

Guidance on writing complaint and compliance action summaries

This guidance is to help inspectors to write outcome summaries. These are summaries that we publish on our website following information that a provider is not complying with the requirements for registration and action is required to meet those requirements.

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Introduction

1. This guidance is to help inspectors write outcome summaries following inspections or investigations that include looking into concerns relating to potential non-compliance with the requirements for registration. It applies to those providers on the Early Years and/or Childcare Registers. We publish outcome summaries on our website.
2. We only write and publish outcome summaries where we or the provider needed to take action to put something right. Where we carry out an inspection or an investigation visit and we find nothing wrong, we do not publish an outcome summary.
3. We publish outcome summaries, where we or the provider needed to take action, in circumstances where we carry out:
 - a priority or brought-forward inspection
 - an inspection at the conclusion of an investigation
 - an investigation without an inspection, for example where we take immediate action to cancel a provider's registration.
4. We must not publish outcome summaries if we have suspended the registration of a provider and following an investigation we found that we or the provider did not need to take any other action. We must only include information about the suspension in a published outcome summary if there is some other action that we or the provider took to remain compliant as a result of our investigation.

Where outcome summaries appear on the web

5. The published outcome summary appears on the provider page of the Ofsted website.

Complaints about the publication of outcome summaries

6. If a provider makes a complaint or raises a concern about the publication of the outcome summary, or the details included in the outcome summary, we follow our normal complaints procedure guidance.¹ In these cases we do not delay publishing the outcome summary, or remove the outcome summary from the website until we have investigated the complaint and reached a decision. This is because we think that it is important for parents and carers to have up-to-date information. If we subsequently need to make changes to the outcome summary, for example, because the provider appeals against the cancellation,

¹ Complaints procedure: raising concerns and making complaints about Ofsted, Ofsted, 2013; www.ofsted.gov.uk/resources/130128.

we re-publish the amended outcome summary. Published outcome summaries remain on our website for a period of five years.

Publication of summaries that relate to a death of a child

7. If we take immediate action to cancel a registered provision following a child's death in the setting, we will refer to the death in the outcome summary unless the parents or carers of the child concerned indicate that they do not wish us to do so. The designated person in the applications, regulatory and contact team (ARC) for liaising with the family must discuss this with the child's parents or carers, including the fact that referring to their child's death in the outcome summary is likely to mean that others will be able to identify the child from the published summary. This must take place prior to publication. If we do include reference to a child's death, we need to be particularly sensitive in writing these outcome summaries.

Recording outcome summaries

Recording outcome summaries at inspection

8. Inspectors should write the outcome summary in the '*outcome summary*' section of the inspection toolkit. This will automatically populate the publication summary box in **the case profile screen** of the regulatory support application (RSA). The early childhood regulatory inspectors (ECRI) should update the action plan at the end of the investigation in order for the ISPs to draft the outcome summary at inspection.
9. The outcome summary will be subject to the same quality assurance arrangements as the inspection toolkit and will be automatically approved when the toolkit is approved.
10. The outcome summary is published to the same timeframe as the inspection report.

Recording outcome summaries where no inspection is carried out, e.g. when taking immediate steps to cancel

11. When the ECRI sets the complaints or compliance action status to **investigation complete**, they should copy the outcome summary – by ticking the **copy** box. This will automatically copy the text from the **outcome summary** field to the **publication summary** field.
12. The ECRI must use the drop down box **publication type** on the regulation support application (RSA) case profile screen. This box is only accessible if the **enforcement action** and or **actions agreed** box in the **final investigation outcome** section is ticked.
13. The outcome summary is populated by **visit outcome summary** in the investigation toolkit or in the evidence submitted by an outsourced inspector.

The ECRI will approve it. Once approved the ECRI must complete the 'final investigation outcome' in the case profile screen.

14. Once the **enforcement action** and or **actions agreed** box in the **final investigation outcome** section is ticked, ECRI's should select the publication type. This will be either compliance action or complaint.
15. ECRI's are responsible for making sure that the final **publish** box is ticked. This will ensure the outcome summary is automatically generated on the provider page of the Ofsted website.

