

Social Care Compliance Handbook

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, 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 internal Ofsted staff. It is published to enable providers, managers and interested parties to understand Ofsted's compliance processes.

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Part 1: Quick guide to compliance work

Introduction

1. The law gives Ofsted a range of powers to deal with registered persons (and in some cases those not registered) who fail to adhere to the legal requirements for social care settings that are regulated or are unregistered. We exercise these powers, referred to hereafter as 'compliance action', to reduce the risk of harm to children, young people and adults who use regulated social care services. The protection of adults and children is the fundamental consideration in our work. These powers allow us to enforce compliance with the law to improve the quality of services provided.
2. Our compliance powers are set out in the Care Standards Act 2000 and associated regulations and apply to the establishments and agencies (referred to as 'settings' in this guidance) 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.
3. This handbook sets out when and how we take compliance action and how we handle concerns raised about a setting's non-compliance with the law.

How to use this handbook

4. The 'Quick guide' to the handbook contains an overview of the key elements of our compliance work, including how we receive information about concerns and the initial action that we take in response. Subsequent sections contain more detailed information about each of our compliance powers and how we make decisions, and must be referred to in conjunction with the 'Quick guide'.
5. For ease of reading, references in this handbook to an 'establishment or agency' include residential holiday schemes for disabled children, unless otherwise stated.

Our policy on compliance action

6. The protection of children, young people and adult service users is paramount in our approach to compliance. 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
 - work in accordance with our published guidance, policies and protocols
 - take action to raise standards and improve lives, as set out in our strategic plan¹
 - take appropriate action. This means taking action that:
 - 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 improvements in the quality of the setting
 - use our statutory compliance powers when a relevant threshold is met.
7. We may receive information from a variety of sources. This includes information which suggests: that children, young people or adult service users are at risk; that a registered person is not meeting the regulations or conditions of registration; that a person is no longer fit for registration to carry on or manage a setting; or that a person is providing or managing a children’s social care setting without the required registration.
8. We always conduct an immediate assessment of risk on receipt of any information to determine what safeguarding or compliance action is required. We liaise with other agencies as necessary, but we always conduct our own investigation or inspection.
9. In carrying out our compliance work, we ensure that we:
- act to protect children, young people and vulnerable adults from harm or the risk of harm
 - 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 decision-making
 - are proportionate in our approach

¹ *Ofsted Strategic Plan 2011–15* (140128), Ofsted 2014; www.ofsted.gov.uk/about-us/ofsteds-priorities-and-values/strategic-plan.

- regularly review the progress of a case
- take regular 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.²

Responding to concerns and notifications

10. We may receive information or concerns from a wide range of sources that a person is not protecting, safeguarding or promoting children, young people or adults' welfare, or complying with the law. We assess and respond to this information in line with the timescales given below in order to protect children, young people and vulnerable adults. Information or concerns may come from:

- notifications from registered persons – the law requires registered person(s) to notify us of certain matters (notifications);³ the notifications that registered persons are required to make are listed in Annex C. A notification from a registered person must be made 'without delay' (in writing within one working day) of the event taking place or concern arising⁴
- serious incident notifications from local authorities
- other agencies, such as the police, schools, environmental health, fire safety, local authority children's services departments and Local Safeguarding Children Boards
- other regulators/inspection bodies, such as the Care Quality Commission, Food Standards Agency and HMI Constabulary
- parents and carers
- children and young people, or their representatives

² There may be occasions where our need to safeguard and protect service users outweighs a specific provision in the Regulators' Code. In these instances we will record our reasons for this. The Regulators' Code is available here: <http://www.gov.uk/government/publications/regulators-code>

³ The requirement to notify Ofsted is set out in the remit-specific regulations. See Annex A for the full list of these.

⁴ For notifications that must be made 'without delay', a person must notify us in writing within one working day. If a person notifies us within one working day by telephone or during a face-to-face conversation, they must confirm the notification in writing within three working days of the verbal notification in order to comply with the regulations. The regulations may specify a different timescale for notifications that do not use the term 'without delay'.

- members of staff
 - visiting professionals, such as health professionals
 - the public, including neighbours
 - Ofsted's inspections of social care settings, schools, local authorities or early years settings.
11. We assess and respond to information as outlined below. In all cases, we respond immediately where information suggests that children, young people or adult service users are at risk of or are being, harmed.⁵

Receiving information

12. Ofsted's Applications, Regulatory and Contact Team (ARC) receive information and notifications that arrive by email, post or phone. ARC forwards the information to the social care compliance categorisation mailbox if there is a safeguarding concern or, in all other cases, to the Social Care Regulatory Inspector and Regulatory Inspection Manager. Notifications that arrive through our online system are automatically directed.
13. When a Social Care Regulatory Inspector or a Regulatory Inspection Manager receives information or a notification from ARC, they must assess the information in line with the relevant *Conducting the inspection guidance* for that particular type of setting.

Fast-track notifications

14. We deal with notifications from providers in two ways: fast-track and standard. Some notifications from registered persons are 'fast-tracked' by ARC or by the online system as they suggest a risk of harm and we must take swift action to protect children, young people or adult service users. These include notifications about:
- the death of a child, young person or vulnerable adult
 - the involvement or suspected involvement of a child or young person in sexual exploitation
 - the instigation or outcome of a child protection inquiry.
15. A 'fast track' notification is forwarded immediately by ARC or the online system to the Regulatory Inspection Manager **and the duty** Social Care Compliance Inspector in the region where the setting is based. The Regulatory Inspection

⁵ For the purposes of parts 1, 2 and 3 of the handbook, references to 'immediate' or 'immediately' mean, in most cases, within two hours.

Manager or Social Care Compliance Inspector arranges the action that will be taken in respect of the concern and decides whether a case review or case discussion is necessary. The Regulatory Inspection Manager or Social Care Compliance Inspector must do this on the **date that they receive the information**.

16. Where a 'fast track' notification relates to the suspension of a setting's manager or member of staff due to an allegation of abuse, we will speak to the police **immediately**, where they are involved.⁶ We will conduct a case discussion on the day that we receive the information. This case discussion will set out the arrangements for an urgent compliance visit.⁷ The Regulatory Inspection Manager and senior HMI must retain strong oversight of the case to ensure that we take swift action to protect and promote the welfare of service users.
17. The duty Social Care Compliance Inspector opens a compliance case on Office Base and records the actions that they have taken, any discussions that they have had, or further information that they have received. They must consider if a serious incident briefing and/or press briefing is required.

Standard notifications

18. Where we receive a notification that does not indicate that children, young people or vulnerable adults are being harmed or are at risk of harm (not fast-tracked), ARC will forward this to the Social Care Regulatory Inspector for that setting. The inspector will review the notification within seven working days of receipt and decide if any action is required to protect and promote the welfare of children, young people or adult service users and/or whether the notification indicates non-compliance with regulations. For example, does the notification form part of a pattern of information which indicates that children, young people or adults are at risk of harm? If this is the case, we must hold either a case review or case discussion. Inspectors should refer to the factors in Table 1 to help them in making this assessment.
19. The inspector should also check that the correct category of the relevant schedule has been used for the notification and, where this is not correct, they should alert the registered person to this and amend the category on Office Base so the notification is accurately recorded. The inspector must note on Office Base that they have changed the category and the reasons for this. The inspector must discuss the notification in full with the Regulatory Inspection Manager and, where appropriate, the senior HMI. Once the inspector has assessed the notification, the Regulatory Inspection Manager must review it to

⁶ In the course of their employment.

⁷ There may be occasions where it is no possible for us to conduct a compliance visit, such as where there is an active police investigation in progress. In these cases, we will record the reasons why we cannot visit in Office Base and ensure that we liaise closely with the police so that we arrange to visit as soon as it is possible.

ensure that there are no immediate concerns about the safety of children, young people or vulnerable adults.

Recording notifications

20. Where a notification does not clarify sufficiently what action the registered persons have taken or are taking in response, the inspector must contact the registered provider or manager for additional information about this.

The inspector must then record their assessment of the notification on Office Base on the day that they do their assessment and must include:

- a brief summary of the reason for the notification
- details of the action taken by the registered persons in response to the incident
- action taken by Ofsted in response to the notification
- details of any contact with the registered persons
- agreed next steps with Regulatory Inspection Manager or senior HMI
- any advice sought from compliance or legal colleagues.

Late Notifications

21. The setting-specific regulations require most notifications to be sent to Ofsted 'without delay'. We define 'without delay' as meaning in writing within one working day after the event, or where the notification is given verbally, in writing within three working days. Where we receive a notification late, the inspector must investigate this and record on Office Base the reasons for the delayed notification. We must consider how the late notification impacts on a registered person's ongoing fitness. We consider the following.

- Did the registered person have a good reason for sending the notification late?
- Did the registered person attempt to withhold information from Ofsted?
- Did the registered person delay sending the notification while they 'put matters right'?
- How does this reflect on the integrity and good character of the registered person?
- How does it reflect on a registered person's knowledge and understanding of the regulations?
- How does it reflect on a registered person's commitment that the safeguarding and protection of children, young people and adults is their top priority?

22. Where we have concerns about a late notification, we must convene a case discussion and decide what action we should take.

Serious incident notifications from local authorities

23. Local authorities have a duty to notify Ofsted of a serious childcare incident.⁸ These must be sent immediately after the local authority has become aware of the concern.
24. Where a serious incident relates to a regulated social care setting, we must follow the guidance below. In such cases, we should receive two notifications: the serious incident notification from the local authority and a notification from the setting concerned.
25. We receive serious incident notifications where an incident:
- relates to the death of a child in care, including where a child dies by suicide and abuse or neglect is suspected to be a factor in the death
 - should be brought to the attention of Ofsted and the Government because of concerns about professional practice or implications for Government policy
 - raises issues about a local authority's professional practice that may need further consideration
 - may lead to a serious case review
 - has attracted, or is likely to attract, media attention.
26. ARC receives the serious incident notification from the local authority, if sent by post or email. Immediately upon receipt, ARC will email the serious incident notification to the serious case reviews/serious incident notifications (SCR.SIN) team. If the local authority serious incident notification is sent via the online system, it will be automatically directed to the SCR.SIN team.
27. The SCR.SIN team will upload the notification onto a secure part of SharePoint and will email the **Senior HMI Social Care** and Regional Director for the area where the setting operates to alert them to this.
28. The Senior HMI Social Care must arrange for a case review to be held **immediately** to decide what action we need to take to ensure that children, young people and adult service users are safe and have their welfare protected. We must consider whether any compliance action is appropriate including whether to seek cancellation of any persons registered in relation to the setting.

⁸ Based on the principles in Local Authority Circular (2007) 25 and *Working Together*.

29. Where a child or young person is placed outside of their local authority's area (involvement of more than one local authority), the Senior HMI Social Care must notify the relevant Senior HMI Social Care in the other Ofsted region. The senior HMI must also ensure that we have received both the notification from the setting about the incident as well as the notification from the local authority. Where we have not, we must take immediate action to ensure that we receive these.
30. The Senior HMI Social Care must open a compliance case in Office Base and record their actions.

Referrals of child protection concerns

31. We may receive information about suspected or actual harm to a child or young person. We refer all child protection information, even if partial or incomplete, to the duty officer of the local authority children's services department (or point for child protection referrals) and/or the local authority designated officer (LADO) and/or the police.⁹ The Director of Children's Services of the placing authority and the host local authority for the setting concerned should also be informed by email. Our threshold for making a child protection referral is:

any information we receive that indicates a concern involving abuse or neglect amounting to ill treatment or any action or omission that may cause harm to a child or young person.
32. We send a referral to the LADO or their deputy (or the duty officer if the LADO is unavailable) where the concern involves an allegation made against a person who works with children or young people.
33. These referrals must be made immediately and no later than **two hours** after receiving the information. Referrals may be about children who are at risk of being sexually exploited or who are missing from the setting where they live and where the above threshold is met. We will confirm our referral in writing **within 24 hours**.
34. We also make child protection referrals about setting-specific notifications where it is clear that the setting has not done this.
35. If we do not receive feedback within **one working day** from the child protection team or the Director of Children's Services about the action that they are taking or intend to take, the colleague who made the referral (this will usually be a Social Care Compliance Inspector or a Social Care Regulatory Inspector) must follow this up by telephone with the Director of Children's Services' office and request a written update. Where the colleague is

⁹ We share this information under Section 179 and paragraph 8 of Schedule 13 of the Education and Inspections Act 2006, in accordance with the Data Protection Act 1998 and with consideration to the principles in *Working together to safeguard children 2013*.

dissatisfied with the action taken by the child protection team, they must refer this to the Regulatory Inspection Manager and the duty Social Care Compliance Inspector on the date the written update is received. At a minimum, a case discussion must be held **immediately** to decide what further action we may need to take.

