cases, a person has 28 calendar days from the service of our notice of decision to appeal to the First-tier Tribunal, there are some exceptions; see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 96) for more details
- notice of decision takes effect: the notice takes effect once the 28-day appeal window has lapsed with no lodging of an appeal, or we receive written notification that the registered person does not intend to appeal, or where the registered person's appeals to the First-tier Tribunal is dismissed. We write to the person to inform them that the action has now taken effect
- monitoring compliance: we must ensure that the person is complying with the notice.

## Notice of proposal and notice of decision process



## Drafting notices

436. When seeking the review of a notice, the inspector must provide the following to the legal services team:

- details of the registered persons as they appear on the certificate of registration
- a copy of the case review minutes, which detail the basis of the decision
- a copy of any earlier case review minutes or notes from any case discussions related to the current compliance case
- if not fully captured in the case review minutes, a chronology of the events leading up to the decision
- if not fully captured in the case review minutes, the registration and compliance history of the registered person subject to the action
- any other supporting information
- the name of the decision-maker
- the full contact details (including secure email address) of the person who will be providing the instructions to the legal advisor allocated to the case
- confirmation of the timescale for receipt of the legal advice.

## Serving a notice

437. We serve notices when taking certain steps. These include:

- a notice to restrict accommodation at a children's home, residential family centre or holiday scheme
- a notice to suspend registration in an emergency
- a compliance notice
- a notice of proposal to: suspend a registration; impose, vary or remove conditions of registration; refuse a registration; refuse a request to vary, remove or impose conditions of registration; grant registration with conditions not previously agreed with the applicant; cancel registration
- a notice of decision to: suspend a registration; impose, vary or remove conditions of registration; refuse a registration; refuse a request to vary, remove or impose conditions of registration; grant registration with conditions not previously agreed with the applicant; cancel registration.

438. We must serve these notices in compliance with section 37 of the Care Standards Act 2000. It is very important that we serve notices properly otherwise it could invalidate the action that we are taking.

## Method of serving notices

439. We can serve a notice:

- in person
- by courier
- by post using a method which can be tracked, such as registered or recorded delivery.<sup>44</sup>

## When the service of the notice takes effect

440. Where we serve a notice in person, or by courier, the notice takes effect on the day it is served. Any time periods in the notice (for example, the appeal period) will commence from the next working day, with the exception of compliance notices (see information below).

441. Where we serve a notice by first-class post, the notice is deemed to be served on the third day after that on which it was sent, unless it can be proved otherwise.<sup>45</sup>

## The persons on whom we serve the notice

442. We serve notices as follows:

Type of person	Applicant or registered	Which person notice is addressed to and to what address it is served	Which person to serve the notice on
Manager	Applicant	Notice is addressed to the manager applicant and is served at their home address	Applicant manager
Manager	Registered	Notice is addressed to the registered manager and served at their home address or the setting address	Registered manager
Individual provider	Applicant	Notice is addressed to the individual applicant and served at their home address or the address provided by the applicant in the application	Individual provider applicant

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<sup>44</sup> Section 37(1) of the Care Standards Act 2000.

<sup>45</sup> Section 37(3) of the Care Standards Act 2000.

<b>Type of person</b>	<b>Applicant or registered</b>	<b>Which person notice is addressed to and to what address it is served</b>	<b>Which person to serve the notice on</b>
Individual provider	Registered	Notice is addressed to the individual provider and served at their home address or the address of the setting	Individual provider
Partnership provider	Applicant	Notice is addressed to at least one partner and served at the principal office of the partnership	All of the partners
Partnership provider	Registered	Notice is addressed to at least one partner and served at the principal office of the partnership or the address of the setting	One or all of the partners
Unincorporated associations (committees)	Applicant	Notice is addressed to all of the individuals who make up the committee and is served at the addresses given in the application form	All of the individuals making up the committee
Unincorporated associations (committees)	Registered	Notice is addressed to all of the individuals who make up the committee and is served at either the address of the setting or at the last known address for each individual	All of the individuals making up the committee
Organisation provider (bodies corporate – limited companies, trusts*, limited liability partnerships and unincorporated associations)**	Applicant	Notice is addressed to the secretary or clerk of the organisation and served at the registered or principal office address of the organisation. (If the organisation is a limited company, we send the notice to the address registered at Companies House.)***	Secretary or clerk of the organisation



Type of person	Applicant or registered	Which person notice is addressed to and to what address it is served	Which person to serve the notice on
Organisation provider (bodies corporate – limited companies, trusts*, limited liability partnerships and unincorporated associations)**	Registered	Notice is addressed to the secretary or clerk of the organisation and served at the principal office address of the organisation. (If the organisation is a limited company we send the notice to the address registered at Companies House.)***	Secretary or clerk of the organisation
Local authority provider	Applicant	Notice is addressed to the Director of Children's Services and served at the local authority's principal office (or office where the DCS is located)	Director of Children's Services
Local authority provider	Registered	Notice is addressed to the Director of Children's Services and served at the local authority's principal office (or office where the DCS is located)	Director of Children's Services

\* Not all trusts will be a body corporate. If in doubt, the inspector or SCCI should seek advice from the legal services team.

\*\* Where an organisation is the provider, but it has a single director (a single-owned company), we must still take the action against the company and not the individual person.

\*\*\* There may be occasions where the principal office address of an organisation is an address where no officers of the organisation work (for example, an accountant's). In these cases, we must serve a duplicate notice to the secretary's or clerk's home address and/or head office address.

## 3.17 Representations

### Representations

443. In some cases, the law allows registered providers, managers and applicants for registration to make representations against a course of action that we propose to take.

444. Representations give a registered person or applicant an opportunity to tell us why they think that the step/s we are intending to take are not required before we make our decision.

445. Ofsted convenes a representations panel to review and consider the information and evidence about whether to continue with the proposed course of action outlined in the notice of proposal.

### **Circumstances where a person is allowed to make representations**

446. Registered persons and applicants for registration can make written representations against a notice of proposal to:

- grant an application for registration with conditions that have not previously been agreed in writing with the applicant
- impose or vary conditions of registration
- suspend a person's registration
- cancel a registration
- refuse an application to register as a provider or manager
- refuse an application to vary or remove conditions of registration.<sup>46</sup>

### **Timescales for making representations**

447. A person must make their representations to us within 28 days of the date that the notice of proposal is served or deemed to be served.<sup>47,48</sup> Representations must be made in writing and sent to:

Social Care Compliance Team  
Ofsted Applications, Regulatory and Contact Team  
Piccadilly Gate  
Store Street  
Manchester  
M1 2WD

Email: [enquiries@ofsted.gov.uk](mailto:enquiries@ofsted.gov.uk)

448. If a person contacts us by telephone to inform us that they intend to make representations, we must ask them to provide their representations in writing. We cannot consider their representations unless we receive it in writing within the 28-day timescale.

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<sup>46</sup> Section 18 of the Care Standards Act 2000.

<sup>47</sup> Section 18(1) of the Care Standards Act 2000.

<sup>48</sup> 'Deemed to be 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).

449. We make a record of the call and a summary of what we have told the person and any response they make in the compliance 'case thinking' record on OfficeBase.

### **Representations received late**

450. We may, on occasion, accept representations later than 28 days after we served the notice of proposal, if there are exceptional reasons to do so. Such reasons will be considered on an individual basis.

### **Representations received after a notice of decision has been issued**

451. Where we have already served the notice of decision, we should return the representations and explain to the registered person or applicant that the time period for making representations has passed and we cannot consider it.

452. However, where late representations include details of improvements or other relevant information, we should consider what this means in relation to the action we have decided to take, as we would with any new or additional information that we receive. This includes considering whether the action that we are taking is still appropriate.

### **Representations made before a notice of decision has been issued**

453. If we have not yet issued the notice of decision but the 28-day timescale for representations has elapsed, it is at our discretion as to whether we consider the representations. We should convene a case review to consider the reasons the registered person or applicant has given for being unable to comply with the 28-day timeframe and the safeguarding risk to children, young people and other service users of a delay in our decision-making.