Information that relates solely to the suitability of a registered person responsible for more than one setting

16. If a case relates **solely** to the suitability of a registered person and the registered person is responsible for more than one setting, for example a chain of nurseries, ARC must open a CIE case for each setting registered to that provider in order for an outcome summary to be published for each registered setting. This only applies when the registered person is the same.

Reporting on non-compliance that does not relate to the initial investigation

17. Inspectors must make a clear distinction between actions taken in relation to a concern and any other non-compliance they might find when looking into the original concern. In cases where inspectors set actions that do not relate to the initial concern, this is included in any final inspection report and may also be included in subsequent monitoring visits and published monitoring letters. The record must make a clear distinction in the inspection report and monitoring letters between findings that relate to the initial concern and those findings that arise incidentally through the course of the inspection or investigation. Outcome summaries are not updated to include any additional actions arising from subsequent monitoring visits.

Principles of writing and reviewing outcomes summaries

18. Outcome summaries include concise details of the information received, the potential non-compliance, what we found as a result and what we did in response. They do not include information about other non-compliance issues that arise during the inspection or investigation.
19. When deciding on the level of detail that ought to be included in the outcome summary, inspectors must use their professional judgement. They should have particular regard to the requirements of the Data Protection Act 1998 and any rights of children and their families and the provider and their families, as well

as the requirements of the Human Rights Act 1998 and the European Convention on Human Rights.^{2, 3}

20. This means that inspectors must not include sensitive child protection concerns or detail that may inadvertently lead to the identification of a particular child in the outcome summary. This includes reference to incidents so unique to a case that children could be easily identified.
21. Inspectors should not include any element of a complaint or any other information in our possession that is not within our remit to regulate. For example, we should not include a reference to information that suggests a provider is considering taking a parent to court because they have not paid a fee in lieu of notice.
22. If inspectors find that the provider is meeting some of the requirements of registration that they are investigating but not others then they must report positively on the requirements that are met as well as those that they were not meeting.

Decisions that are subject to review

23. There are occasions where a decision made at the investigation complete stage may change as a result of a decision by the Health, Education and Social Care Chamber First-tier Tribunal (the Tribunal) following an appeal, or a court in the case of a prosecution. Where this is the case an ARC individual must update the outcome summary once the Tribunal or court has made its decision and republish it.

Objections and appeals

24. If our action is subject to an objection or our decision is subject to an objection to Ofsted or an appeal to the Health, Education and Social Care Chamber First-tier Tribunal ('the Tribunal') the outcome summary should include the action we are taking, but also make reference that it is subject to an objection or appeal to the Tribunal.

Components of the outcome summary

25. A complaint or compliance outcome summary should include these sections:
 - summary of the information and the potential non-compliance
 - what we did in response
 - what we found as a result

² Data Protection Act 1998: www.legislation.gov.uk/ukpga/1998/29/contents.

³ Human Rights Act 1998: www.legislation.gov.uk/ukpga/1998/42/contents.

- other matters (if applicable)
- action taken.

Summary of the information and the potential non-compliance

26. The summary should include:

- the nature of the information we have received and where it came from, for example 'a concern' or 'notification from a provider'
- the nature of the concerns. It is not enough just to say that they suggested a person may be in breach of requirements - it should be clear to the reader what the concern is about. If the concern is so specific that it may identify individuals or the complainant, then the summary should detail the nature of the legal requirement
- the regulatory breach/general welfare requirements requiring investigation and the specific legal requirements to which it relates.

Examples of the summary are:

On xx July XXXX, we received a complaint that raised concerns about XXXXX. At an inspection we looked into this concern to see whether the setting was meeting XXXXX > list the relevant overarching regulatory requirement, for example, safeguarding and promoting children's welfare<; in particular, the requirement relating to >list the specific legal requirement <

or

On XX July XXXX, the provider notified us that XXXX. The notification means that the provider met their legal responsibility as set out in the Early Years Foundation Stage welfare requirements to notify Ofsted of XXXXX.

or

On XX July XXXX, we received a notification from an outside agency that raised concerns about XXXXX. At an inspection we looked into this concern to see whether the setting was meeting XXXXX. (List the relevant regulatory requirements for example, safeguarding and promoting children's welfare.) In particular, these include a requirement that states XXXXX. (List the specific legal requirement to which it relates, for example, the procedure to follow in the event of a child going missing.)

or

We carried out an inspection which judged that the overall effectiveness of the setting was inadequate and did not meet the needs of the children who attend.