36. A statutory agency, such as a local authority or the police, may also share information with Ofsted about a child protection concern that involves a registered person. We record this information, including information given to us verbally, on Office Base. Where we receive such child protection concerns, the compliance colleague must convene a **case discussion immediately** to determine what action we should take.

Risk categorisation of other information

37. We have a dedicated mailbox for information that requires categorisation. This mailbox must be used to ensure that we take action in line with the degree of risk. All information received must be categorised within one working day of receipt.
38. Compliance colleagues and inspectors must use the risk factors in Table 1 when making decisions about categorisation.

High risk categorisation

39. Where a compliance colleague, inspector or Regulatory Inspection Manager initially categorises information as high risk, we must take immediate action to protect children, young people and adult service users, for example by conducting a compliance visit and/or alerting child protection agencies, such as the local authority and the police. We must initiate action within 2 hours of receiving the information.
40. Any information that indicates the following must be categorised as high risk:
 - the suspension from the setting of a manager or member of staff because of an allegation of abuse¹⁰
 - the suspected risk of harm or actual harm to a child, young person or vulnerable adult.
41. Where there are potential concerns about the safety and welfare of children, young people or adult service users, we must hold **a case discussion on the day** that we receive the notification. The case discussion **must** give serious consideration to conducting an inspection or **compliance visit within 24 hours** of the notification.

¹⁰ In the course of their employment.

42. Where appropriate, a discussion, usually by telephone, must be held by the senior HMI social care and the Director of Children's Services about the continued placement of children and young people in that setting. A record of the discussion must be kept in Office Base.
43. Compliance colleagues must open a compliance case on Office Base and record the actions that they have taken, including records of phone conversations and documents examined. We must consider whether a serious incident briefing and/or press briefing is required.

Lower risk categorisation

44. Where compliance colleagues categorise information as lower risk, we make a decision on what action we will take ensuring that it is proportionate to the risk involved. The options that we have for further action and/or investigation are outlined below in 'Investigating concerns and evidence collection'.
45. We will record our reasons for this and details of our actions as a compliance case in Office Base.

Changes in categorisation

46. We keep our compliance cases under regular review and continue to monitor risk. We may change the categorisation on a case if, for example, we initially categorised it as lower risk, but further information now suggests that the risks have increased. Similarly, we may reduce a categorisation from high to low once action has been taken to reduce the risk of harm to children, young people and adult service users. We must record our decision and reasons for this in Office Base.

'Inadequate' judgement at inspection

47. At a full inspection, we may obtain evidence that suggests a registered person is not complying with the regulations and/or that the safety and progress of children, young people or adult service users are poor and, as a result, we are likely to judge a setting to be inadequate for 'overall effectiveness'.¹¹ Where an inspector is proposing to make a judgement of inadequate, they must contact the Regulatory Inspection Manager to make them aware of this and we must hold a **case discussion within two working days** of the inspection. Where there are immediate safeguarding concerns, we will conduct a case discussion **during the inspection or immediately afterwards**.
48. Where required, we will hold a case review within five working days of the inspection or sooner where there are serious concerns. This enables us to consider the circumstances and whether we need to take urgent steps to

¹¹ The final judgement will not be determined until the inspection report has been through the quality assurance process.

respond to regulatory breaches and protect children, young people or adult service users. In such instances, we must notify the placing authorities and host local authority (or parents for holiday schemes) of the inadequate judgement.¹² See 'Working with other agencies and strategy meetings' for further details.

49. For interim inspections of children's homes, if we are proposing a judgement of 'inadequate progress', we will hold a case discussion during the inspection or as soon as possible afterwards. However, if there are serious concerns, we hold a case review immediately instead of a case discussion. We must notify the placing authority and host local authority of the 'inadequate progress' judgement where this suggest that children and young people are at risk.
50. Inspectors should refer to the *Conducting the inspection* and the *Framework for inspection* guidance for the relevant setting for further details on what they need to consider in the case discussion and case review.

'Unregistered' social care

51. We may receive information that suggests a person is carrying on or managing a social care setting without registration.¹³ It is an offence to do so and we can prosecute.
52. Operating an unregistered social care setting may pose a significant risk to the protection of children, young people or adult service users, including non-vetting of staff or substandard services. Therefore, we treat any incidence of unregistered social care as an extremely serious matter, likely to result in prosecution. We refer any information, even if partial or incomplete, which indicates concerns about child protection, **immediately** to the local authority children's services or the police.
53. We check our records to see if the person is known to Ofsted and whether or not we hold any information on them relating to another setting. We may contact other agencies to establish if they have any information about the setting or individual.
54. In the case of an unregistered children's home, holiday scheme for disabled children or residential family centre we will convene a **case discussion immediately** and visit the setting to determine whether the service that they are providing or managing should be registered. This is because the risks for children, young people or families of using an unregistered home, holiday scheme or centre, are high. We must conduct a case review following the visit to determine what action, if any, we need to take.

¹² This occurs after the report has been through the quality assurance process, unless there are significant safeguarding concerns.

¹³ Some settings are exempt from registration. These are set out in Section 11 of the Care Standards Act 2000 and associated regulations.

55. For other settings, we must hold a case discussion **within two days** of receiving the information that suggests that an unregistered setting is operating. We will always visit the setting to determine what they are providing and whether it should be registered with Ofsted. Where we have serious concerns, we will hold a case discussion **immediately** and visit the setting.
56. The inspector or compliance colleague must record on Office Base the findings from their visit. Where the information indicates that the person is carrying on or managing unregistered social care, we must convene a case review to determine the action we will take.
57. See 'Unregistered settings' for full details.

Press briefings and serious incident briefings

58. We may need to prepare a press briefing and/or serious incident briefing in response to information that we receive, which raises concerns for Ofsted. These concerns may be in relation to a setting, our practice, the quality of our work and/or our reputation, and possible media interest.
59. See 'Press and serious incident briefings' for full details.

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

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

- 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 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 notifications containing limited or vague information)
- the patterns of information (for example, possible links between information received from different sources)
- involvement of other agencies (for example, the police or Local Safeguarding Children Board) 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
- 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 in making a decision about whether further action is required following a notification or receipt of information. Information may not suggest a risk when viewed in isolation; but it may suggest fundamental problems when viewed in the context of other recent events and information.

Investigating concerns and evidence collection

60. When we receive information or allegations that suggest a breach of regulations or legislation, we need to check if children, young people or adult 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.¹⁴ We may do this by:¹⁵
- conducting a statutory inspection
 - conducting a compliance visit or
 - writing to the registered person(s) asking them to provide us with comprehensive information about the action they have, or are, taking. We will only use this option for low risk concerns.

Investigating a concern at inspection or at a compliance visit

61. The decision to undertake a statutory inspection or a compliance visit is made by the Social Care Compliance Inspector or Senior Practitioner and, where appropriate, a Regulatory Inspection Manager or more senior manager. The decision will be made using the factors in Table 1 and based on the level of risk and the colleagues' professional judgement. The inspector or compliance colleague will carefully record the reasons for and decision taken in Office Base. The senior HMI social care must be informed of the decision where we have serious concern.
62. 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 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. We produce an inspection report following the inspection.

¹⁴ Where we receive concerns, we consider how these relate to the relevant regulations relating to the setting, and investigate on that basis.

¹⁵ Ofsted has the power under sections 31 and 32 of the Care Standards Act 2000 to: enter premises; seize documents; interview staff; require a registered person to provide us with information about their establishment or agency; and/or require any person to provide us with assistance that is within the person's control and which enables us to exercise our powers.

63. We will conduct a compliance visit, rather than investigating a concern as part of a statutory inspection, 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
 - 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
 - at any other time where we assess the risks warrant this.
64. The case discussion or case review will determine the timescales for conducting the compliance visit or inspection. In most cases, this should happen **immediately** after making the decision to do so. We have discretion over notice periods for compliance visits, including those that we normally only inspect on an unannounced basis. There may be circumstances where it is appropriate to give notice, for example, where it is important for the provider or manager to be onsite to respond to our enquiries.

Planning an inspection or compliance visit

65. We plan carefully for a compliance visit or inspection that includes an investigation of a concern. The inspector and/or the compliance colleague must draft lines of questioning before the inspection or visit so that the person conducting the visit can obtain the necessary information and evidence to support the decision. The lines of questioning should act only as a guide, with inspectors and compliance colleagues using their professional judgement on what to investigate when on site. The planning should take account of the following:
- whether to involve child protection agencies
 - if we 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
 - if the inspection or compliance visit should be announced or unannounced
 - if it needs to be a joint visit with another agency

- 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
- if there are any concerns about the manager and the nature of those concerns
- how involved the registered provider, responsible individual and the registered manager are
- how we will protect the identity of the complainant, where applicable
- who needs to be interviewed
- what documents need to be inspected and/or seized? Do we need to seize these under the Care Standards Act 2000 and, if so, do we need to engage the Police and Criminal Evidence Act 1984 codes of practice? If the latter, do we have an evidence pack including a pocket notebook?
- what action may we need to take if the provider is non-compliant with relevant legislation, including where we identify concerns about the welfare of children and young people
- if it would be appropriate to take a witness statement
- if we need to caution the registered person(s) under the Police and Criminal Evidence Act 1984 (see 'Offences and prosecutions')
- what we do if the provider refuses entry to the setting
- how work is divided if more than one inspector is conducting the inspection or visit, including who is leading the visit or inspection.

Working with other agencies

66. We liaise with other agencies about concerns as necessary, but we conduct our own compliance visit or inspection in all circumstances. On occasion, we may agree to undertake a joint visit with a representative from a different statutory agency, such as a local authority. 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
- their respective roles
- the questions to be asked and who is going to ask them

- whether to keep one central record of the visit or whether each officer/agency will keep their own record (Ofsted will always require a record)
 - what arrangements will be in place to share information after the visit
 - 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.
67. At the outset of the joint visit, we must explain to the registered person(s) the respective roles of the agencies. In a joint visit, our responsibility is to determine whether or not the registered person is carrying on or managing the service in line with the relevant regulatory requirements and will continue to meet the legal requirements for registration.
68. We gather our own evidence to help us reach that decision. While the accompanying person may have collected evidence during a joint visit, and may be prepared to share that with us, it is important that we collect enough first-hand evidence to support any decision we take. We must decide whether a registered person remains fit for registration with Ofsted. We do not delegate this decision-making responsibility to a child protection agency and nor do we rely solely on the evidence gathered by the other agency in order to reach our decisions.
69. Further information on how we work with other agencies, including strategy meetings, is available at 'Working with other agencies and strategy meetings'.

Revealing complainant's details

70. If a complainant tells us their name, we must try to keep their details confidential, irrespective of whether they ask us to do so. However, we explain to the complainant that this may not be possible in all cases, and sometimes, the registered person may be able to work out who has made the complaint. In other cases, we may have to reveal their identity as this may be the only way to allow for a thorough investigation of the concern. We must consider this on a case-by-case basis. Where we consider it necessary to reveal a complainant's identity, we must record our reasons for this in Office Base.
71. If we take action against a registered person that results in a court case or an appeal to the First-tier Tribunal, it may not be possible to keep the complainant's identity confidential at that stage. This must be communicated to the complainant.

Onsite during an inspection or compliance visit

72. We inform the registered person(s) or person in charge at the time of the inspection or compliance visit that we are investigating a concern.¹⁶ This is important to ensure that we maintain transparency, act fairly and impartially.
73. We should also tell the registered person(s) or person in charge about any information we receive that suggests non-compliance. Our normal practice is to share all the information that we have about a concern with the registered person(s) so they have sufficient information to be able to address the concern. Where we relay our concerns to the person in charge instead of the registered person(s), we should ask and record how they will inform the registered person(s) of what we have said.
74. However, 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 we decide that it is not appropriate to share information about the concern, we must record the reasons for this in Office Base.
75. The inspector or compliance colleague should also 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.

Recording evidence under the Care Standards Act 2000

76. We must ensure that we correctly collect evidence so it is admissible in court and tribunal. Regardless of what type of compliance action we choose to take, from setting requirements to using statutory powers, our evidence must be reliable and rigorous and be sufficient to meet, at a minimum, our evidence threshold of 'on the balance of probabilities' for civil action.
77. When recording and seizing evidence, we must be clear under what Act we are doing so. Where our concerns relate to a breach which is not an offence, we should record and seize evidence under the Care Standards Act 2000.¹⁷ Where our concerns suggest that a criminal offence may have been committed, we must ensure that we collect evidence in accordance with the Police and Criminal Evidence Act 1984 (PACE). This includes cautioning the person under PACE and seizing evidence in line with this Act.

¹⁶ Ofsted does not have a statutory role to investigate complaints. However, we use information from complaints to look into whether a registered person is complying with the regulatory requirements.

¹⁷ Section 31(1) and (2) of the Care Standards Act 2000.