454. We record the decision about whether we accept the late representations and our reasons for this on OfficeBase.

### **Content of representations**

455. A registered person or applicant should include any relevant information in their representations that support their view that the proposed action should not be taken. This may include information or evidence that the registered person or applicant does not believe that Ofsted previously considered, or details of any action that they have taken since they received the notice of proposal. Where the person has taken advice from a solicitor or barrister and they wish to raise legal arguments, these should be included in the written representations.

456. The registered person or applicant should also state in their written representations if they:

- wish to attend the representations panel in person

- intend to bring a representative to the panel, and if so, the capacity of that person (they must state if they are bringing a solicitor or barrister with them).

### **Receiving the representations**

457. On receipt of written representations, the SCCI will:

- record that we have received it in OfficeBase
- write to the person acknowledging the receipt of their representations
- convene a representations panel.

### **Convening a panel**

458. The Care Standards Act 2000 does not prescribe a format or procedure for considering representations; this is at Ofsted's discretion. We must be able to evidence the steps we have taken to thoroughly review the original proposal through the representations process.

459. The panel will usually consist of:

- a Senior HMI, Social Care who has had no involvement in the case to date
- the involved SCCI, SCRI or RIM
- a third Ofsted colleague identified by the region with no or limited knowledge of the case
- a minute taker.

460. The panel may seek advice from the legal services team or other colleagues via their attendance at the panel, or consultation before or after the hearing.

461. Minutes are taken of the meeting.<sup>49</sup>

### **Notifying the person of the panel arrangements**

462. Once the panel is convened, the SCCI sends a letter to relevant the person, confirming the arrangements. The letter must include the following information:

- time and date of the panel meeting
- details about the format the meeting will take
- who will take part in the panel.

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<sup>49</sup> We will provide a copy of these to the person making the representations if they request them.

463. If the registered person or applicant has told us that they wish to attend the panel in person, we should also include the venue for the meeting with directions and a map where possible.

### **Attendance by the registered person or applicant at panel**

464. Where a person has informed us that they wish to attend the panel in person, we must be reasonable when setting the date for the panel meeting in order to give the person the opportunity to attend to make their representations. We will discuss their availability to attend with them in order to find a suitable date.

465. We will not unduly delay making our decision if a person does not attend the representation panel when they indicated that they wished to, or where they are unavailable for extended periods of time. The welfare of service users remains our first priority.

466. We will generally hold the meeting where possible in the locality where the person lives, ideally using an Ofsted office. We do not generally expect those making representations to travel more than an hour and a half to a representations hearing.

467. In some circumstances, we may decide to offer the registered person or applicant the option to join the panel by telephone or video conferencing, for example, where the registered person or applicant is unable to attend in person.

468. If the registered person or applicant brings a representative with them, the role of the representative is to:

- advise the person making the representations
- ask questions on his or her behalf
- present reasons to the panel why we should not take the proposed step/s.

469. A panel is not a forum to cross-examine evidence. The panel only asks questions of the person making the representations if they do not understand all of the information provided; the panel does not challenge the information given. Similarly, the person making the representations, or their representative, is not permitted to challenge the panel.

470. Where representatives are solicitors, they can advise their client on legal points that may affect the decision, but we do not enter into a legal debate with them. Any legal arguments should already be included in the written representations made.

471. The panel may adjourn the hearing at any time if it considers that it needs time to discuss a particular aspect of the representations or seek advice from others within Ofsted.

## Conduct of the panel

472. Before commencing the hearing, all members of the panel must have read and considered all documents relevant to the making of the original decision and any representations provided by the appellant. It is advisable to do so well in advance of the panel hearing to be able to access any additional information they may require. Records of the panel decision-making must include details of what documents were reviewed.
473. The Senior HMI, Social Care, who is the decision-maker, will chair the panel. The Chair must:
- introduce themselves and the other panel members
  - inform the person making the representations which panel members have previously been involved in the decision-making processes and which are new to the case
  - ask the person making the representations to confirm his or her name, address and that he or she is the registered person or applicant
  - ask any representative to introduce him or herself and his or her status in the meeting
  - clarify the purpose of the panel to the person making the representations
  - explain that the panel is not a court and that there is no opportunity to cross-examine regarding the evidence, but that either party can ask for clarification on any points through the Chair
  - show a copy of the notice of proposal to the person making the representations and ask him or her to confirm that this is the notice about which he or she is making representations. It may be necessary to clarify whether the person is making representations with respect to the whole notice or to a specific element or elements of it; for example, with a notice of proposal to vary conditions the provider may be making representations regarding just one condition
  - explain that we review the information they have submitted prior to or present at the hearing before we make our decision
  - explain that this is their opportunity to present any new or extra information to help us make our decision
  - explain that if we do not uphold their representations we will issue a notice of decision, against which they have a right of appeal to the tribunal,
  - explain that after they have made their representations, the panel takes a short break, after which the panel:
    - ask if there is any further information they wish to give
    - summarise the main points of the representations as understood by the panel, including any additional information

- explains how and when the panel will make a decision
- tells the applicant/registered person how and when the panel will notify them about the decision
- tells the applicant/registered person what he or she can do next if the representations are not upheld.

### **Decision-making by the panel**

474. The panel Chair must make a decision. If other members of the panel do not agree with it, the Chair must record their dissenting view. We can disclose this dissenting view to the person in any future tribunal hearing or other hearing if they appeal, in line with common practice in legal decision-making.
475. The panel considers and discusses all information provided in the representations against the notice of proposal issued before a decision is made on the outcome of the representations. The decision can only be made based on the notice of proposal issued, and the information provided in the representations against that notice.
476. The decision will either be to:
- uphold the representations
  - not uphold the representations.
477. There is no power to impose additional conditions or to undertake a different course of action.
478. Where a panel upholds the representations but believes a different course of action or other conditions are more appropriate, they may recommend this. If this occurs, a case review should be convened as quickly as possible after the panel in order to decide what action to take. Any recommendations must be detailed in the outcome letter sent to the appellant.

### **Informing the registered person or applicant of the panel's decision**

479. We may initially inform a person of the panel's decision in person or by telephone, but we must always confirm this in writing.
480. In all cases, we write to the registered person or applicant within 10 working days of considering the representations.
481. Where we uphold the representations and will not issue a notice of decision, we send a representations outcome letter confirming this position and that the notice of proposal no longer applies. We may also send a letter requiring the registered persons to meet regulations. We may also issue a new notice of proposal where we have decided other conditions or actions are more appropriate.

482. Where we do not uphold the representations, we issue the notice of decision, which includes detail of the representations made and how we have considered the representations when making our decision. The notice of decision must comply with the requirements of section 19 of the Care Standards Act 2000, which includes information about the right to appeal against our decision to the tribunal and how to contact the tribunal.

### **Record keeping and retaining notes from the panel meeting**

483. We record the decision with the reasons on OfficeBase.

484. All members of the panel review the minutes for accuracy before they are signed off by the Chair. The minutes are stored as part of the compliance case in OfficeBase.

485. We retain any notes made by members of the panel in accordance with the social care compliance file retention schedule. Where a decision has been made to retain the files and the setting remains registered, we must review this decision at the date of the next inspection. We may share these notes with the tribunal and appellant during any subsequent appeal process.

## **3.18 Appeals to First-tier Tribunal, Health, Education and Social Care Chamber**

### **Introduction**

486. In some circumstances, registered persons or applicants for registration may appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against decisions we make.<sup>50</sup>

487. Applicants and registered persons may appeal against our decision to:

- refuse registration
- grant registration with conditions that the applicant has not previously agreed to
- cancel registration
- impose, vary or remove conditions of registration
- refuse a request to vary, remove or impose conditions of registration
- refuse to give written consent for a disqualified person<sup>51</sup>
- suspend a registration (by notice or in an emergency)

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<sup>50</sup> Section 21 of the Care Standards Act 2000.

<sup>51</sup> A decision made under section 65 of the Children Act 1989. Appeals are made under section 65A of the Children Act 1989.