What we did in response

The outcome summary must identify the action that we, or the provider, took with regard to the complaint or information received, including whether or not we undertook a visit.

What we found as a result

27. We need to provide sufficient information about our findings so people can understand why we, or the provider, took the action but not so detailed that the reader can identify specific individuals.
28. The outcome summary must include all information relating to a failure to comply with statutory requirements. For example, if the concern relates to adult to child ratios and the provider is in breach of this legal requirement, the outcome summary must include a reference to the failure. For example:

...we found that there were insufficient numbers of staff working at the setting to ensure that ratios were consistently met overall.

Other matters

29. The summary should only include findings arising from the original concern. Any other matters that came to light as a result of the investigation will be included in the final inspection report and subsequent monitoring letters.

Action taken

30. The outcome summary must give brief details about the action that we or the provider needed to take as a result of the concern. For example, if we set actions for the provider to comply with, then this section may state:

Following our inspection, we sent the provider a notice to improve that asked them to XXXXX.

31. If we are satisfied with the action taken by the provider we should say so.

Referencing different types of actions

Welfare requirements notice

32. If we serve a welfare requirements notice, this section should state:

Following our inspection, we served a welfare requirements notice on the provider that required them to XXXXX.

This section should end with:

It is an offence for a person who, without reasonable excuse, fails to comply with a welfare requirements notice. Failure to comply may result in a prosecution.

Cancellation

33. If we are taking steps to cancel the registration, the summary must make a reference to this. It should also include the statement – as set out above – relating to the provider’s right to object to our action or appeal to the Tribunal against our decision. For example:

Following our inspection, we are taking steps to cancel the provider’s registration. The provider has a right to object to our intention to take the step.

34. Once we know the outcome of the objection or the Tribunal determines the outcome of the appeal, the relevant ARC individual must update the information. For example:

Following our inspection, we took steps to cancel the provider’s registration. The provider objected to us taking this step. Having heard the provider’s reasons for objecting to this step, we have decided not to proceed with cancellation and the provider remains registered with Ofsted.

or

Following our inspection, we took steps to cancel the provider’s registration. The provider appealed to an independent external tribunal, the Health, Education and Social Care First-tier Tribunal and it upheld/ did not uphold the appeal. The provider remains registered with Ofsted/ the provider’s registration is therefore cancelled.

Prosecution

35. If we decide to prosecute a provider for an offence, the inspector must not include a reference to the prosecution in the initial outcome summary information. However, the summary should make reference to any other action we are taking, such as issuing a welfare requirements notice.
36. Once the outcome of the prosecution is determined, and if the prosecution is successful, the relevant ARC individual must update the information to include the details. For example:

We took steps to prosecute the provider for committing an offence of obstruction under section 77 of the Childcare Act 2006. The court found the provider guilty of obstructing an authorised person exercising a power under this section and fined the provider £5,000.

37. If the provider is found not guilty then the summary must not include a reference to the prosecution. However, it should include any other action that we took as a result of our inspection.

Simple cautions/warning letters

38. If we decide to offer a simple caution or warning letter rather than prosecute for an offence admitted by the provider, and the provider accepts the simple caution, then the wording may be:

The provider admitted that they have XXXXX. This is an offence under >insert relevant legislation, for example, the Childcare Act 2006/EYFS regulations<. We issued the provider with a simple caution, which she accepted. We may take this into account if she commits an offence again when making a decision on whether to prosecute.

Suspension

39. An example of wording where we have taken steps to suspend a provider's registration is:

We suspended the provider's registration because we believed children may be at risk of harm. Suspension allows time for the provider to take steps to reduce or eliminate the risk of harm to children.

40. If the provider has appealed against the suspension but this is still in place at the time of writing the outcome summary it should state:

The suspension remains in place while the Health, Education and Social Care First-tier Tribunal hears the appeal. The provider may not provide childcare for which registration is required while the suspension is in place, and may commit an offence if they do so.

41. Once we lift the suspension we should update the outcome summary to reflect this, for example:

We have now lifted the suspension because the provider took appropriate action to deal with the matter that led to the suspension and we are satisfied that there is now no risk of harm to children as a result of this matter.