78. The need to engage PACE is 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.
79. See 'Offences and prosecutions' for further information.
80. When we are collecting evidence under the Care Standards Act 2000, the inspector or compliance colleague must make notes throughout the inspection or visit in the agreed format (see current guidance on Office Base). This includes recording evidence that demonstrates either that the registered person(s) is meeting requirements or that they are falling to comply with requirements.
81. The evidence collected is essential to ensuring that we make the right decision about our next steps, including any statutory or non-statutory compliance action. The evidence must:
- detail what time of day the visit commenced and ended
 - 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
 - be sufficient in quality, quantity and range to describe the investigation, including planning, methodology and findings about the specific requirements subject to investigation
 - support any compliance outcomes
 - provide a record, which underpins and secures the decisions and inspection judgements.
82. We must ensure that our evidence explores and demonstrates the involvement of people with managerial accountabilities for the breach. For example, does our evidence show that the action or inaction of the registered manager, the responsible individual and/or the registered provider contributed to the breach?
83. When we record evidence, we must be able to identify the person that provided us with the evidence. 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 and reasonable to do so. 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.¹⁸

¹⁸ For the purposes of the Data Protection Act 1998, we must demonstrate that this is necessary and reasonable.

84. The inspector or compliance colleague may seize and remove evidence during an inspection or visit to support compliance action. When we do so, we must issue a receipt to the registered person(s) or person in charge (the receipt book is available as part of the evidence pack).
85. We must keep a detailed record in Office Base of all evidence that we have received, including where we received it from and when we received it.
86. 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 a higher level of compliance action is needed, they must consult with a Regulatory Inspection Manager or Senior Practitioner and arrange a case review.

Recording evidence under PACE

87. When we suspect a person has committed, or is about to commit, an offence for which we are the prosecuting authority, we must consider whether to caution them under the Police and Criminal Evidence Act 1984 (PACE) codes of practice. The inspector or compliance colleague should decide this in discussion with the Regulatory Inspection Manager or Senior Practitioner. If we decide to caution a person under PACE, we must ensure that we do so in accordance with the relevant PACE code of practice. In addition, we must ensure that we secure and record evidence in compliance with the relevant PACE codes of practice. To do this, inspectors and compliance colleagues must use their pocket notebook and evidence bags.
88. Inspectors and compliance colleagues must carry their pocket notebooks at all times when visiting a registered setting or if they are having a separate meeting with a registered person.
89. Inspectors and compliance colleagues must record in their pocket notebook:
 - 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 what the registered person says after he or she has been issued with a caution under the Police and Criminal Evidence 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 excuse under the law for that offence)

- details of any photographic evidence taken
 - details of any evidence seized.
90. If the inspector or compliance colleague seizes and removes any evidence during an inspection or visit to support compliance action, this must comply with the relevant PACE codes of practice.¹⁹ We must issue a receipt to the registered person(s) or person in charge (the receipt book is available as part of the evidence pack). The inspector or compliance colleague must record in their pocket notebook the details of the physical evidence seized.
91. Where we seize an item as evidence, we must be able to prove to a court or the Tribunal that the item we produce is the actual item. We must be able to show a continuous chain of evidence for the item.
92. Photographs can also be used as a form of evidence. We may take colour photographs using a smart phone, mobile phone, Blackberry, digital camera or disposable camera.²⁰ The inspector or compliance colleague must record details of all photographs taken in their Ofsted pocket notebook. We must show a documentary chain of evidence from the time we take the photographs to when we offer them as evidence in the pocket notebook.
93. Full information on photographic evidence and how to seize evidence correctly is available in our detailed information sheets as part of the evidence pack.

Providing feedback at the inspection or visit

94. The inspector or compliance colleague 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 the inspector or compliance colleague to consider other matters as they emerge, and to ensure that they have fully understood, and have noted, the responses correctly. It also helps the registered person(s) to consider if there is any more evidence they wish us to consider.
95. When giving feedback to the registered person(s) or person in charge, the inspector or compliance colleague must:
- use plain language

¹⁹ Further information on this is available in 'Offences and prosecutions' and in the evidence pack.

²⁰ We may take photographs using a smart phone, mobile phone or Blackberry. Where we do, the memory card will need to be securely stored as evidence. Where the device does not have a separate memory card, the whole device itself will need to be securely stored as evidence. This is likely to result in practical problems for inspectors and compliance colleagues. Therefore, where a smart phone, mobile phone or Blackberry does not have a separate memory card, inspectors and compliance colleagues are advised to use a digital camera instead.

- be clear about whether we believe the registered person is not complying with requirements, including any conditions of registration, with illustrations
- be clear as to whether we consider that children, young people or vulnerable adults 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
- ensure that what they are telling the registered person is fully consistent with the inspection or visit evidence
- write down the responses to any feedback provided by registered person(s) or person in charge
- explain Ofsted's options for further action, both non-statutory and statutory
- explain that he or she 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.

After the visit or inspection

96. We record the information and evidence from the inspection or visit in Office Base, including:

- the outcome of the investigation and any action the provider has taken
- any evidence of compliance and non-compliance
- details of who attended the feedback and any response they made
- any action we are taking in response to any non-compliance
- full details of the concerns arising and their impact on children, young people or vulnerable adults.

97. The inspector or compliance colleague must:

- complete any electronic notes **within 24 hours** of the visit or inspection
- advise and consult compliance colleagues or the Regulatory Inspection Manager about the next steps to take, usually through the **case review** process
- notify the senior HMI about the outcomes of the case review, where appropriate

- arrange to transfer any evidence, including photographic and seized evidence to the ARC Administration Team in Nottingham, who will log and securely store it. Evidence must be sent by Special Delivery, in-person or, if bulky, by courier. The inspector or compliance colleague must detail in their pocket notebook the Special Delivery or courier details. They must also inform the ARC Administration Team whether the PACE codes of practice were observed when seizing the evidence.
98. The inspection or compliance colleague must send their pocket notebook by Special Delivery or in person to the ARC Administration Team in the Nottingham office when it is full or when they are on leave. This team will log and securely store the notebooks.
99. If we receive a request for the disclosure of a pocket notebook or its contents, the inspector or compliance colleague must consult legal services and the information rights teams before making any disclosure.

Requesting a provider to provide an action plan relating to concerns

100. There may be instances where, rather than conducting a compliance visit or inspection, we ask a provider to submit information to us on how they have responded to a concern. In these instances, we will write to the registered person(s) and ask them to provide us with a comprehensive report on the actions or 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. We only do this where we receive low-level concerns that do not suggest a risk to the safety or well-being of children, young people or adult service users, and where the provider's compliance with regulations and inspection history does not give us cause for concern. The Social Care Regulatory Inspector and the Regulatory Inspection Manager will make this decision, and record their reasons for doing so, on Office Base. We will write to the registered person(s) within **two days** of making this decision.
101. When we ask the registered person(s) to provide us with information on how they have responded to concerns, where appropriate, we will ask them to provide Ofsted with a comprehensive plan of the action that they have taken or will take within a prescribed timescale. The registered person(s) have **one week** from the date of our letter to respond to us.
102. On receipt of the registered person(s) response, we will assess the information and any action plan provided to determine if it adequately deals with the concern. The inspector or compliance colleague must do this **on the day** they receive the response. They record a summary of the response, their analysis of its content and conclusion about whether it is satisfactory under the compliance case in Office Base. Regulatory Inspection Managers must review the response and summary and sign these off on Office Base within two days.

103. If we do not receive a response to our letter from the registered person(s) within the one week's timeframe, we must conduct an **immediate** inspection or visit.
104. Where the response or action plan fails to address the concerns raised, to our satisfaction, we must undertake an urgent inspection or compliance visit **within five working days** of assessing the action plan. An inspector and the Regulatory Inspection Manager and/or Senior Practitioner will make this decision in a case discussion or case review and record it on Office Base. Where advice is required, a case review should be called.
105. If the action plan is satisfactory, inspectors must write to the registered person(s) asking for confirmation of the completion of the action plan within the timeframes specified. The inspector will summarise on Office Base the response received and their judgement on whether this is satisfactory **within five days** of receipt. Inspectors must also check that the actions are complete when they next inspect the setting.

Case discussions, case reviews and decision-making

106. Once we have received and/or investigated information that suggests a risk to children, young people or adult service users and/or non-compliance with the law, we must decide what action we will take. We usually do this through two routes: case discussions and case reviews.
107. It may be appropriate for an inspector or compliance colleague to seek advice from Legal Services and/or from the Social Care Policy Team to help with their decision-making through a case discussion or case review. This may include advice on the correct interpretation of legislation or policy advice in complex cases. Inspectors and compliance colleagues should seek legal advice as early as possible in a compliance case.
108. See 'Legal advice and policy advice' for full details.

Case discussions

109. Case discussions are conversations or discussions that we have about a compliance case or concern. A case discussion will usually include a Regulatory Inspection Manager or Social Care Regulatory Inspector and Social Care Compliance Inspector or Senior Practitioner, although it may involve other people.
110. Where serious concerns arise during an inspection, a case discussion must be held during the inspection or immediately afterwards so that children, young people and adult service users' welfare can be protected and appropriate compliance action can be taken without delay. Where a Regulatory Inspection Manager is not involved in this case discussion, they must be informed of the case discussion as soon as possible and review the decisions made.

- 111. The case discussion may decide: that further information is required; that we should notify other relevant agencies of the concern; that we need to move to a case review; and/or that we will use a non-statutory compliance action.
- 112. We implement decisions from the case discussion **as soon as possible** after making them.
- 113. If a case discussion is held, the inspector or compliance colleague must open a compliance case on Office Base. They must record a brief summary of the concerns, discussion and actions arising from the case discussion. Further information on case discussions is available in 'Decision-making and case reviews'.

Case reviews

- 114. A case review is an internal process where we make decisions on taking compliance action, including using our statutory powers.
- 115. The participants for the case review will differ depending on the type of action that we are considering taking. Full details about this and the matters that we consider in a case review are available in 'Decision-making and case reviews'.
- 116. We keep formal minutes of our case reviews and store these on Office Base as part of the compliance case.

Compliance powers available to Ofsted

- 117. The law gives us a range of powers to regulate children's social care settings. We use both statutory (compliance action supported by law) and non-statutory (informal actions that are not set in 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.
- 118. Detailed information on each of these compliance actions, including their thresholds for use, is available in Part 2 of this handbook.

Short and long-term and multiple compliance powers

- 119. We can use more than one compliance power at the same time; the powers do not have to be used consecutively. 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. For example, if new information suggests further concerns, we may use an additional or stronger compliance power. Conversely, if information suggests risks are alleviated, we may reduce the level of action we are taking.

120. In making our decisions, we will consider both short-term (blue in the diagram) and long-term (orange in the diagram) actions. Short-term compliance takes effect in a short timeframe allowing for action to be taken swiftly to safeguard service users and to put matters right. Longer-term compliance actions have 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 long-term compliance action is being effected. It may, therefore, be appropriate to use a combination of short and long-term actions.
121. For example, while taking longer-term action against a provider to deal with the wider issues of fitness (for example, issuing a notice of proposal to cancel registration or to impose conditions on a registration), we may use short-term powers, such as a restriction of accommodation, to provide immediate protection to children, young people and adult service users. We **must** seek legal advice in these cases.

Civil and criminal compliance powers

122. The bulk of Ofsted's compliance powers are of a civil nature. That is, if challenged, our evidence must prove 'on the balance of probabilities' that the person did not meet the regulations.
123. The exceptions to this are our powers to issue a simple caution or to prosecute for an offence, which fall under criminal law. In these cases, we must prove 'beyond reasonable doubt' that the person committed the offence.

Statutory compliance 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 & 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 compliance actions

Issue a simple caution

Issue a warning letter

Make a requirement at inspection

Code:

Blue: Short term

Orange: Long term

Green: Non-statutory

Make a recommendation at inspection

Non-statutory compliance actions

- *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.
- *Make a recommendation at inspection:* Including a recommendation for action in an inspection report against the National Minimum Standards.
- *Issue a simple caution:* Where a person admits an offence, but where we decide not to prosecute, a simple caution will be considered in future offences and in future civil compliance action.
- *Make a requirement at inspection:* Including a requirement in an inspection report against the regulations.

Statutory compliance 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:* 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.²¹
- *Suspend a registration:* We can suspend the registration of a provider or manager through the notice of proposal/notice of decision route. A person

²¹ A decision to issue a compliance notice may be subject to Judicial Review.

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.²²
- *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 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.²³
- *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.²⁴
- *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

²² These appeals are subject to our expedited appeals process. Please see appeals chapter for more detail.

²³ These appeals are subject to our expedited appeals process. Please see appeals chapter for more detail.

²⁴ These appeals are subject to our expedited appeals process. Please see appeals chapter for more detail.