- restrict accommodation (for children's homes, residential family centres and residential holiday schemes for disabled children only).

488. In addition, providers may appeal to the First-tier Tribunal against an emergency order made by a magistrate to:

- cancel a registration
- vary or remove a condition of registration
- impose a new condition of registration.<sup>52</sup>

### **Timescales for making appeals**

489. To appeal against most actions<sup>53</sup> a registered person or applicant has 28 days after:

- the date on which we serve a notice of decision
- or
- the date on which the magistrate makes their order.

490. The only exception to this is where a person is appealing against our decision not to grant written consent for a disqualification.<sup>54</sup> In this case, the person has three months to appeal.<sup>55</sup>

491. The First-tier Tribunal counts time limits for an appeal from the first working day after we serve the notice.<sup>56</sup> This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.

492. Any submission to the tribunal, such as lodging papers, must be completed by 5pm on the day due.

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<sup>52</sup> We may apply to a magistrate for an emergency order under section 20 of the Care Standards Act 2000.

<sup>53</sup> Section 21 (2) and (2A) of the Care Standards Act 2000.

<sup>54</sup> Section 65A of the Children Act 1989.

<sup>55</sup> Schedule (a) under rule 20(1)(d) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

<sup>56</sup> Rule 1 of The First Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008, defines a working day as 'any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971'.

<b>Ofsted Action</b>	<b>Formal representations to Ofsted?</b>	<b>Appeal body</b>	<b>Appeal period</b>
Compliance notice	No	No right of appeal	
Warning letter	No (offence has been admitted)	No right of appeal	
Suspension of registration by notice	Yes	First-tier Tribunal	28 days
Suspension of registration in emergency	No	First-tier Tribunal	28 days
Restriction of accommodation	No	First-tier Tribunal	28 days
Simple caution	No (only issued by consent)	No right of appeal (only issued by consent)	
Refusal to grant registration	Yes	First-tier Tribunal	28 days
Granting registration with conditions not agreed by the applicant	Yes	First-tier Tribunal	28 days
Imposing, varying or removing conditions of registration by notice	Yes	First-tier Tribunal	28 days
Imposing, varying or removing conditions of registration in emergency	No	First-tier Tribunal	28 days
Refusal of a request to vary, remove or impose conditions of registration	Yes	First-tier Tribunal	28 days
Refusal to give written consent for a disqualified person	No	First-tier Tribunal	3 months
Cancellation of registration by notice	Yes	First-tier Tribunal	28 days
Cancellation of registration in emergency	No	First-tier Tribunal	28 days

### **Expedited appeals**

493. Ofsted has agreed an expedited appeals process with the First-tier Tribunal for certain cases. They are appeals against:

- restriction of accommodation
- magistrate's order to cancel registration
- magistrate's order to impose, vary or remove conditions of registration
- suspension of registration in an emergency.

494. Parties subject to the appeal process, which are covered by the expedited process, must comply with the timescales for expedited appeals as set out in the memorandum of understanding.<sup>57</sup>

### How to appeal to the First-tier Tribunal

495. If an applicant or provider tells us that he or she intends to appeal against our decision, we should tell them to write to:

HMCTS – Care Standards  
 1<sup>st</sup> floor  
 Darlington Magistrates Court  
 Parkgate  
 DL1 1RU  
 Telephone: 01325 289350  
 Fax: 01264 785013

Email: [cst@hmcts.gsi.gov.uk](mailto:cst@hmcts.gsi.gov.uk)

496. A person must appeal to the First-tier Tribunal in writing. Applications to appeal **must** include a copy of the notice of decision and an appeal application form. This form can be downloaded from: [www.justice.gov.uk/tribunals/care-standards](http://www.justice.gov.uk/tribunals/care-standards). On receiving an appeal, the secretary of the tribunal sends the information from the appellant to Ofsted. Unless the appeal is being dealt with under the expedited procedure, we must respond to the tribunal within the timescales set out below.

497. On receiving the notice of an appeal, the Senior HMI, Social Care decides whether to defend the appeal, taking into account the recommendations of colleagues and any legal advisors. The decision regarding whether to defend the appeal must be made immediately. If we decide to defend the appeal the legal team **must** be notified immediately.

### Initial response to the First-tier Tribunal in the event of an appeal

498. We must prepare the necessary documents and a covering letter of instruction, and forward it initially to the legal team in Ofsted who decide how the matter

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<sup>57</sup> *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*, Ofsted, May 2014; [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

will be dealt with. The legal adviser dealing with the matter will complete the form providing Ofsted's response, once they have sufficient instructions, and return it to the secretary of the tribunal.

499. The draft response must include:

- an acknowledgement that we have received the copy of the application for appeal
- confirmation that we oppose the application (see the section 'Strike outs' below)
- a brief outline of the reason we are opposing the appeal
- the name and address of the solicitor representing us
- a copy of any order made by a magistrate and a copy of the statement.

500. If we do not respond to the information from the secretary to the tribunal within the appointed timescale, we run the risk of taking no further part in the proceedings. This means that the tribunal can decide the outcome of the appeal without hearing our defence. The tribunal may also consider that we have acted unreasonably in conducting our part of the proceedings, and may subsequently make an order for us to cover the other party's costs.

501. We may send and receive documents to and from the tribunal by:

- post
- hand
- fax
- email, where the tribunal permits this.<sup>58</sup>

### **Responding to notification of an appeal**

502. The appointed legal adviser prepares the response to a request and must send it to the tribunal within:

- **three working days** of receipt of an appeal against:
  - restriction of accommodation at a children's home, residential family centre or residential holiday camp for disabled children
  - an urgent suspension of registration
  - a magistrate's order for emergency cancellation or variation of conditions of registration<sup>59</sup>

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<sup>58</sup> Paragraph 13 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

- **20 working days** of receipt in relation to all other appeals.

### **Strike outs**

503. In certain circumstances, we may apply to the First-tier Tribunal to strike out an appeal. This might include cases where the time allowed for an appeal has expired, or the basis of the appeal is outside the tribunal's jurisdiction.
504. It is important to ensure, before applying for a strike out, that we are satisfied there are clear grounds and it is appropriate to do so.
505. The grounds for applying for a strike out are set in rule 8(1) to (5) of the First - tier Tribunal (Health, Education and Social Care Chamber) Rules 2008.<sup>60</sup>
506. An application by Ofsted to strike out is not appropriate where we have evidence that we did not serve the notices connected with the proceedings in accordance with section 37 of the Care Standards Act 2000. In such circumstances, we should seek legal advice on the validity of our original enforcement action.<sup>61</sup>

### **How to apply to strike out an appeal**

507. Where an inspector believes that there are grounds to apply to strike out an appeal, they must seek advice from the legal services team.
508. The legal adviser will contact, advise and assist the SCCI in making the application for a strike out.

### **Withdrawal of an appeal**

509. Either party to an appeal may request to withdraw their case by sending a written notice to the tribunal or orally at a hearing. A withdrawal will not take effect unless the tribunal consents to it.<sup>62</sup>
510. Where the tribunal gives its consent for a party to withdraw their case, that party may apply to have their case reinstated. Such a request must be made in

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<sup>59</sup> *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*, Ofsted, May 2014; [www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc](http://www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc).

<sup>60</sup> The First-tier Tribunal (Health, Education and Social Care Chamber) Rules 2008.

<sup>61</sup> Counsel advice is that a notice is not deemed to have effect where there is evidence to prove that the registered person or applicant did not receive that notice, even where that notice is served correctly under the provisions of the Care Standards Act 2000. In these cases we must carefully consider whether it is appropriate for us to defend the appeal. See section 7 of the Interpretations Act 1978. We must send all documentation in accordance with the information assurance requirements.

<sup>62</sup> Rule 17 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

writing and be received by the tribunal within 28 days of the written notice to withdraw or the oral hearing occurring.

511. The tribunal will notify each party to the case that a withdrawal has taken effect.

### **Notice of the First-tier Tribunal hearing**

512. The tribunal will give each party notice of the time and place of the hearing and any subsequent changes to this. This notice period will be at least 14 days, except in expedited appeals where the tribunal will give us notice as soon as the hearing is set.