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.²⁵

Notice of proposal/notice of decision process

124. As outlined above, many of our compliance actions take place through the notice of proposal and notice of decision process. Due to the timescales involved, these are longer-term compliance actions and may take many weeks/months to become effective. The steps involved are:

- *Case review and decision* to take compliance action
- *Drafting notice of proposal*: We must finalise the notice within **five days** of the case review.²⁶ 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 'Serving a notice' for full details.
- *Monitoring compliance*: We must monitor compliance with the relevant legal requirements and importantly the risk to children, young people or adults using the service. We will set timeframes for monitoring visits as part of the case review.
- *Hearing representations*: A person has **28 calendar days** from the time the notice of proposal has been served to make representations to us. We convene a panel to hear the representations and consider the evidence the person provides. We write to the person with our outcome within **10 days** of the panel meeting. See 'Representations' for further details.
- *Drafting notice of decision*: If we decide not to uphold a person's representations, or the person does not make representations, we move to the notice of decision stage. We draft a notice telling the person why we have decided to take this action and detailing the evidence that we have. If we uphold the representations, we inform the person of that and do not send a notice of decision. We may consider taking other action where necessary.
- *Serving the notice of decision*: We serve the notice of decision in line with our procedures in 'Serving a notice'.

²⁵ These appeals are subject to our expedited appeals process. Please see appeals chapter for more detail.

²⁶ There may be occasions when a longer period is needed due to external solicitors checking the notice.

- *Monitoring compliance:* We must continue to ensure that service users are safe through regular monitoring.
- *Appeals to the First-tier Tribunal:* A person has **28 calendar days** from the serving of our notice of decision to appeal to the First-tier Tribunal, Health, Education and Social Care Chamber. See 'Appeals' for full details.
- *Notice takes effect:* The notice takes effect once: the 28-day appeal window lapses 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 appeals against the notice of decision to the First-tier Tribunal and the appeal is dismissed. We write to the person to inform them that the action has now taken effect. See 'Appeals' for further details.
- *Monitoring compliance:* We must ensure that the person is complying with the notice.

Appeals to the First-tier Tribunal

125. Many of our compliance powers are subject to challenge in the First-tier Tribunal of the Health, Education and Social Care Chamber. We also have an expedited appeals process with the First-tier Tribunal for certain cases.²⁷ See 'Appeals' for full details.

Recording of information relating to compliance action

126. We keep a full record of all of our action relating to a compliance case. This includes details of case discussions, case reviews, communications with the registered person(s), compliance visits, examination of documents and case thinking. This provides a comprehensive record of why we took the action we did, at the time we did, and is very important if we are challenged in the First-tier Tribunal. All inspectors and compliance colleagues must record this information under the compliance case in Office Base.

Special compliance cases

Refusing an application for registration

127. A person who wishes to carry on or manage children's social care must apply for registration with Ofsted first. We carry out checks on the person, inspect the premises and interview them to determine if they are fit to provide or manage the setting. Full details about how we manage the registration process are available in the *Social Care Registration Handbook*.

²⁷ The expedited appeals process is available from our website at: www.ofsted.gov.uk/resources/100242.

128. Where an inspector first encounters concerns about an application for registration, they should open a compliance case immediately and hold a **case discussion** with the Social Care Compliance Inspector, Senior Practitioner or Regulatory Inspection Manager. This does not necessarily mean that we have sufficient grounds to propose to refuse the registration. Rather, it provides an opportunity for us to formally record our thinking about the application; to articulate the nature of our concerns; and to record the steps that we are taking as a result. It is very important that we keep this record to support our final registration decision.
129. 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. See 'Refusal of registration' for full further details.

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

130. A provider may apply to Ofsted to vary, remove or impose conditions of their registration. Full guidance on the process for managing these requests is available in the *Social Care Registration Handbook*.²⁸
131. There may be circumstances where we do not agree with the provider's request to vary, remove or impose conditions of registration. This is more likely to be the case in requests for major variations. Following the receipt of information from the provider and/or the visit to the setting, the inspector must discuss with the Regulatory Inspection Manager where they have concerns. The inspector should open a compliance case and record the details of their discussion and case thinking. They should also hold a case discussion with a Social Care Compliance Inspector, Senior Practitioner or Regulatory Inspection Manager.
132. If the case discussion determines that there is sufficient evidence about the request to vary, remove or impose conditions to make a decision, we must convene a case review. At the case review the decision will be made as to what action we will take.

Disqualification and written consent

133. The law prevents certain individuals ('disqualified individuals') from working with children and young people in order to safeguard them.²⁹ If an individual is disqualified, they must not carry on, be otherwise concerned in the management of³⁰ or have a financial interest in a children's home. In addition, a registered provider may not employ a disqualified individual at a children's home.

²⁸ *Social Care Registration Handbook*: www.ofsted.gov.uk/resources/110171

²⁹ Section 65 of the Children Act 1989.

134. If a disqualified individual wishes to carry on, be concerned in the management of, or have a financial interest in a children's home, they must apply for written consent from Ofsted first. A registered provider must also apply for written consent to employ a disqualified individual. Failure to do so is an offence.
135. If we find a disqualified individual (without written consent) is involved with a children's home in any of the above capacities, we must convene a **case discussion** or case review **immediately** to determine the risk to children or young people that they may pose.
136. Individuals become disqualified because they are classed as being disqualified from private fostering.³¹ This may occur because the person has been convicted of an offence; has had a child in their care removed; or has had their registration as a childcare or children's home provider or manager cancelled. Full details on the matters that make a person disqualified and the written consent process is available at 'Disqualification and written consent'.

Making referrals to the Disclosure and Barring Scheme

137. We have statutory powers to refer individuals to the Disclosure and Barring Scheme (DSB) where we have evidence of conduct or behaviour that resulted in harm to a child or young person or that placed a child or young person at risk of harm. Following a referral, the DSB will decide whether to include the individual on a list of people who are barred from working with children and/or vulnerable adults. See 'Referrals to the Disclosure and Barring Service' for full details.

Closing a compliance case

138. We close a compliance case where:
- we are satisfied that children, young people and adult service users' welfare and outcomes are been protected and promoted
- and
- the registered person(s) are complying with the law
- and/or
- the compliance action has taken effect (for example, a cancellation or refusal has taken effect or a prosecution has been secured).
 - The decision to close a compliance case is made at a case review, with the approval of the original decision-maker. The reasons for closing the case and a summary of the case are made on Office Base by the inspector or

³¹ Under section 68 of the Children Act 1989 and its subordinate regulations.

compliance colleague. We also make arrangements for the return of any evidence seized. The information stays on record and we will refer to it in future. This may include when determining a person's fitness in respect of any other registrations that they hold with Ofsted, in considering any future application from the person for registration, or when considering any other concerns about the person that arise.

Part 2: Types of compliance action

Compliance notices

Introduction

139. Compliance notices set out actions that a registered person must take by a certain date to meet the requirements imposed by the relevant regulations. 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.
140. A registered person commits an offence if they do not take the action(s) set out in a compliance notice within the specified time.

Threshold

141. 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 compliance actions available to us.
 - Legal basis for serving compliance notices
 - We serve compliance notices under section 22A of the Care Standards Act 2000.³²
142. This section specifies that the requirements that may be the subject of a compliance notice are those requirements 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.
 - We may issue a compliance notice against a registered provider or a registered manager of a/an:
 - adoption support agency

³² Inserted into the Care Standards Act 2000 by the Children and Young Persons Act 2008.

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

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

Making the decision to serve a compliance notice

144. The decision to serve a compliance notice must be made in a case review, as set out in 'Decision-making and case reviews'.
145. In making the decision, it is important to note that we do not have to set requirements before issuing a compliance notice. There may be circumstances when it is appropriate for us to serve a compliance notice where the breach is sufficiently serious and/or that the risk is such and/or that the history of compliance by the registered person is of concern.
146. 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 relate to the actions or inactions of the registered provider, the registered manager or both?
147. See 'Decision-making and case reviews' for further information.
148. It is helpful to remember that compliance notices are 'short-term' actions. That is, they can be served quickly to require a person to put matters right and comply with the law in a brisk timeframe. There is no process within the Care Standards Act 2000, which enables a registered person to make representations or to lodge an appeal against a compliance notice.³³ We may consider their use

³³ A compliance notice may be challenged by a Judicial Review.

in conjunction with 'longer term' compliance action where we have wide-reaching concerns.

149. Finally, 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. If the person fails to comply with a notice, this is both an offence that we can prosecute for and a ground for cancellation.³⁴ 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 of imposition/variation of conditions, then it is not appropriate to serve a compliance notice.

Drafting a compliance notice

150. A compliance notice must be as specific as possible, setting out the requirements with which, and how, we consider the registered person is failing or has failed to comply and the actions that the registered person must take by a certain date to meet the relevant regulations.
151. The inspector generates a notice from Office Base and drafts the content. The inspector must draft the notice within **two working days** of the case review. The notice is reviewed by a Social Care Compliance Inspector or Senior Practitioner within a further two days and signed off by the decision-maker who chaired the case review within one day.
152. For each failure to comply with a specific regulation we draft a separate compliance notice. That is, each notice should contain one action with one timeframe only. This reduces the ability for a notice to be partially met. Partially met compliance notices cannot be used as grounds for stronger compliance action such as cancellation or prosecution. Non-compliance with a compliance notice however, is a specific ground for cancellation.
153. When drafting a notice we should ensure that the safety and welfare of children, young people and adult service users are given paramount importance. The notice must be drafted with the most important aspect of the concern first followed by the best evidence which illustrates the person's failure to comply. We must include sufficient evidence in the notice to prove, on the balance of probabilities, that the breach has occurred.

Information to be included in a notice

154. There are specific minimum legal requirements that we must also include in the notice.³⁵ These are:
- specify the setting to which the failure to comply with requirements relates

³⁴ Section 22A(4) and section 14(1)(ca) of the Care Standards Act 2000.

³⁵ Section 22A(3) of the Care Standards Act 2000.

- specify which requirement we believe the registered person is failing, or has failed, to comply with (the name, paragraph and sub-paragraph of the regulation)
- specify how the registered person is failing, or has failed, to comply with that requirement
- specify the action the registered person must take to comply with the requirement or to prevent re occurrence of the failure
- specify the period of time in which the registered person must complete the action
- inform the registered person that it is an offence to fail to comply with the requirement set out in the notice, and that failure to comply with a compliance notice is a ground for cancellation.
- Setting the timeframe for a notice

155. We must set an appropriate timeframe for the completion of the action in the notice. Only one timeframe per compliance notice can be set. The timeframe for the registered person to comply with the notice starts from the date of the notice and not date that we serve the notice (see 'Serving a notice' for further details). This means that the date of the notice and the effective service date should be the same, but crucial in cases when a registered person is required to undertake urgent action.

156. We allow a minimum period of 24 hours for a provider to take urgent action. Where urgent action is 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, which would render the action of serving the notice pointless.

Serving a compliance notice

157. We must serve a compliance notice in line with our procedures in 'Serving a notice'.

Monitoring a compliance notice

158. We conduct a 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.

159. We must complete a monitoring visit the day after the specified completion date for the notice, or at the very latest, within five working days from that date. Where we have served multiple compliance notices with different completion dates, we schedule follow-up visits for each completion date on each notice. Where this occurs, we must be careful not to check on compliance

for a notice where the action date has not yet passed, otherwise we may invalidate that compliance notice.

160. Compliance notices may be monitored as part of the second full inspection of a children's home, which our policy states will be conducted within six to eight weeks of an inadequate judgement. If, however, we are concerned about the safety and welfare of children, young people and adult service users during this period, an urgent visit must take place.
161. Consideration should be given as to who is best placed to undertake the monitoring visit or second full inspection of a setting that has been judged inadequate. It may not always be appropriate for the same inspector to carry out the inspection who has undertaken a significant number of visits to the setting. Complex monitoring visits may require the Regulatory Inspection Manager or compliance colleague and inspector to undertake a visit.
162. There are some circumstances when monitoring compliance with a notice is less straight forward, such as when no children and young people are living at a children's home. If this is the case, we may decide it is best to give notice of the monitoring visit to ensure that the setting is staffed during our visit so we can check compliance. Such decisions should be rare and made as part of the case review which should explore how evidence can be obtained in these circumstances to assess compliance with a notice.
163. Regulatory Inspection Managers are responsible for ensuring that all actions and records in relation to any monitoring visits are accurately documented in Office Base.
164. Before undertaking a monitoring visit, or second full inspection of a children's home, an inspector must:
 - read the last inspection report and evidence base
 - read all relevant information on Office Base, including:
 - the last inspection report and evidence
 - records of case thinking and case discussion in the compliance case
 - the minutes of any case reviews
 - the compliance notice(s)
 - any information from the case, such as the action plan and notifications from the setting
 - complete the planning section of Office Base and develop key lines of enquiry before the visit.
 - During a second full inspection of a children's home, inspectors must:

- check that children, young people and adult service users are safe and well cared for
- check that all requirements and recommendations from the previous full inspection have been completed (assuming the timescales have passed)
- check the requirements from any compliance notices, which have passed the timescale for completion, have been met
- record the findings from the inspection on Office Base.
- During a monitoring visit, inspectors must:
 - check that children, young people and adult service users are safe and well cared for
 - check the requirements from any compliance notices, which have passed the timescale for completion, have been met
 - record the findings of the inspection on Office Base.
 - During a monitoring visit, we may 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 call a case review and consider what compliance action we may take against these other breaches. We may use a pattern of non-compliance as general evidence of lack of fitness for continued registration and this may form the basis for issuing a notice of proposal to cancel the registration.