### **Preparation for the First-tier Tribunal hearing**

513. SCCIs and RIMS take responsibility for coordinating and managing our response, including managing advice from solicitors.
514. The timescales for action vary. If either party has asked for a directions hearing, or if the Principal Judge or nominated Chair considers it necessary to hold a directions hearing, timescales are agreed or imposed.
515. If there is not a directions hearing, the Principal Judge or nominated Chair directs when the tribunal should receive the documents, witness statements or other material relied on by both parties. The directions may also require the other party to receive these items by a set date.
516. The responsible SCCI must follow Ofsted's internal legal guidance in preparing and compiling evidence and communicating with witnesses.
517. SCCIs with involvement from the legal services team complete the bundle (the package of documentation we submit to the tribunal) and arrange for the transfer of documents to the tribunal and other parties. We must take account of this extra step when setting timescales.

### **The hearing**

518. The tribunal will deal with some appeals by written submissions only, provided both parties agree.
519. Further guidance on handling appeals is available to Ofsted staff via internal legal guidance, which can be found on the Ofsted intranet.

### **After the hearing**

#### *The outcome*

520. The tribunal will tell both parties about its decision. In oral hearings, the tribunal may choose to tell both parties of its decision verbally or reserve its

decision while considering the facts and submissions. The tribunal must provide each party as soon as reasonably practicable after making its decision with:<sup>63</sup>

- a notice stating the tribunal's decision
- written reasons for the decision
- notification of any rights of review or appeal against the decision and the timeframes for lodging these.

521. If an applicant claims not to have received the above information, we should direct them to the tribunal.

522. The decision takes effect on the date on which the tribunal makes it.<sup>64</sup> Once we have received the decision, if the appeal has been dismissed we write to the appellant informing them that the decision has now taken effect and what this means for them. Where we have cancelled their registration, we warn the person in the letter that it is an offence for them to continue to carry on or manage the setting and we may prosecute them if they do so.

#### *Decisions affecting conditions of registration*

523. If the tribunal's decision is to vary or add conditions to the registration, we must make certain that the wording of any varied or new conditions excludes naming individuals and follows on from the existing text on the certificate (for example, 'The children's home...'). The SCCI is responsible for raising any concerns with the tribunal about the wording in the order and raising it with our legal advisor if the matter is not resolved at that time.

524. The SCCI must record the decision on OfficeBase. If the tribunal decides that a registration should continue with amended conditions, we must issue a new certificate of registration with the conditions as set out by the tribunal. We do not need to send a new notice of proposal in these cases, but we must ask the registered person to return their old certificate of registration to us.

#### *Notifying local authorities of the outcome of an appeal*

525. Where an appeal is against a notice of decision to cancel registration, restrict accommodation, or suspend a registration, we must send a notification to every local authority in England and Wales informing them of the outcome of the appeal.

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<sup>63</sup> Paragraph 30 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

<sup>64</sup> In some cases the tribunal may suspend the effectiveness of its own decision, pending a determination or appeal to the Upper Tribunal – rule 5(3)(l) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

## **A review of the First-tier Tribunal decision**

526. In certain circumstances we, or the appellant, may apply to the Principal Judge of the tribunal for a review of the tribunal's decision.<sup>65</sup> Neither party can apply for a review on the ground that they do not agree with the decision. Rather, the only ground for making an application for a review is that there is an error of law in the decision.

527. We should make an application to the Principal Judge no later than 28 working days after receiving the decision. A Senior HMI, Social Care must authorise an application to ask for a review and must seek legal advice before making such an application.

528. If the tribunal decides not to review the decision, or reviews it and decides to take no action, the party can make an application to the tribunal for permission to appeal. The tribunal must send to both parties, as soon as is practicable:

- a record of its decision
- a statement of its reasons for refusal to review, or to review
- details of any rights to appeal to the Upper Tribunal and the timeframes for this
- details of any rights to make representations.

## **Appeals to the Upper Tribunal**

529. Either party may apply to the Upper Tribunal for permission to appeal. A party can only do this after they have first applied to appeal to the First-tier Tribunal and had this application refused. An application for permission to appeal must be made in writing and be received by the Upper Tribunal no later than one month after the date that the First-tier Tribunal made the decision to refuse its permission to appeal.<sup>66</sup>

530. We will only consider appealing to the Upper Tribunal in exceptional circumstances. The relevant Regional Director is responsible for making the decision on whether to appeal to the Upper Tribunal.

531. The instructed solicitor or barrister will discuss with us if there are grounds for appeal and provide the necessary advice on making such an appeal.

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<sup>65</sup> Rule 49 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

<sup>66</sup> Rule 21(3)(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008.



## Part 4: Other compliance and enforcement guidance

### 4.1 Working with other agencies and serious case reviews

#### Introduction

532. This section sets out our role in child protection concerns, including how we work jointly with other agencies in strategy discussions and serious case reviews, in order to protect children and young people.
533. Ofsted's 'Safeguarding children and young people and young vulnerable adults' policy applies to all our staff, and to those who provide contracted services for us.<sup>67</sup> It provides staff with consistent advice on dealing with potential issues involving the safeguarding and protection of children and young people and where appropriate vulnerable adults, and promotes effective multi-agency working as provided for in the Children Act 2004, and 'Working together to safeguard children'.<sup>68,69</sup>
534. We have a number of protocols with other agencies that set out in detail our agreed working arrangements with them. These protocols are published on Ofsted's website.<sup>70</sup> This section contains further information about Local Safeguarding Children Boards.
535. Ofsted's processes for dealing with whistleblowing referrals are set out in 'Whistleblowing to Ofsted about safeguarding in local authority children's services'.<sup>71</sup> This document includes details of our 'whistleblowing hotline'.<sup>72</sup>

#### Strategy discussions<sup>73</sup>

536. Local authority children's services arrange strategy discussions in accordance with statutory guidance.<sup>74</sup>

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<sup>67</sup> *Safeguarding children and young people and young vulnerable adults policy*, Ofsted, 2015; [www.gov.uk/government/publications/ofsted-safeguarding-policy](http://www.gov.uk/government/publications/ofsted-safeguarding-policy).

<sup>68</sup> Children Act 2004.

<sup>69</sup> *Working together to safeguard children*, Department for Education, 2015; [www.gov.uk/government/publications/working-together-to-safeguard-children--2](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2).

<sup>70</sup> Memorandums of understanding between Ofsted and partner organisations; [www.gov.uk/government/collections/ofsted-memorandums-of-understanding](http://www.gov.uk/government/collections/ofsted-memorandums-of-understanding).

<sup>71</sup> *Whistleblowing to Ofsted about safeguarding in local authority children's services*, Ofsted, 2014; [www.gov.uk/government/publications/whistleblowing-about-safeguarding-in-local-authority-childrens-services](http://www.gov.uk/government/publications/whistleblowing-about-safeguarding-in-local-authority-childrens-services).

<sup>72</sup> [whistleblowing@ofsted.gov.uk](mailto:whistleblowing@ofsted.gov.uk).

<sup>73</sup> This meeting can be known by other names such as a 'section 47 meeting' or strategy meeting. However, *Working together to safeguard children* (Department for Education, 2015) refers to this as a strategy discussion. [www.gov.uk/government/publications/working-together-to-safeguard-children--2](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2).

## **Attendance at strategy discussions**

537. Ofsted staff attend strategy discussions where the investigation concerns a registered person and/or where the concerns are sufficiently serious that we need to consider their impact on the overall operation of the setting. For instance, we may attend where there are concerns about an ongoing culture of restraint practice in a children's home. Decisions about whether to attend are made by the RIM in the area where the concern has arisen.

## **Our role at strategy discussions**

538. At strategy discussions, we support robust, timely steps to protect children and promote their welfare and challenge decisions that we believe will not do so.

539. We work collaboratively with other agencies to:

- always share any information we have that is relevant to the concern being investigated
- identify any limitations on the information that we can share (limitations should be discussed and agreed prior to the strategy meeting with Ofsted's legal advisors)
- provide details of the background to our involvement with the setting, including any decisions or actions we have taken to date in respect of the concern
- inform of any notifications we have made to local authorities, parents and other relevant agencies
- provide information about any actions we may take to make the setting safe for service users
- explain our regulatory functions and powers. This includes our crucial responsibility, as the regulatory authority, to satisfy ourselves that a registered provider and/or manager remain fit for registration. We must make clear that to do this we may carry out our own investigation to determine that the provision continues to be fit to provide a service. This may result in Ofsted initiating and completing its investigation before the child protection investigation is completed
- where we intend to take no further action, we should ask that we receive minutes from future meetings to enable us to reassess if there is further information that needs us to get involved again.

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<sup>74</sup> The purpose and tasks of strategy discussions are set out on pages 36–38 of: [www.gov.uk/government/publications/working-together-to-safeguard-children--2](http://www.gov.uk/government/publications/working-together-to-safeguard-children--2).

540. We also explain to other agencies that registered person(s) can appeal to the tribunal against some of the decisions we make. We ensure that, when necessary, we secure the agreement of those attending the strategy meeting to attend any tribunal if necessary, and/or supply witness statements.
541. We must also agree with the other organisations the information that we can share with the registered person(s) about the concern. The police or local authority have to decide how much information they are willing to place in the public domain, without it having a negative impact on their investigation, but need to understand the constraints this can place on Ofsted's actions.
542. Local authority children's services may decide to investigate the concern under section 47 of the Children Act 1989, or the police may decide to make enquiries as to whether an offence has occurred.<sup>75</sup> We will not be involved directly in these investigations, as we do not conduct child protection investigations with, or on behalf of, children's services or the police, but we may carry out a joint visit as described in the section 'Working with other agencies when planning an investigation'.

### **At the close of an external agency investigation**

543. Where an external agency investigates concerns and makes decisions about the welfare of children and young people, we continually reassess whether the registered person continues to meet the regulations and/or remains fit for registration.
544. When we close a case, we must consider the information from others' investigations in determining when to schedule our next inspection or whether we should conduct monitoring inspections. We must record this decision on OfficeBase. Some compliance cases will remain open until we know the outcome of any legal action.

### **Serious case reviews**

545. Local Safeguarding Children Boards (LSCBs) have a duty to review the role of professional bodies that come into contact with:
- any child who dies where abuse or neglect is known or suspected to be a factor
  - any child who is seriously harmed where abuse or neglect is known or suspected to be a factor and where there are concerns about how organisations or professionals have worked together to safeguard the child.

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<sup>75</sup> Children Act 1989.

546. These reviews are known as 'serious case reviews'.<sup>76</sup> Membership of LSCBs includes representatives from a broad range of agencies that provide services to children.
547. The primary purpose of a serious case review is to consider whether there are lessons that can be learnt about the ways in which organisations work together to safeguard and promote the welfare of children. Guidance on LSCBs and serious case reviews is in 'Working together to safeguard children'.
548. The LSCB may request any involved agency to submit an individual management review of their involvement in the case. Ofsted may be requested to do so where regulated provision is an element of the case.
549. The review will be conducted by a suitable person who is at the grade Band A or above. The review may agree recommendations to improve Ofsted practice.

## 4.2 Disqualification and written consent

### Introduction

550. Section 65 of the Children Act 1989 states that a person disqualified under section 68 of that Act will be disqualified from carrying on, being concerned in the management of, having a financial interest in, or working at, a children's home. A full list of the circumstances that can result in disqualification can be found in Schedule 1 of The Disqualification from Caring for Children (England) Regulations 2002.<sup>77</sup> An individual will be disqualified from carrying on, being concerned in the management of, having a financial interest in, or working at<sup>78</sup>, a children's home if the individual has been:

- subject to any order relating to the care of children<sup>79</sup>
- subject to the following by a specified regulatory body: cancellation of a registration; refusal of registration; or refusal of approval for that individual to care for, foster or look after children
- convicted of particular offences
- convicted of any offence, which involved bodily injury to, or death of, a child.

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<sup>76</sup> The circumstances where serious case reviews are held are set out in Regulation 5 of the Local Safeguarding Children's Boards Regulations 2006.

<sup>77</sup> The circumstances referred to in the schedule include convictions for criminal offences, family court orders and certain regulatory action.

<sup>78</sup> Where a disqualified individual wishes to work at a children's home, including as a volunteer, the employer must apply to Ofsted for written consent to employ the disqualified individual.

<sup>79</sup> There are exceptions, such as contact or residence orders.

551. We should always seek legal advice when determining whether a person is disqualified as the legislation governing disqualification is complex.

### **Written consent**

552. Ofsted has a separate role as the appropriate authority under section 65 of the Children Act 1989 that grants waivers to disqualified persons. Any disqualified person that wishes to carry on, be concerned in the management of, or have a financial interest in a children's home, must apply for written consent from Ofsted first. This role is distinct from Ofsted's role as a registration authority under the Care Standards Act 2000. A disqualified person has 28 days to notify Ofsted that they are disqualified and apply for written consent. Failure to do so is an offence<sup>80</sup>.

553. If we find a disqualified individual (without written consent) is involved with a children's home in any of the relevant capacities, we must convene a case review as soon as possible to determine the action to be taken. A legal advisor should be asked to attend such a case review.

## **4.3 Making referrals to the Disclosure and Barring Service**

### **Introduction**

554. We have a statutory duty<sup>81</sup> to refer individuals to the Disclosure and Barring Service (DBS). The referral is made so that DBS can decide whether to include the individual on a list of people who are barred from working with children and/or vulnerable adults (the DBS's barred lists).

555. We refer individuals to the DBS where we have evidence of conduct or behaviour that resulted in harming a child or young person, or which placed a child or young person at risk of harm.

556. The DBS board is responsible for making decisions about whether to include a person in a barred list.

### **When to make a referral**

557. Section 45 of the Safeguarding Vulnerable Groups Act 2006 imposes a duty on Ofsted to refer persons to DBS for consideration of inclusion in the list of people who are barred from working with children or vulnerable adults, where any one or more of the following criteria are met:

- the person has been cautioned or convicted of a relevant (automatic barring) offence

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<sup>80</sup> Section 65(4) Children Act 1989

<sup>81</sup> Under section 45 of the Safeguarding of Vulnerable Groups Act 2006

- the person has engaged in conduct that has harmed or posed a risk of harm to a child or vulnerable adult
- the person has satisfied the harm test (has not engaged in relevant conduct but poses a risk of harm to a child or vulnerable adult)
- the person is or has been, or might in future be, engaged in regulated activity<sup>82</sup>
- except in cases of automatic barring subject to representations, we consider that the DBS may consider it appropriate for the person to be included in a barred list<sup>83</sup>

558. The 'harm test' is defined in section 45(3) of the Safeguarding Vulnerable Groups Act 2006 as the person may:

- harm a child or vulnerable adult
- cause a child or vulnerable adult to be harmed
- put a child or vulnerable adult at risk of harm
- attempt to harm a child or vulnerable adult
- incite another to harm a child or vulnerable adult.

559. In practice, we may decide to refer any of the following people for consideration for inclusion in a barred list if the referral criteria are met:

- registered person(s)
- people whose registration we have cancelled
- people who have voluntarily cancelled their registration
- people who have resigned or been dismissed from a regulated activity<sup>84</sup>
- people employed (even if unpaid) to work directly with children, young people or vulnerable adults by a registered person
- applicants for registration.

560. In some cases, we may decide to refer an individual for consideration for inclusion before we have gathered all the evidence relating to misconduct but where the limited information we have satisfies the relevant tests for referral. For example, where a social care provider (who is an individual) applies for voluntary cancellation before we complete our investigation and we have not

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<sup>82</sup> The legal definition of regulated activity is set out in schedule 4 of the Safeguarding Vulnerable Groups Act 2006.