Determining if a compliance notice has been met

165. When following up the requirements on a compliance notice, we consider what action the registered person has taken and if it indicates that they are now satisfactorily complying with the requirement set out in the notice. A registered person must fully comply with the requirement set out in the compliance notice within the deadline specified. Partial completion of a requirement is not sufficient. The decision on whether a compliance notice has been met is made at a case review by the original decision-maker or by a colleague of equivalent or higher grade.
166. 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.

167. If we are satisfied that the compliance notice has been met, we tell the registered person this and confirm it in writing by sending them a letter. We then consider whether to close the compliance case through a case review.
168. 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. We must consider in a case review what further action we will take as a result.
169. It is important to note that 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 action

170. Where a compliance notice is not met, we will convene a case review within **two days** of the failure to comply or earlier, if more urgent action is required. The case review will happen in two stages. In the first stage, the case review will consider whether to caution the registered person for the offence, in line with the Police and Criminal Evidence Act 1984 Codes of Practice.³⁶ See 'Offences and prosecutions' for full details. The case review will also agree the arrangements for interviewing the person under caution, if we are considering prosecuting them for the offence.
171. After the interview (where we decide to interview the registered person), the second case review will take place. This will consider the information from the interview, where applicable, and consider what further action we should take. This may include:
- 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 or warning letter, in lieu of a prosecution
 - prosecuting the provider for failing to comply with the notice
 - issuing a notice of proposal to carry out civil compliance action, such as, to cancel, vary or suspend the registration
 - applying to a magistrate for an emergency order to cancel registration, or impose or vary conditions of registration.
 - We can only prosecute a person for not complying with a requirement in a compliance notice by the date set in that notice. We cannot rely on a compliance notice for prosecution purposes when the registered person has

³⁶ Police and Criminal Evidence Act 1984 Codes of Practice;
www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/

complied with the requirements set out in the notice by the date specified but thereafter fails to comply on the same point at a later date. In such circumstances, we will serve a new compliance notice or consider other forms of compliance action.

Suspension of registration

Introduction

172. Ofsted has the power to suspend a registration under sections 14A and 20B of the Care Standards Act 2000. We may do this through:

- non-urgent procedure under section 14A: this uses the notice of proposal/notice of decision procedure
- emergency procedure under section 20B: where the notice of suspension takes immediate effect.
- 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.³⁷ It is an offence for a person to carry on or manage a setting while their registration is suspended.³⁸

173. Suspension enables:

- Ofsted to respond to instances where a setting is not being carried on in accordance with 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

and/or

- action to be taken to reduce or eliminate the risk of actual harm to children, young people or adult service users.

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

175. The overarching aim of suspending a registration will be to ensure the safety of service users and to protect further admissions to the setting until a full investigation is complete and a decision is made about the next steps. We will consider all our compliance powers when deciding whether any compliance action is appropriate.

³⁷ Suspension does not have the effect of cancelling a registered person's registration.

³⁸ Section 24A(1) of the Care Standards Act (2000)

Threshold for emergency procedure

176. 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.’

177. 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.

178. **The notice is effective from the time it is served.**³⁹ Ofsted only uses its power to suspend a registration under the emergency procedure in exceptional circumstances, which fulfil the threshold above.

179. 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. We will usually do this by telephone, and will record a summary of the conversation in Office Base and consider any feedback the person(s) may have 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

180. 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.

181. 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’.⁴⁰

182. Ofsted will suspend a registration using the non-urgent procedure where this is the only reasonable option to: deal with the regulatory breaches found; secure children, young people and adult service user’s safety and well-being; and, is proportionate to the concerns identified.

³⁹ Section 20B(2) of the Care Standards Act 2000.

⁴⁰ Section 14A(6) Care Standards Act 2000 ‘relevant requirement’ means any breach of regulations made under part 2 of the Act, any part of the Act itself or any other enactment which appears to Ofsted to be relevant.

Decision to suspend

183. The decision to suspend a registration, or extend the period of suspension, must be made at as case review.

184. See 'Decision-making and case reviews' for full details.

Serving a suspension notice

185. We must serve the notice in line with our procedures in 'Serving a notice'.

Drafting the notice to suspend registration

186. **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.
- Non-urgent procedure

187. The notice of proposal to suspend registration must:

- state that is it 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.
- Non-urgent procedure

188. The **notice of decision** to suspend a registration must:

- state that it is given under Section 19 (4)(aa) 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.

- Extending a suspension of either type

189. Ofsted will consider extending 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.
- Ofsted will consider extending the period of suspension if:
 - the registered person(s) has or have not taken appropriate steps to reduce the risk or actual harm to children, young people or adults
 - another agency is still conducting an ongoing investigation, which has not concluded and a level of risk to children, young people or adults remains.
 - Where the period of a suspension is to be extended, the notice must comply with all the detail required in the original notice of suspension.⁴¹ 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

190. The period of suspension must be reviewed:

- before the period expires, or earlier where there is evidence that the suspension should be lifted

or

- Ofsted receives an application from the person whose registration is suspended to vary or remove the suspension.

191. We must convene a case review to decide whether to extend or remove a suspension of a registration. See 'Decision-making and case reviews' for full details. The review must consider:

- if there continues to be a risk of harm to children, young people or adults and the level of that risk, including whether the provision of emergency cancellation apply

⁴¹ Contents of a notice of suspension are covered in the above paragraphs in this section of the handbook.

- whether the grounds identified in the suspension notice still apply
- what other or alternative action, if any, is appropriate and proportionate to remedy the situation.

192. We must carefully record our reasons and decision on Office Base.

193. 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.

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

Notifying local authorities of the suspension

195. Ofsted sends a notification to every local authority in England and Wales when:⁴²

- we issue a notice to suspend registration (emergency procedure)
- we issue a notice of decision to suspend (non-urgent procedure)
- we issue a further notice to extend a suspension
- we lift 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

196. Registered persons can apply to remove, or vary, the period of suspension under section 15(1)(c) of the Act.

197. Registered persons apply to remove or vary the period of a suspension by writing to Ofsted outlining the reasons why the risks to children, young people or adult service users have been removed. The application must be accompanied by the relevant fee when this is determined by the Department for Education (until this point Ofsted will not impose any fee for this application).

⁴² Sending notifications about enforcement to local authorities in England and Wales: ofstedhome/our-remits/social-care/Pages/Adoptionsupportagenciescomplianceandenforcement.aspx

198. We must convene a case review within **three working days** of receipt of the application. The case review will consider the application and reach a decision on whether to grant or refuse the application.
199. 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).
200. 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

201. A registered person can provide Ofsted with information at any time that they believe could affect our decision to continue to apply the suspension. Where we receive such information, we must hold a case review **within three days** to assess whether the suspension should remain or be removed.
202. A registered person who is subject to an emergency suspension under section 20B, has no right to make representations to Ofsted. He or she 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.⁴³ An expedited process applies to appeals against emergency suspension.⁴⁴
203. See 'Appeals' for further details.
204. A registered person who has been served with a notice to suspend their registration, under the non-urgent procedure, has the right under Section 18 of the Act to make representation to Ofsted.
205. See 'Representations' for further details.
206. The registered person who has been served with a notice under the non-urgent procedure has the right under Section 12 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.
207. See 'Appeals' for further details.

⁴³ Under section 21 of the Care Standards Act 2000.

⁴⁴ Memorandum of understanding between Ofsted and the First Tier Tribunal of the Health, Education and Social Care Chamber: www.ofsted.gov.uk/resources/100242http

Restriction of accommodation

Introduction

208. We have the power to serve a notice to restrict accommodation at a children's home, residential family centre or holiday scheme for disabled children under section 22B of the Care Standards Act 2000. We have no legal power to serve a notice to restrict accommodation on any other social care setting.

Legal basis for a notice restricting accommodation

209. Section 22B states: ⁴⁵

'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.'

210. A notice restricting accommodation effectively 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.

Threshold

211. Section 22B of the Care Standards Act 2000 does not set a statutory 'test' or threshold to be met in order to restrict accommodation. This section outlines Ofsted's policy on the circumstances where we will make such an order and the factors we will take into account. The policy allows us to take into account the individual circumstances of each case when deciding whether restricting accommodation is the appropriate compliance action to take.

212. We only serve a notice restricting accommodation where we reasonably believe that there is a risk of harm to a child, young person or adult if we do not restrict accommodation.⁴⁶

213. The purpose of restricting accommodation is to allow time for:

- an investigation into the risk, including by another agency, to be carried out

⁴⁵ Section 22B of the Care Standards Act was inserted by the Children and Young Persons Act 2008. This power was extended to include holiday schemes for disabled children by the Care Standards Act 2000 (Extension of the Application of Part 2 to Holiday Schemes for Disabled Children) (England) Regulations 2013.

⁴⁶ The term 'harm' is defined in the Children Act 1989, section 31 and section 105 as amended by the Adoption and Children Act 2002, section 120 – as 'ill treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another'.

or

- steps to be taken to reduce or eliminate the risk of harm to children, young people or adults.⁴⁷

214. There may be limited circumstances when we restrict accommodation for other reasons that do not fit the above criteria, provided that the threshold is met.⁴⁸

215. 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, 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

216. We make the decision to serve a notice restricting accommodation in a case review.

217. See 'Decision-making and case reviews' for full details.

218. It is important to remember that a restriction of accommodation takes immediate effect from the point that it is served. We, therefore, may use this power in conjunction with other compliance action that is longer term, 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 possibly a subsequent appeal against our decision has passed. However, to safeguard the welfare of children and young people, it may be appropriate to prevent the provider from admitting other children to the home immediately by restricting accommodation.

Drafting the notice

219. 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:⁴⁹

- explain the requirements imposed by the notice
- specify the establishment or holiday scheme that the restriction applies to
- give our reasons for serving the notice

⁴⁷ These steps may be taken by the registered person, by Ofsted or by another person or agency.

⁴⁸ The purpose of restricting accommodation is not a statutory provision set out in law but is Ofsted's policy approach to the use of this power.

⁴⁹ Section 22B(3) of the Care Standards Act 2000.

- explain the person's right of appeal.
- 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 sufficient monitoring and review. There is no set time period for restriction and, as such, each period of restriction should be based on the individual facts of the case. However, as a general rule, the maximum period of restriction should not exceed more than six weeks at any one time.⁵⁰

220. 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 children, young people or adults and the potential impact if we do not take such a step.

221. 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. The compliance colleague must record on Office Base the reasons for withholding any information. We must ensure that any information we share is done so in accordance with the Data Protection Act 1998.

222. The inspector generates a notice from Office Base and drafts the content within **two days** of the case review. The notice is reviewed by a Social Care Compliance Inspector or Senior Practitioner within a further **two days** and signed off by the decision-maker from the case review within **one day**.⁵¹ The inspector may also ask our legal advisors to review the notice.

Serving the notice

223. Prior to serving the notice, the inspector should inform the registered persons, usually by telephone, of the action we are about to take. 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.

224. A restriction of accommodation takes immediate effect at the time of service. We must follow our procedure in 'Serving a notice'.

⁵⁰ In some circumstances we may decide to set an expiry date of less than six weeks. For example, where building or repair works are due to be completed in a shorter time.

⁵¹ These time scales may be longer where the notice is reviewed by an external legal adviser.

Notifying local authorities of the restriction

225. We must send a notification to every local authority in England and Wales when:⁵²

- 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 and progress

226. As detailed above, we restrict accommodation for a maximum period of six weeks, beginning on the date we serve the notice, or for a lesser period where appropriate. If necessary, we can restrict accommodation for a further maximum period of six weeks.

227. While a restriction is in place, we must continually review whether the reasons for the restriction continue to apply, and review the case each time new information relating to the setting comes to our attention and, in any case, at least once in each period of restriction. The compliance colleague records on Office Base:

- 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.

228. Only in exceptional circumstances should we restrict accommodation beyond two six-week periods (see below). However, if we decide to restrict accommodation beyond twelve weeks, the case review should also consider whether additional and/or alternative action, such as imposing conditions of registration or issuing a compliance notice, is appropriate.