<sup>83</sup> Paragraphs 1 and 7 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006.

<sup>84</sup> As defined in the Safeguarding Vulnerable Groups Act 2006.

issued a notice of our proposal to cancel but where we have concerns about that person.

### **Duty on employers to refer to DBS**

561. Employers have a statutory duty to refer an individual to the DBS if they have removed the person because they have harmed or posed a risk of harm to a child or vulnerable adult.<sup>85</sup> If we become aware that the registered person has not taken this step, we make the referral ourselves. We also let the DBS know that the employer failed to make the appropriate referral.
562. Where a provider refers an individual to the DBS, we can forward any additional evidence we hold that may assist the DBS in reaching a decision.
563. If the registered person fails to make a referral, inspectors must investigate why they did not do so, and whether this failure impacts on the registered person's fitness to remain registered and/or their suitability to work with children, young people and adults.
564. It is an offence under the Safeguarding of Vulnerable Groups Act 2006 for an employer to fail to provide information to the DBS without reasonable excuse, when required by law to do so. Ofsted are not the prosecuting authority for this offence, the power to prosecute lies with the DBS.

### **Making the decision to refer to the DBS**

565. The decision to refer a person to the DBS is made in line with our decision-making table. See chapter on 'Decision-making, case discussions and case reviews' (page 12) for more information.
566. The DBS considers each referral against the evidence available before deciding whether to include the individual on a barred list. In some cases, the DBS may seek additional information from us.
567. Where we believe a person who is connected to Ofsted's functions (such as a registered person or an applicant for registration) is included on a barred list, we may make an application to the DBS to have this information confirmed in writing to us and they will also inform the individual by letter. We may do this where we receive information to suggest that a registered person has become barred and where they have failed to inform us of this fact. Once it has been established that a person is 'barred' we would take steps to cancel their registration.

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<sup>85</sup> Under section 35 of the Safeguarding of Vulnerable Groups Act 2006.

## **Making a referral**

568. Once we make a decision to refer a person to the DBS, the decision-maker completes and signs the DBS referral form. The form is available on the DBS website.<sup>86</sup>

## **4.4 Closing a compliance case**

569. We close a compliance case where:

- we are satisfied that children, young people and adult service users' welfare and outcomes are being protected and promoted
- the registered person(s) are complying with the law
- the compliance action has taken effect (for example, a cancellation or refusal has taken effect or a prosecution has been secured).

570. Sometimes cases may be closed to merge concerns so these relate to one compliance case only.

571. The decision to close a compliance case is made at a case discussion or case review. The reasons for closing the case and a summary of the case are made on OfficeBase by the inspector. We also make arrangements for the return of any evidence seized. The information stays on record and will be referred to as necessary for determining a person's fitness in respect of any ongoing registration, other registrations they hold or future applications for registration.

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<sup>86</sup> Disclosure and Barring Service referral form; [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/).



## Annex A: Events that registered providers must tell us about

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
1	Death of a child	√ a resident accommodated	√	√	√	√	√	√
2	Serious accident or illness to a child and the action taken in respect of this	√ also applies to a resident accommodated			√	√ serious injury only	√	√

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<sup>87</sup> The Secretary of State may set conditions of approval on a secure children's home under regulation 3 of the Children (Secure Accommodation) Regulations 1991 which include making certain notifications to Ofsted. These usually include: allegation that a child has committed a serious offence; perimeter breaches, including dangerous contraband; fire or serious disorder; serious child-on-child assault; serious incident or sustained episode of self-harm or attempted suicide.

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
3	Referral to the DBS of an individual working for the service or setting (previously a Protection of Children Act (POCA) referral) <sup>88</sup>	√	√	√	√	√	√	√
4	Any incident relating to a child that the registered provider considers serious		√	√				
5	Outbreak of any infectious disease – and advised to notify by a registered medical practitioner	√		√	√			√

<sup>88</sup> Please note that the regulations applying to adoption support agencies, residential family centres and voluntary adoption agencies refer to the POCA list. The regulations have not been updated to refer to the Safeguarding of Vulnerable Groups Act 2006. This does not affect the provider's responsibility to notify us of any referral to the DBS.

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
6	Involvement, or suspected involvement, of child in sexual exploitation <sup>89</sup>	√ including a parent under 18 years	√	√	√			√ Involvement or suspected involvement in sexual exploitation
7	Serious incident necessitating calling the police	√	√ to the home	√ to the home	√ to the foster parent's home			√ to any address that the scheme is operational at

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<sup>89</sup> Please note that for residential family centres, adoption support agencies and voluntary adoption agencies the regulations refer to 'child prostitution' which may be considered as a narrower definition than child sexual exploitation.

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
8	A serious complaint	√ about the centre or persons working there	√ an allegation of abuse against persons working in the home	√ an allegation of abuse against persons working in the home	√ about a foster carer approved by the agency		√ about any adopter approved by the agency	√ about the scheme or an employee
9	Instigation and outcome of any child protection enquiry	√ including a parent under 18 years	√	√	√		√	√
10	A child/young person goes missing			√ <sup>90</sup>				

<sup>90</sup> These notifications are set as a condition of approval as a secure children's home by the Secretary of State under regulation 3 of the Children (Secure Accommodation) Regulations 1991.

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
11	Information relating to criminal convictions and cautions relating to a registered person or responsible individual	√	√ also applies to directors where provider is an organisation and partners where provider is a partnership	√ also applies to directors where provider is an organisation and partners where provider is a partnership	√	√	√	√
12	Appointment of receiver, manager, liquidator or provisional liquidator, or a trustee in bankruptcy	√	√	√	√	√	√	

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
13	Where provider is an individual, that they have made an arrangement with their creditors from which they have not been discharged	√	√	√	√			
14	Absence of the registered person, registered manager, agency manager or branch manager for 28 days or more	√	√	√	√ registered manager only	√	√	
15	Appointment (including change) of a registered manager (including date of appointment) or responsible individual	√	√	√	√	√		√
16	Change to the name or address of the registered company	√	√	√		√	√	√

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
17	Change of membership of partnership (where registered provider is a partnership) or change in director, trustee, manager or officer where provider is an organisation or other entity		√	√	√	√	√	
18	Premises significantly altered/extended or additional premises acquired	√	√					
19	A person other than the registered provider or registered manager is carrying on or managing the establishment or agency	√	√	√	√	√	√	√
20	Change of manager						√	

Type of information		Residential family centres	Children's homes	Secure children's homes <sup>87</sup>	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
21	Agency ceasing to act or exist					√	√	
22	The registered person ceases to carry on	√	√	√			√	
23	Death of the registered person, responsible individual, manager or branch manager	√	√		√ manager only	√	√	√ registered provider only
24	Creation of and subsequent review of the statement of purpose and children's guide – within 28 days	√ resident's guide, not children's guide	√		√	√	√	√
25	Review of behaviour management policy			√				√
26	Review of quality of care	√	√	√	√			√



<b>Type of information</b>		<b>Residential family centres</b>	<b>Children's homes</b>	<b>Secure children's homes<sup>87</sup></b>	<b>Independent fostering services</b>	<b>Adoption support agencies</b>	<b>Voluntary adoption agencies (where the child is placed for adoption by the VAA)</b>	<b>Holiday schemes for disabled children</b>
27	Report as to financial viability where it is likely that the establishment or agency has become financially unviable or is likely to be so within the next six months	√	√	√	√	√	√	

## Annex B: Decision-making table for case discussions and case reviews

In this table, wherever it refers to the Senior HMI, Social Care, this includes the Senior HMI, Social Care or their nominated representative.