229. A registered person does not have a right to make representations⁵³ to Ofsted against the notice or to make an application to have the restriction lifted. A

⁵² Guidance is available on Ofsted's intranet: *Sending notifications about enforcement action to local authorities in England and Wales.*

ofstedhome/our-remits/social-care/Pages/Adoptionsupportagenciescomplianceandenforcement.aspx

⁵³ A registered person has no right to make representations against a restriction of accommodation under section 18 of the Care Standards Act 2000.

registered person subject to a notice restricting accommodation has a right of appeal against the notice to the First-tier Tribunal.⁵⁴ However, a registered person can provide us with any information that they believe could affect our decision to restrict accommodation at any time. We consider this information in a case review to determine whether the restriction of accommodation continues to be an appropriate step.

230. The case review considers:

- if there continues to be a risk of harm to children, young people or adults
- whether the grounds identified in the notice restricting accommodation still apply
- what other or alternative action, if any, is appropriate and proportionate, such as prosecution or cancellation of registration.

Restricting accommodation beyond 12 weeks

231. 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 children, young people or adults to an acceptable level. This may occur, for example, where there is partial damage to a property, by water or fire for example, and repairs are not complete, or there are building works underway at the premises

or

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

232. The decision to extend the restriction beyond 12 weeks must be made in accordance with our decision-making table (see 'Decision-making and case reviews').

Drafting a notice to extend a restriction of accommodation

233. Where we decide to extend a restriction of accommodation, we draft a new notice using the standard template. The notice must clearly set out:

- the reasons for continuing to restrict accommodation

⁵⁴ Section 21 of the Care Standards Act 2000... A person may apply for a judicial review of the decision or make a complaint to the Ombudsmen.

- 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

234. 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
- if we serve a notice stating that the restriction is lifted

or

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

235. While there is no legal requirement for a notice to have an expiry date, it is not appropriate for a notice to cease to have effect (to expire) without a review of the reasons for the notice and the compliance case. The compliance colleague must review the restriction at regular intervals and, where necessary, lift the restriction where the risk of harm is no longer present or is reduced to an acceptable level.

236. In all cases where we decide to lift the restriction of accommodation, we draft a notice to this effect, using the standard template.

237. We must inform all local authorities in England and Wales when we lift the notice restricting accommodation, using the relevant notification template.

Compliance with a restriction of accommodation

238. We must monitor a registered person's compliance by carrying out an unannounced visit to the setting whenever we have reason to believe that the restriction is not being complied with and, in any event, at least once in each restriction.

239. 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 we consider whether this impacts on their fitness to provide or manage children's social care provision and whether other compliance action is appropriate, such as cancellation. We must do this in a case review.

Appeals

240. 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 after we serve the notice. The Tribunal applies an expedited process to these appeals.⁵⁵
241. See 'Appeals' for further details.
242. Where we restrict accommodation as well as take other compliance 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.⁵⁶

⁵⁵ The expedited appeals procedure is covered by the *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber* (100242), Ofsted, 2011; www.ofsted.gov.uk/resources/100242

⁵⁶ The Tribunal accepted the twin-track approach in *Odubamowo v Ofsted*, where the tribunal president ordered the consolidation of the registered provider's two appeals.

Warning letters

243. Warning letters are a non-statutory power. We may issue a warning letter where a person commits an offence, but where we decide that it is not appropriate to issue a simple caution or to prosecute them.

Threshold

244. We may issue a warning letter where:

- the offence did not impact on the safety and welfare of children, young people or adult service users (a technical breach)

and

- the circumstances of the offence does not meet the thresholds for a simple caution and/or a prosecution

and/or

- we are taking civil compliance action against the person for other failings and have decided that it is not proportionate to take criminal action against them for the offence.

245. The purpose of a warning letter is to make it clear to the person that they have committed an offence, but that we are deciding to take no further action at this time. Warning letters help to provide a record of non-compliance by a person. They can be used in future as evidence that a person committed an offence and was warned about this.

Making the decision to issue a warning letter

246. We make the decision to issue a warning letter in a case review after we have interviewed the person about the offence under the Police and Criminal Evidence Act 1984 caution. A warning letter must only be issued where the person has admitted the offence, but we have decided not to prosecute. It should not be used in lieu of a prosecution if a prosecution is the most appropriate action to take. A warning letter is only appropriate in specific circumstances and must include the details listed below.

247. See 'Offences and prosecutions' and 'Decision-making and case reviews' for further details.

Drafting a warning letter

248. 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 case will remain on our files
 - that we will take the warning letter into consideration in the future in deciding whether to take compliance action.
249. The issuing of a warning letter does not constitute administering a simple caution and the evidence of such a letter is not admissible in any future prosecution.
250. We must store a copy of the warning letter on Office Base and carefully record our reasons for taking this action.

Simple cautions

251. 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 commissioning of a criminal offence and is issued in line with Ministry of Justice guidance.⁵⁷
252. 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.
253. It is important to recognise that simple cautions are different from a Police and Criminal Evidence Act 1984 caution, which we administer where we believe a person has committed an offence prior to questioning the person about the offence(s).⁵⁸

Threshold

254. We may issue a simple caution if:

- the person admits the offence

and

- there is a realistic prospect of a conviction

and

- the offender understands the significance of a simple caution and gives informed consent to being formally cautioned

and

- other compliance action is unlikely to be effective

and

- prosecution would not be in the public interest.⁵⁹

⁵⁷ Ministry of Justice Simple cautions for Adult Offenders www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=_default&query=simple+cautions

⁵⁸ Police and Criminal Evidence Act 1984 Codes of Practice:
www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/.

⁵⁹ Further information on this is available in *The Code for Crown Prosecutors*, Crown Prosecution Servicer, 2013.

Making the decision to issue a simple caution

255. Before we decide to issue a simple caution, the person must admit the offence. If a person admits to the offence then we first consider if we have sufficient evidence to secure a prosecution. The admission (of the offence) has to be a genuine admission and we do not use the possibility of a simple caution as an incentive to obtain that admission. We must also be confident that we could secure a conviction if the case went to court and the person pleaded 'not guilty', in spite of any earlier admission under a Police and Criminal Evidence Act 1984 caution.
256. To prosecute some offences, such as breach of conditions of registration, we have to prove that the person did not have a reasonable excuse. Before offering a simple caution, we must also be satisfied that the person's admission, which they must make under a Police and Criminal Evidence Act 1984 caution, includes an acknowledgement that he or she did not have a reasonable excuse for committing the offence, as the person may later claim this in their defence.
257. See 'Offences and prosecutions' for further details.
258. If a person has previously received a 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) then we can administer a simple caution again. We can also administer a further simple caution if any subsequent offence is unrelated.⁶⁰

Evidence for issuing a simple caution

259. We interview the person under a Police and Criminal Evidence Act 1984 caution to gather more evidence, which may help to determine whether a prosecution is viable. We consider this evidence at a case review. In making the decision to offer a simple caution, we must be sure that if we offer the caution and the person refuses to accept it, that we are prepared to pursue a prosecution.
260. If we are not prepared to pursue a prosecution we should not offer a simple caution and should instead consider taking alternative civil action.
261. See 'Decision-making and case reviews' for more details.

Offering a simple caution

262. 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 what action we will take (prosecution) if they do not accept it. Inspectors must seek advice from Legal

⁶⁰ This is based on Home Office guidance.

Services when drafting the letter to ensure that it contains all the necessary legal information.

263. If the person agrees to accept a simple caution for the offence, a Regulatory Inspection Manager (or above) will meet with them to offer and issue the simple caution.
264. If the person does not agree to accept the simple caution, we proceed to prosecution.
265. Further guidance on administering a simple caution is available in Table 2 below.

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 if accompanied by another officer, ensure they record the meeting in their pocket notebook.
- 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 Police and Criminal Evidence Act 2984 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 in consideration of 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.

Recording and storing a simple caution

266. We record the simple caution on Office Base, noting the day, date, venue and colleagues involved in issuing it. The Regulatory Inspection Manager issuing the simple caution returns a signed copy to the social care compliance team, who retains it in accordance with Ofsted's file retention schedule.⁶¹

Making a referral to the Disclosure and Barring Service

267. 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 'Referrals to the Disclosure and Barring Service' for more details.

Future consideration of the simple caution

268. 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 when making further decisions about whether or not to pursue a future prosecution, where a simple caution is relevant.

269. 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.

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

⁶¹ We must send all documentation in accordance with our information assurance requirements.

Offences and prosecution

Introduction

271. We have the power to prosecute a person for committing certain offences, which relate to registered settings or to settings that should be registered with us but are not (unregistered settings).
272. 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 steps (procedural steps) have first been taken.⁶² While for other offences, there are no specific procedural steps that we must take before commencing a prosecution. If a prosecution is being considered, compliance colleagues and inspectors must engage early with the legal team to ensure that any procedural steps are correctly followed.
273. Securing a prosecution sends a clear message that a situation is unacceptable. It is an effective deterrent, usually resulting in the guilty person paying financial penalties. Pursuing a prosecution for an offence is a short-term compliance action, and may be used in conjunction with other actions. A prosecution may be brought as a single action and, in some instances, may be used on its own where other compliance action is considered as unsuitable or unnecessary.

Range of offences

274. A breach of the following is an offence which we can prosecute for:

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)).⁶³
- 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)).

⁶² The service and non-compliance with a compliance notice is an example of a procedural step.

⁶³ This offence under the Care Standards Act 2000 does not apply to voluntary adoption agencies by virtue of s11(4). The offence for operating an unregistered voluntary adoption agency lies under section 93 of the Adoption and Children Act 2002.

- 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 Children Act 1989

- Carrying on, being otherwise concerned in the management of, or having any financial interest in a children's home while disqualified (section 65 (4) of the Children Act 1989).
- Employing a disqualified person in a children's home (section 65(2) of the Children Act 1989).

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

275. 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, the adoption regulations below, when breached, constitute an offence for which Ofsted can commence proceedings 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 7⁶⁴ **without reasonable excuse** (regulation 17).

⁶⁴ In summary, regulation 7 provides that an agency must not disclose to an applicant any identifying information about a subject without the subject's consent.

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.

276. It is also an offence not to comply with the following:

The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005:

- A contravention of or failure to comply with regulations 5(1) to (7), 6, 7(1) and (4), 8(2), 9(1), 10, 11, 12(1) and (2), 13, 14, 16–18, 19(1), 20, 21(1), 22, 23, 24(1) and (2), 25, 26, 27(1) (regulation 29).⁶⁵

277. However, 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:⁶⁶

- in what respect we are of the opinion that the registered person has contravened or is contravening 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 so as to comply with any of those regulations, and
- the period, not exceeding three months, within which the registered person should take action.⁶⁷

278. 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 notice⁶⁸
- the registered person fails to complete the actions set out in the notice in the time period specified.

⁶⁵ Ofsted has the power to prosecute a person who was but no longer is a registered person for an offence of a breach of regulations 14 and/or 22.

⁶⁶ Regulation 29(2) and (3) of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005.

⁶⁷ Regulation 29(3) of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005.

⁶⁸ When serving such a notice, inspectors and compliance colleagues must consult with Legal Services about setting the timeframe for making representations.

Who we can prosecute

279. We can prosecute any person who commits an offence where we are the prosecuting authority.⁶⁹ This includes the prosecution of:

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

280. 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).⁷⁰

281. 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.

282. 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 purporting to act in such capacity, the individual as well as the body corporate shall be guilty of the offence.⁷¹

General prosecution thresholds

283. Our five general prosecution thresholds are:

- there are grounds to believe that the person has committed an offence the offence was committed within the last **three years**⁷²
- we begin proceedings within **six months** of the date on which evidence that an offence has been committed which is sufficient in our opinion to warrant the proceedings, becomes known to us⁷³

⁶⁹ Ofsted are the prosecuting authority for the offences listed above.

⁷⁰ Section 31(9) of the Care Standards Act 2000.

⁷¹ Section 30(2) of the Care Standards Act 2000.

⁷² Section 29(2) of the Care Standards Act 2000.

⁷³ Section 29(2) of the Care Standards Act 2000.

- there is sufficient evidence to provide a realistic prospect of conviction. The evidence must be capable of being used in court, be reliable and be credible. That is:

The evidential stage: 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 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.⁷⁴

- the public interest stage is met.⁷⁵ That is:

The public interest stage: In every case where the evidential stage is met, we must go on to consider whether a prosecution is required in the public interest. A prosecution will usually take place unless we are satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

284. We must commence prosecution proceedings within six months of the date on which evidence, sufficient to warrant the proceedings, comes to our knowledge.⁷⁶ In such cases, we involve the legal team as early as possible.
285. 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.⁷⁷ However, in these cases, we will consider how the information impacts on a person's ongoing fitness to be registered.
286. With regards to the timeframes above, the proceedings start when we lodge the relevant documents with a court.

Pursuing an investigation into a suspected offence

287. Where we suspect an offence is or has been committed, we should advise the person that we have the power to prosecute if the offence is proved. We must then decide whether to investigate the suspected offence further.

⁷⁴ Further information on this is available in *The Code for Crown Prosecutors*, Crown Prosecution Servicer, 2013.

⁷⁵ Further information on this is available in *The Code for Crown Prosecutors*, Crown Prosecution Servicer, 2013.

⁷⁶ Section 29(2) of the Care Standards Act 2000.

⁷⁷ Section 29(2) of the Care Standards Act 2000.

288. In deciding whether to pursue an investigation 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 the person has (only for offences that have the 'reasonable excuse' clause).

289. If the information suggests a pattern, whereby a person is failing to consistently meet the requirements of registration and/or the offence is of a serious nature, the inspector should caution the person under the Police and Criminal Evidence Act 1984 and the associated revised Codes of Practice.^{78,79} Further information on how to do this is below.

290. Where the information suggests that the breach is not serious and it is a one-off incident and there are no other concerns about the person or setting, the inspector may decide that it is not appropriate to consider prosecuting the person. In these cases, the inspector does not need to caution the person under the Police and Criminal Evidence Act 1984. Instead, the inspector should:

- if the breach is identified during an inspection, follow the *Conducting the inspection* guidance for that setting for information on how to consider the breach in making judgements and in writing the report
- if the breach is identified during an investigation visit, inform the registered person or person in charge that you suspect a breach has occurred but that we will not be taking any further action at this time. The inspector or compliance colleague should detail the evidence of the breach in their investigation toolkit and record the details of whom they spoke with and when about the breach.

'Without reasonable excuse'

291. As noted above, we have several offences that have the 'without reasonable excuse' defence. There is no definition of reasonable excuse and it will vary depending on the particular circumstances of each case.

⁷⁸ Section 67(9) of the Police and Criminal Evidence Act 1984 states that 'persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code'.⁷⁹ Police and Criminal Evidence Act 1984 Codes of Practice: www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/.

⁷⁹ Police and Criminal Evidence Act 1984 Codes of Practice: www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/.

292. 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. However, a circumstance that was foreseeable or was within the person's control may not constitute a reasonable excuse. In most cases, ignorance of the law will not be accepted as a reasonable excuse.
293. 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 they are 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 consider their explanation carefully in deciding whether it is reasonable. We may decide that, to test their claim, we require further information or need to carry out further enquiries.
294. Some examples of what might be a 'reasonable excuse' include:
- documents being lost through theft, fire or flood
 - serious illness – physical or mental
 - bereavement
 - significant personal problems.
295. This list is not exhaustive, and whether such matters amount to reasonable excuse will depend on the facts of the specific case. We may seek advice from our legal advisors in deciding if the excuse given is reasonable.

Making the decision to prosecute

296. We must consider the evidence of the breach and make our decision via a case review.
297. See 'Decision-making and case reviews' for further information.
298. This will involve two stages.
299. The first-stage case review will determine the arrangements for interviewing the person under PACE caution 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.
300. To ensure a conviction, our evidence must be sufficient to provide a realistic prospect of conviction. Where the offence contains the 'without reasonable excuse' defence, we must be able to demonstrate that the person we are prosecuting did not have a reasonable excuse for their action. For example, if we have previously written to the person pointing out that they must follow a particular course of action, we are in a better position to show that there was no 'reasonable excuse'.
301. If a person fails to attend an interview under caution, or refuses to attend, this should 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.
302. In the event that a person attends an interview under caution but denies committing the offence, this does not necessarily mean that we have insufficient evidence to pursue a prosecution. We must consider all of the evidence that we have and determine if we think we have a realistic prospect of conviction. We may seek legal advice in making this decision.
303. The second stage case review will consider all of the evidence that we have gathered, including the information from the interview under caution, and determine what action we should take and whether to pursue a prosecution. We record our reasons for this, including:
- why the general prosecutions thresholds are met, including reasons why the public interest test is, or is not, met
 - where we decide to issue a simple caution, rather than prosecuting, our reasons for this.
 -
304. If, after evaluating the evidence, we decide to proceed with a prosecution, solicitors will advise on the necessary steps to take and procedures to follow.
305. 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

306. 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.^{80 81} Other offences may result in larger fines or imprisonment.

- 307. A conviction for certain offences in relation to an establishment or agency may also become a ground for cancellation of a person's registration.
- 308. See 'Cancellation of registration' for further details. It may also trigger a disqualification from certain involvement in children's homes.⁸²
- 309. We also consider any conviction in determining a person's ongoing fitness and, in deciding, if any other compliance action is necessary.

Giving a Police and Criminal Evidence Act caution

- 310. Social Care Regulatory Inspectors, Compliance Inspectors and Regulatory Inspection Managers have the power to caution a person. We must advise the person that we believe he or she has committed an offence and caution them in line with the Police and Criminal Evidence Act codes of practice before asking any further questions.⁸³ We must caution any person as soon as we become aware that the person may have committed the offence.
- 311. 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.'
- 312. We caution for two reasons. Firstly, the caution advises the person about his or her rights, if asked to explain his or her actions or omissions. Secondly, 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.
- 313. Immediately after giving the caution, the inspector or compliance colleague must take a word for word record of anything that is said in their pocket note book.
- 314. 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

⁸⁰ The conviction of a person, as the result of his or her trial at a magistrate's court.

⁸¹ Section 37 of the Criminal Justice Act 1982

⁸² Section 65 Children Act 1989.

⁸³ Police and Criminal Evidence Act 1984 revised Codes of Practice, Code C, paragraph 10.5:

www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c-2012.

their rights relating to seized property. We must do this in order to comply with Code B of Police and Criminal Evidence Act.⁸⁴ 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.

315. After cautioning and providing the Code B notice to the person, the inspector must follow our procedures in the 'Quick guide' on what information they must record.
316. 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.⁸⁵
317. Inspectors must preserve, and securely store, any evidence of the offence committed that they gather at the visit and adopt the Police and Criminal Evidence Act revised Codes of Practice procedures by recording evidence in their pocket notebook (see the 'Quick guide' for more details). They must also record details of any evidence seized on the Code B notice given to the person.⁸⁶
318. Inspectors must collect, store and record all other evidence on Office Base. Inspectors must keep original documents rather than photocopies of documents.
319. If we uncover evidence of a separate offence during an interview under a Police and Criminal Evidence 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.

Taped interviews under a Police and Criminal Evidence Act caution

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

⁸⁴ Police and Criminal Evidence Act 1984 (PACE) Code B: Code of practices for searches of premises by police officers and the seizure of property found by police officers on persons or premises.

⁸⁵ 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.

⁸⁶ Consideration should be given to any impact on children, young people or adult service users of seizing paper records i.e. original care plans, rotas etc. Wherever possible the setting should be left with copies so that they can continue to operate without compromising the welfare of service users.

- 321. We must record on tape any interviews we conduct under a Police and Criminal Evidence Act 1984 caution. We must tell the person, subject to the interview, how we will store the records of that interview.
- 322. Social care compliance colleagues and inspectors usually carry out interviews conducted under a Police and Criminal Evidence Act 1984 caution together. A colleague, who has received the relevant professional training, must be present throughout the interview.
- 323. We must follow Code E of the Police and Criminal Evidence Act 1984 revised codes of practice when carrying out a tape-recorded interview conducted under a Police and Criminal Evidence Act 1984 caution.⁸⁷

Responding to media enquiries in prosecution cases

- 324. We do not routinely prepare press releases in advance of any prosecution we undertake, but we respond to media enquiries about a prosecution or other matter. Any responses should be checked with Ofsted's legal representatives and with the press team before they are released to the media.

⁸⁷ Police and Criminal Evidence Act 1984 revised Codes of Practice, Code E:
www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/.

Unregistered settings

Introduction

325. 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.^{88,89,90} It is an offence to do this and we may prosecute.
326. Operating an unregistered social care setting may pose a significant safeguarding risk to children, young people and adult service users, including non-vetting of workers or substandard services. Therefore, we treat any incident of a person operating or managing unregistered social care very seriously.

Exemptions to registration

327. There are some settings for children, young people and adults that do not require registration with Ofsted. A person is allowed to provide or manage such a setting without being registered. The exemptions are set out in the Care Standards Act 2000 and setting-specific regulations.⁹¹

Responding to a report of unregistered settings

Initial response

328. Details of how we initially respond to an unregistered setting are in our 'Quick guide'. When we discover or receive a report that a person is providing or managing a setting that requires registration with us, we check Office Base for any previous knowledge about the setting or individual. 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

⁸⁸ With the exception of managers of voluntary adoption agencies, who are not required to register with Ofsted.

⁸⁹ Under section 11 of the Care Standards Act 2000.

⁹⁰ Regulations made under section 1(4A) of the Care Standards Act 2000 provide for exceptions from the requirement to register.

⁹¹ See section 1(4A) of the Care Standards Act 2000 and Ofsted's 'Guide to registration' document for the setting and Annex H of the *Social Care Registration Handbook* for details on the exemptions to registration: <http://www.ofsted.gov.uk/resources/110171>

- we have previously refused the person registration.

329. We may contact 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. We then visit the setting to determine what service they are providing. See 'Quick guide' for further details.

Visits to potentially unregistered setting and/or managers

330. The inspector or compliance colleague must apply the following principles when visiting a setting which we believe is being provided or managed without registration.

331. 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. The principles are:

- The visit should be unannounced.
- Once at the premises, establish the identity of the person who is suspected of providing and/or managing the setting without registration.
- If the provider and/or manager is not on site, take full contact details for them and attempt to make contact immediately.
- Obtain full details about the nature and extent of the setting provided.
- The provider and/or manager suspected of being unregistered must be issued with a caution (under the Police and Criminal Evidence Act 1984) immediately if there is evidence that leads us to believe that they have committed the offence of carrying on or managing without registration. We must also issue a Code B notice to the person under the Police and Criminal Evidence Act 1984.
- Ask the provider and/or manager to confirm in writing their intention to stop operating outside of the law.
- Evidence for prosecution requires proof of:
 - 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
 - the lack of registration
 - any evidence seized or copied, such as publicity material, leaflets and records of the setting, in compliance with Code B of the Police and Criminal Evidence Act 1984

- all statements or exhibits from children and young people, staff, commissioners and publishers
- the inspector’s observations.

332. Following a visit, we may decide to interview a person suspected of carrying on or managing a social care setting without registration under the Police and Criminal Evidence Act 1984. We may use the evidence from this interview in any future prosecution. See ‘Offences and prosecutions’ for further details.

Taking the investigation forward

333. We assess the information that we receive following a visit. We may take the following action:

- decide, from information we have gained about the setting, that the person does not need to register with us and confirm this in writing
- refer the information to the local authority and/or police where it suggests child protection concerns
- convene a case review, where the information suggests that a setting should be registered.
-

Making the decision on action for unregistered providers and/or managers

334. If the information we receive suggests that a person should be registered, we convene a case review to determine what action to take next. See ‘Decision-making and case reviews’ for full details. At the case review, we must consider:

- the attitude and intentions of the person, including whether they intend to keep operating or managing
- any history that we know about the person
- the risk to children, young people and adult service users
- the knowledge of the person about the requirements to register
- whether the person sought advice from Ofsted previously about the need to register, and what advice they received.

335. We may decide to:

- invite the person to an interview under a Police and Criminal Evidence Act 1984 caution⁹²
- prosecute the person for committing an offence following an interview under caution
- write to the person telling them that they must register and request that they submit an application, preferably immediately but in all cases within 20 working days
- conduct visits to the setting to ensure that it has ceased operating.⁹³

336. In all cases, where we believe that a setting is operating without registration, we must inform the 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 that we are taking. The inspector or compliance colleague must share the information on the placing authorities involved with the whistleblowing team so that this information can be considered as part of the local authority's inspection.

337. Where we have previously informed a person that they must register with us and they have failed to do so, we must decide what compliance action we should take, including considering whether to prosecute them. Only in exceptional circumstances should we provide them with a further opportunity to submit an application for registration to us.

Unregistered managers⁹⁴

338. We have guidance for our inspectors on circumstances where a children's home, residential family centre or holiday scheme is operating without a registered manager or where they have a manager in place who is not registered with Ofsted.⁹⁵ We must follow this guidance for these settings.

339. For fostering agencies and adoption support agencies, if we discover that a person is acting as the manager and is not registered, we must inform them that this is an offence. The inspector should seek guidance from a compliance colleague or Regulatory Inspection Manager as to whether it is appropriate to caution the person under the Police and Criminal Evidence Act 1984. It may be appropriate in circumstances where:

⁹² Police and Criminal Evidence Act 1984 Codes of Practice; www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/.

⁹³ Under section 31(2) of the Care Standards Act 2000.

⁹⁴ It is important to note that this does not extend to voluntary adoption agencies, as managers of these agencies are not required to register with Ofsted.

⁹⁵ *Conducting inspections of children's homes from 1 April 2014*, (100194), Ofsted 2014, : www.ofsted.gov.uk/resources/100194 *Conducting inspection of residential family centres*, (130055), Ofsted 2014; www.ofsted.gov.uk/resources/130055 and *Conducting inspections of residential holiday schemes for disabled children*, (140142), Ofsted 2014: www.ofsted.gov.uk/resources/140142.