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
1. Consideration of action to take following a failure by a registered person to complete requirements set in an inspection report	Social Care Inspector or RIM attends and makes decision	Case discussion or case review
2. Compliance notice	RIM attends and makes decision	Case review
3. Notice to refuse registration	Senior HMI, Social Care attends, makes the decision and notifies the Regional Director and National Director	Case review
4. Notice to grant registration with conditions not previously agreed by the applicant	RIM attends, makes the decision and notifies Senior HMI, Social Care	Case review
5. Notice to vary, impose or remove conditions of registration – other than at the provider’s request	RIM attends, makes the decision and notifies Senior HMI, Social Care	Case review
6. Notice to refuse request to vary, remove or impose conditions of registration – at provider’s request	RIM attends, makes the decision and notifies Senior HMI, Social Care	Case review
7. Warning letter issued after an interview under the PACE Act 1984	RIM attends and makes the decision and notifies Senior HMI, Social Care	Case review
8. Issuing a notice restricting accommodation up to 12 weeks (applies only to children’s homes, residential family centres and holiday schemes for disabled children)	Senior HMI, Social Care attends, makes the decision and notifies Regional Director. Where a Senior HMI is not available to attend, the RIM should attend, make a recommendation and brief the Senior HMI who makes the decision and notifies the Regional Director	Case review

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
9. Issuing a notice restricting accommodation beyond 12 weeks (applies only to children's homes, residential family centres and holiday schemes for disabled children)	Senior HMI, Social Care attends, makes the decision and notifies Regional Director	Case review
10. Notice to cancel registration	Senior HMI, Social Care attends, makes the decision and notifies the Regional Director and National Director*	Case review
11. Suspension of a registration (by notice) or extension of a period of suspension by notice	Senior HMI, Social Care attends, makes the decision and notifies the Regional Director and National Director*	Case review
12. Prosecution	Senior HMI, Social Care makes the decision in consultation with the Regional Director and notifies the National Director	Case review
13. Offer a simple caution following an interview under the PACE Act 1984	RIM attends and makes the decision	Case review
14. Emergency action application to Magistrate (emergency cancellation or emergency impose, vary or remove conditions of registration)	Senior HMI, Social Care attends, makes the decision and notifies Regional Director and National Director* ~	Case review
15. Suspension of registration (emergency process) or extension of suspension by emergency process	Senior HMI, Social Care attends, makes the decision and notifies Regional Director and National Director*	Case review
16. Give written consent to disqualified person	Senior HMI, Social Care attends and makes the decision	Written consent case review
17. Representations against a notice of proposal	Senior HMI, Social Care chairs the panel and makes the decision*	Representations panel
18. Referral to the DBS	RIM attends, makes decision and notifies Senior HMI, Social Care	Case review
19. Closing a compliance case	RIM attends or holds a case discussion and makes the decision.	Case review/ case discussion

<b>Action</b>	<b>Decision-maker and colleagues notified of decision</b>	<b>Forum: case review, case discussion or other process</b>
20. Surveillance	Deputy Director must authorise, notifies HMCI, Regional Director and Senior HMI, Social Care	Case discussion and authorisation process

\*Because of the tight timeframes involved in these decisions, if the Senior HMIs, Social Care for the region where the setting is located are not available, a Senior HMI, Social Care from another region must attend the case review and make the decision.

~Because of the urgent nature of these actions, the Senior HMI, Social Care may inform the Regional Director and/or National Director after the action has been taken.

## Annex C: Roles and responsibilities in case reviews

The 'colleague' indicated in the table below will be the person who normally attends the case review in that capacity. However, there may be occasions where a different colleague takes on this role (for example, because of the circumstances and complexity of a case or due to illness or absence from work) or where a colleague performs more than one role.

Colleague	Role and responsibilities
SCRI	<ul style="list-style-type: none"> <li>■ presents the details of the concern/s, clearly identifying how these impact on service users' safety and welfare</li> <li>■ details how the concerns relate to the action or inaction of the registered provider (including the responsible individual) and/or registered manager</li> <li>■ presents a summary of regulations or legislation that have been breached</li> <li>■ presents clear, accurate and detailed evidence that can withstand challenge</li> <li>■ provides a view on what compliance action should be taken</li> <li>■ provides a view on what other action Ofsted should take, including informing placing authorities or preparing for press interest.</li> </ul>
SCCI	<ul style="list-style-type: none"> <li>■ organises and chairs the meeting</li> <li>■ carries out a robust review and, where appropriate, challenges the evidence provided</li> <li>■ ensures that decisions are made to protect and promote the safety and welfare of children, young people and adult service users</li> <li>■ ensures that all compliance options are considered and that the action taken is proportionate</li> <li>■ completes the summary of the case review on OfficeBase, including entering actions resulting from the case review</li> <li>■ reviews and agrees the case review minutes</li> <li>■ attaches the final version of the case review minutes onto OfficeBase following review by the participants.</li> </ul>
RIM	<ul style="list-style-type: none"> <li>■ supports the inspector in presenting the case</li> <li>■ ensures that the evidence presented at the case review is sufficiently robust</li> <li>■ ensures that the decisions made protect and promote children, young people and adult service users' safety and welfare</li> <li>■ ensures that the correct persons are identified for taking action against registered provider and/or registered manager</li> <li>■ ensures the correct persons are identified to be communicated with</li> </ul>

Colleague	Role and responsibilities
	<p>about the compliance action, such as placing authorities, and that other regions in Ofsted are notified if the persons are involved in providing or managing other settings</p> <ul style="list-style-type: none"> <li>■ ensures that there is a clear and agreed plan for monitoring the setting</li> <li>■ reviews and agrees the case review minutes.</li> </ul>
Minute-taker	<ul style="list-style-type: none"> <li>■ drafts the case review minutes, which are a summary of the discussion and actions to be taken</li> <li>■ sends the minutes to the RIM and SCCI for review</li> <li>■ ensures that the final agreed minutes are available on OfficeBase.</li> </ul>
Decision-maker	<ul style="list-style-type: none"> <li>■ should take a balanced approach and ensure all concerns are considered</li> <li>■ ensures that decisions made protect and promote the safety and welfare of children, young people and adult service users</li> <li>■ decides what compliance action, if any, we will take</li> <li>■ ensures that decisions are proportionate</li> <li>■ ensures that there is an appropriate timeline for completing all actions, which prevents drift and delay</li> <li>■ signs off minutes of the case review</li> <li>■ signs off notices within five working days of the case review.</li> </ul>
Policy and/or legal services colleague	<ul style="list-style-type: none"> <li>■ advises on policy and legal matters including: <ul style="list-style-type: none"> <li>– clarifying any areas of policy</li> <li>– clarifying any legal points, including the correct interpretation of the legislation</li> <li>– advising on the strength of evidence and whether it sufficiently meets the relevant thresholds.</li> </ul> </li> </ul>

## Annex D: Surveillance

1. Ofsted is authorised under the Regulation of Investigatory Powers Act 2000 to conduct surveillance as part of any investigation relating to its social care regulatory functions.
2. The Regulation of Investigatory Powers Act 2000 works with existing legislation, in particular the Intelligence Services Act 1994,<sup>91</sup> the Police Act 1997<sup>92</sup> and the Human Rights Act 1998.<sup>93</sup> In brief, we must conduct all surveillance according to the Human Rights Act 1998, and in particular Article 8, 'Right to respect for private and family life'.
3. The Regulation of Investigatory Powers Act 2000 ensures that any use of investigatory powers is compliant with human rights and sets out:
  - when we can carry out directed surveillance
  - who should authorise each use of the power
  - what use we can make of the material gained.
4. We only use directed surveillance in the regulation of social care providers where we need to provide evidence that a provider has committed or is committing an offence, and we have exhausted all other methods of gathering evidence, such as unannounced visits.
5. Section 26(2) of the Regulation of Investigatory Powers Act 2000 defines directed surveillance as surveillance which is covert, but not intrusive (that is, surveillance carried out in a manner designed to ensure that persons are unaware that surveillance is taking place) and carried out:
  - for a specific investigation or specific operation
  - in a manner that is likely to result in obtaining private information about a person or people
  - in a way which is planned, rather than the chance observations of, for example, an inspector attending a setting to conduct an inspection.
6. We carry out a case discussion (see chapter on 'Decision-making, case discussions and case reviews' on page 12) before seeking authorisation to carry out directed surveillance. Only staff who have received approved training carry out surveillance. Inspectors carrying out surveillance, as well as authorising

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<sup>91</sup> Intelligence Services Act 1994; [www.legislation.gov.uk/ukpga/1994/13/contents](http://www.legislation.gov.uk/ukpga/1994/13/contents).

<sup>92</sup> Police Act 1997; [www.legislation.gov.uk/ukpga/1997/50/contents](http://www.legislation.gov.uk/ukpga/1997/50/contents).

<sup>93</sup> Human Rights Act 1998; [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents).

officers, are familiar with the 'Code of practice for covert surveillance and property interference'.<sup>94</sup>

### **When is it necessary and proportionate to grant surveillance?**

7. The applicable ground for us is that the surveillance is necessary for the purposes of preventing or detecting a crime. This means when we suspect a person has committed, or is committing, an offence under the Care Standards Act 2000, the Adoption and Children Act 2002 or the relevant regulations.
8. Only authorising officers can give permission for the use of surveillance (see chapter on 'Decision-making, case discussions and case reviews' on page 12). The authorising officer decides if the application to carry out surveillance is an appropriate and proportionate response. The authorising officer considers the following four elements of proportionality:
  - how the size and scope of the operation is balanced against the gravity and extent of the misdemeanour or offence
  - how and why the methods to be adopted will cause the least possible intrusion on the target and others
  - why the use of the power is appropriate and the only reasonable way of obtaining the information or evidence
  - what other means of obtaining the information have been considered and why these are not appropriate.
9. The authorising officer balances the seriousness of carrying out surveillance against our responsibility to safeguard service users. Surveillance is not proportionate if it is excessive given the circumstances of the case, even if the offence is serious, where we can realistically obtain the required information by other means. Proportionality also includes demonstrating that the methods and tactics to be used when carrying out a particular surveillance operation are the least intrusive.
10. We only use surveillance where we are unable to obtain the evidence by other means, such as an unannounced visit. Directed surveillance may be a proportionate response if observation is the only way to gather our own evidence that the registered provider is committing an offence.
11. We must demonstrate, on the authorisation forms, how using surveillance is proportionate.

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<sup>94</sup> *Code of practice for covert surveillance and property interference*, Home Office, 2010; [www.gov.uk/government/publications/code-of-practice-for-covert-surveillance-and-property-interference](http://www.gov.uk/government/publications/code-of-practice-for-covert-surveillance-and-property-interference).



## **Application to conduct surveillance**

12. We set out in the application:

- why – the reasons directed surveillance is necessary in the particular case and what crime it will prevent or detect
- what – an explanation of the information we want to gain from surveillance
- where – the location it will take place at, with maps or sketches, if appropriate
- when – the date we intend to start, how long the surveillance is authorised for and over what period of time
- who – the identities, where known, of the people who are to be the subjects of the surveillance
- how – the methods and equipment to be used, such as a camera, cars and so on.

13. Additionally, the application will set out:

- the details of any potential collateral intrusion, the justification for the intrusion and steps taken to limit the intrusion
- the arrangements made to ensure that the surveillance remains covert.

## **Urgent cases**

14. We do not have the power to undertake surveillance without prior written authorisation, even in urgent cases. We always obtain written authorisation whenever we think we need to carry out surveillance.

## **Authorising officer's duties**

15. Authorising officers receive training and are familiar with the 'Code of practice for covert surveillance and property interference' before authorising surveillance. Authorising officers, and not Ofsted, are personally responsible for any decision they take. A court may hold the authorising officer to account, even if they have ceased working for us. Authorising officers set a timescale for review when authorising surveillance.

## **Granting authorisation**

16. Authorising officers only grant authorisation if they are satisfied that:

- surveillance is an appropriate and proportionate response
- the surveillance is to provide evidence that someone is committing an offence for which HMCI is the prosecuting authority
- the persons nominated to carry out surveillance are trained in covert surveillance

- all sections of the form are complete, and the request provides an outline of the intended approach and includes all necessary information, as set out above, for the authorising officer to reach a decision.
17. When approving a surveillance authorisation request, the authorising officer includes an account of why they are authorising the surveillance, what they are authorising, the time period approved, where the surveillance will take place and why it is a proportionate response. This is because it is likely a court will cross-examine an authorising officer on this if there is a legal challenge.
  18. When refusing an application, the authorising officer sets out the reasons for the refusal. The authorising officer states if they are willing to consider a further request and, if so, the issues for consideration by the applicant. Copies of each and every version of the application are forwarded to the social care policy team for storage and retention, in line with Ofsted's file retention policy.
  19. The authorising officer is responsible for:
    - liaising with our legal advisers before making the final decision when minded to grant an application
    - informing HMCI of a surveillance operation, once authorised, to ensure that there are no wider implications that may affect our ability to carry out the operation.

### **Reviewing authorisation**

20. The authorising officer reviews each authorisation after the surveillance is complete to assess whether it should be renewed or cancelled. The review considers:
  - if the surveillance continues to meet the criteria set out in the request form
  - if the surveillance remains a proportionate response
  - if we can gather the evidence in any other way
  - all evidence gathered by surveillance at that time
  - any additional information that may have a bearing on the case.

### **Renewing authorisation**

21. We send the application for renewal to the authorising officer who authorised the original surveillance. The authorising officer will read the original request along with the renewal surveillance form. The authorising officer will check that the renewal form includes details about:
  - any significant changes to the information in the previous authorisation
  - the reason it is necessary to continue surveillance
  - the content and value to the investigation of the information gathered so far

- the estimated length of time for the additional surveillance.

### **Person responsible for the surveillance operation**

22. Once the surveillance is authorised, the RIM who has completed approved training in surveillance is responsible for the operation.
23. The RIM is responsible for informing the police in the area where the surveillance will take place, before our operation commences. This is to ensure that we do not interfere with any ongoing investigations by the police and so that they are aware of the surveillance in case they receive a report from a member of the public.
24. The RIM monitors the surveillance operation and decides how long it should continue or, if sufficient evidence is obtained, they will recommend to the authorising officer to stop the operation. The RIM is responsible for informing the authorising officer of any change required or reason why the operation is no longer required.
25. Once we have completed a surveillance operation, the RIM prepares a report to allow us to review the operation and learn lessons from it.

### **Cancelling authorisation**

26. We complete a request for the cancellation of the directed surveillance once we have completed the surveillance operation, or we have decided not to continue with it for any reason.
27. Only the authorising officer can cancel the permission. The authorising officer will cancel the permission as soon as possible after the surveillance has ended, or as soon as she or he is satisfied that the surveillance no longer meets the criteria set out in the latest request form.

### **Storage of information**

28. In line with the 'Code of practice for covert surveillance and property interference', we hold a central record of all authorisations. This is held by the social care policy team. We make the record available to the relevant commissioner or inspector from the Surveillance Commission, on request. We hold a record for each authorisation for at least three years from the end of each authorisation.
29. We retain the following documentation:
  - a copy of the application, a copy of the authorisation or refusal from the authorising officer, together with any supplementary documentation
  - a record of the period during which we have undertaken the surveillance
  - the frequency of reviews prescribed by the authorising officer

- a record of the result of each review of the authorisation
  - a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested
  - the date and time of any instruction given by the authorising officer
  - all the log books and personal issue books.
30. We store all information electronically and in hard copy, with access rights only available to the senior officer and authorising officer, in line with our retention policy.

### **Retention and destruction of surveillance material**

31. We keep any surveillance material (such as logs or photographs) in a secure place for as long as is relevant to any future criminal or civil proceedings. If a court case or tribunal hearing takes place, we make the material available to it. The court or tribunal may ask us to disclose the information to the other party in the hearing.
32. We destroy any surveillance material we gather during an investigation whenever an operation has ceased and we no longer require that material for a prosecution or civil action.
33. The RIM is responsible for ensuring that the handling, storage and retention of the products of surveillance are in line with our policy and the 'Code of practice for covert surveillance and property interference', and that we consider data protection requirements.
34. If the authorised surveillance shows evidence of other criminal offences, we secure the evidence in the normal manner and inform the relevant police force or prosecuting authority.