- the person has been in post for a long time without registration
- the person does not intend to register
- there are safeguarding concerns and/or a poor level of care being provided to service users
- there are other breaches of regulations
- the person or provider may have committed other offences.

Inviting the person to an interview under the Police and Criminal Evidence Act

340. If we are considering prosecution, we must invite a person to interview under the Police and Criminal Evidence Act 1984. See 'Offences and prosecutions' for full details.
341. At the conclusion of the interview, we tell the person whether we believe the setting they are providing or managing requires registration. If we require them to register, we also tell the person that if he or she continues to operate without registration it is an offence.
342. We convene a case review to determine what action to take next, including whether or not to prosecute.

Applying for registration

343. In all cases, where we discover settings that require registration, a person **must** register with us if he or she wishes to continue providing or managing the setting.
344. We **cannot** allow an unregistered person to continue to provide or manage a setting that requires registration, as this would condone the committing of an offence. This means that we cannot allow a person to provide a setting that requires registration while they are going through the registration process. We write to the person informing them that:
- they are providing or managing a setting without registration. We inform them that this is an offence for which we are not taking action against at the current time
 - they must register with Ofsted if they wish to continue providing or managing the setting. We provide a timeframe of 28 days from the date of our letter for the person to submit their application for registration
 - they must cease providing or managing the setting immediately and throughout the entire registration process. If they continue to provide or manage, this is an offence for which we may prosecute them

- if we do not receive their application within 28 days we will consider taking further action against them.

345. It is important to recognise that the requirement for a person to stop providing or managing the setting immediately is likely to result in children and young people needing to move from a children's home or holiday scheme, or families moving from a residential family centre. Although this will be disruptive to these children, young people and families, the safeguarding risk of them using an unregistered home or holiday scheme, or being assessed at an unregistered residential family centre, must be given priority.

346. An application to register does not exempt someone from the offence they have committed or continue to commit.

Conducting visits⁹⁶

347. We should consider, as part of a case review, whether we should conduct visits to ensure that the person ceases to carry on or manage an unregistered setting. The case review should determine the frequency of these visits.

348. If, on a visit, we discover that a person has continued to provide or manage an unregistered setting, we must convene a case review to determine what action to take. This may include prosecuting for an offence. We must ensure that the details of our decision and the reasons for this decision are recorded on Office Base.

⁹⁶ Under section 31(2) of the Care Standards Act 2000.

Refusal to grant registration

349. 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. Paragraphs 259 to 307 of that handbook set out the factors we consider and who has the power to make recommendations about refusing a registration.
350. We may have concerns about an application for registration early on in the application's process. This may include, for example, receiving a statement of purpose that is not sufficiently detailed or tailored to the setting, or where a DBS disclosure 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 the Regulatory Inspection Manager, Senior Practitioner or Social Care Compliance Inspector and record a summary of the discussion and any actions or approach agreed as part of a compliance case in Office Base.
351. This does not necessarily mean that we have sufficient grounds to propose refusing the registration. Rather, it provides an opportunity for us to formally record our thinking about the application; to articulate the nature of our concerns; and to record the steps that we are taking with regards to them. It is very important that we keep this record to support our final registration decision.
352. 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 with the Regulatory Inspection Manager or compliance colleague in a case discussion.
353. If, after completing the check, the inspector recommends that the registration be refused, we must convene a case review. See 'Decision-making and case reviews' for further information.

Factors to consider in decision-making about registrations

354. 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, such as being fit to provide or manage a social care setting caring for highly vulnerable children, young people and adults. Lodging an application for registration is, therefore, a serious step; it is not an opportunity for a person to 'test the waters' to see if their proposed setting or manager is suitable for

registration or what they need to do to improve in order to be granted registration.

355. 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 and also the following:

■ Quality of the application

- Did the applicant provide all of the necessary information in a well-organised and timely manner? Or does the application contain vague, ambiguous, non-specific or incomplete information?
- Does the statement of purpose and other policies show a detailed understanding of the setting that the applicant intends to run?
- Does the applicant demonstrate a solid understanding of the regulations, standards and other legislation?
- Does the applicant clearly demonstrate how they will achieve positive outcomes for children, young people or adults?

■ Integrity and good character

- Did the applicant make any false or misleading statements on their application? (This is also an offence. See 'Offences and prosecutions' for more details)
- Has the applicant attempted to withhold any information from Ofsted which they should have informed us about?
- Has the applicant informed us of any changes to their original registration information in a timely manner?
- Has the applicant met any requests from Ofsted for further information in a timely manner?
- Has the applicant met any requirements or other actions set by Ofsted during the application process in the correct timeframe?
- Has the applicant attempted to start operating or managing the setting before or during the registration process? (This is also an offence. See 'Offences and prosecutions' for more details)

■ Fitness of the responsible individual and manager

- Do we have any concerns about the persons nominated as the responsible individual or appointed as the manager?
- Has the provider applicant withdrawn or changed the person put forward as the responsible individual due to concerns about their suitability? Further information on this is below.

356. Where we decide to refuse a registration, it is important that we proceed through the notice of proposal, representations and, where appropriate, notice of decision stage in order to:
- ensure that a person who has applied for registration to carry on or manage a children's home, and has been refused, is disqualified from involvement in a children's home in future unless they are granted written consent
 - ensure that a person who has applied for registration to carry on or manage a children's home, and has been refused, is disqualified from involvement in childcare and childminding in the future unless they are granted a waiver
 - there is a clear record of our concerns about the person and our reasons for refusing registration for us to refer to in the event that the person seeks registration again and/or in assessing a person's ongoing fitness if they hold other registrations with us.
357. It is important to remember that the law and our guidance on registration for applicants clearly state the consequences for a person if they have their application for registration refused; an applicant accepts this risk at the point that they submit an application form to us.
358. Although we have published timescales in which we will decide most registration applications, there may be occasions where we will extend these timescales in order to complete the full registration determination process. Where this is the case, we must make sure that we record why there has been a delay in processing the application and keep the applicant up to date with the application's progress. The safety and protection of children, young people and adult service users is our utmost consideration over any other.

Withdrawal of an application for registration

359. An applicant may withdraw their application for registration at any point, up until either:
- their registration has commenced
- or
- they have filed an appeal with the First-tier Tribunal.
360. There may be occasions where we have concerns about an applicant, but 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 give us the power to refuse a person's withdrawal (unless one of the above events have 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 Office Base before closing the compliance 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.⁹⁷

Impact of withdrawal of a manager’s application, or change to a responsible individual, on a provider’s fitness

361. There may be occasions where a manager withdraws their application or where the provider applicant changes the person that they have nominated to be the responsible individual, where there are concerns about the suitability or fitness of these people.
362. Where this occurs, we will consider any withdrawn applications for a manager or change of the responsible individual in our assessment of a provider’s fitness, where we have information that the provider was in some way involved in the manager’s withdrawal of their application to register. This includes where we are considering an application for registration by a new provider and where a provider is already registered and has put forward a new manager or responsible individual.
363. For example, a person is applying to be the provider of a residential family centre. We have received the manager’s application for the setting and the person nominated to be the responsible individual. It becomes evident during the ‘fit person’ interviews that we have concerns about the fitness of the manager and the suitability of the responsible individual. Following the interviews, the provider encourages the manager to withdraw their application and the provider informs us that they have nominated a new responsible individual.
364. Under regulations 5(3), 6 and 7 of the Residential Family Centre Regulations 2002, the provider is required to appoint a responsible individual (if the provider is an organisation) and a manager who are fit and suitable and who they have full and satisfactory information about. Therefore, where we find that we have concerns about the suitability and fitness of the manager applicant or nominated responsible individual, we must consider how this reflects on the provider’s fitness as it questions their ability to meet the regulations.
365. 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 they have been provided with incorrect or incomplete information. 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 consider making

⁹⁷ We are required to retain information from all applications for registration that we receive in order to comply with regulation 3(5) of the Care Standards Act 2000 (Registration)(England) Regulations 2010.

inquiries into the fitness of the employer who provided the false or misleading reference if they are registered with us.

366. We make these considerations in a case review and keep a detailed record of our decision and reasons on Office Base.

Granting registration with conditions that have not previously been agreed by the applicant

367. 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*.
368. 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 children, young people and adult service users or to address specific issues relating to that setting type.
369. We make this decision at a case review. See 'Decision-making and case reviews' for more details.

Drafting the notice of proposal

370. Following the decision at the case review, the inspector must draft the notice of proposal to grant registration with conditions within **five days** of the decision.⁹⁸ 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*.
371. We must serve the notice of proposal in line with our procedures in 'Serving a notice'.
372. 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 'Representations' for further details.

Notice of decision and issuing the new certificate of registration

373. Where we issue a notice of decision to grant registration with conditions, which 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.
374. 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.

⁹⁸ This timeframe may be longer where the notice is reviewed by an external legal adviser.

Failure to comply with conditions of registration

375. It is an offence for a person to fail to comply with conditions of their registration, **without reasonable excuse**.⁹⁹ See 'Offences and prosecutions' for further details. Where a person fails to comply, we must convene a case review and consider what further action we will take against them, including prosecuting for an offence or cancelling registration.

⁹⁹ Section 24 of the Care Standards Act 2000.

Imposing, varying or removing conditions of registration

376. We may decide to impose, vary or remove conditions of registration as part of our compliance action. We can do this through two processes:

- by a notice of proposal and notice of decision¹⁰⁰

or

- by application to a magistrate.¹⁰¹ Detailed information on this emergency process for imposing, varying or removing conditions of registration is available at 'Emergency action'.

377. For an application to a magistrate, section 20(a) of the Care Standards Act 2000 provides the threshold for taking this action. We will do this if:

- we have evidence to show that unless an order is made, there is or would be an immediate, 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

and

- the immediate risk to children, young people and adult service users outweighs any other detrimental effect to them resulting from the order.

378. For the removing, varying or imposing of conditions by notice, section 13(a) of the Care Standards Act 2000 does not provide a threshold for when we should take this action; it is at Ofsted's discretion to use this power as it thinks fit. The threshold that we adopt 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 outcomes for children, young people and adult service users.

379. We must ensure, however, 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 that legal obligation by other means.

380. We make the decision to impose, vary or remove conditions of registration in a case review. See 'Decision-making and case reviews' for further details.

¹⁰⁰ Section 13(A) of the Care Standards Act 2000.

¹⁰¹ Section 20(a) of the Care Standards Act 2000.

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

381. 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 compliance colleague must finalise the notice within **five working days** of making the decision.¹⁰²
382. The inspector must ensure that the conditions that we are proposing to vary or impose are worded in line with our guidance in Annex I and Annex M of the *Social Care Registration Handbook*.
383. We must serve the notice of proposal in line with our procedures in 'Serving a notice'.
384. 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 'Representations' for further details.

Notice of decision and issuing the new certificate of registration

385. Where 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 been lodged, or the First-tier Tribunal has heard and dismissed the appeal, the decision will take effect.
386. 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.

Failure to comply with conditions of registration

387. It is a criminal offence for a registered person to fail to comply with their conditions of registration, without reasonable excuse.¹⁰³ See 'Offences and prosecutions' for further details. Where a person fails to comply, we will consider this in determining a person's ongoing fitness to be registered. In such circumstances, we must convene a case review and consider what further action we will take against the person, including prosecuting for an offence or cancelling registration.

¹⁰² This timeframe may be longer where an external legal adviser is reviewing the notice.

¹⁰³ Section 24 of the Care Standards Act 2000.

Cancellation of registration

388. 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.

Our powers to cancel registration

389. 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). See 'Emergency action' for further details on this.

390. A registered provider or manager may also apply to Ofsted for the cancellation of their registration.¹⁰⁴ 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*. 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.

391. If a person, whose registration is cancelled, carries on or manages a social care setting they will be committing a criminal offence.

Grounds and threshold for cancelling registration

392. 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.

393. The grounds, which we can apply in cancelling a registration are, if:¹⁰⁵

- the registered person has been convicted of a relevant offence¹⁰⁶

and/or

- any person is convicted of a relevant offence in relation to the establishment or agency¹⁰⁷

¹⁰⁴ Section 15(1)(b) of the Care Standards Act 2000.

¹⁰⁵ A minimum of one ground must be met. However, there may be circumstances where more than one ground is met for cancelling a registration.

¹⁰⁶ Section 14(1)(a) of the Care Standards Act 2000.

and/or

- the agency or establishment is being, or has at any time been, carried on or managed otherwise than in accordance with the relevant requirements¹⁰⁸

and/or

- the registered person has failed to comply with a compliance notice¹⁰⁹

and/or

- the registered person has failed to pay a prescribed fee¹¹⁰

and/or

- the registered person has made a statement which is false or 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 registration¹¹¹

and/or

- the establishment or agency has ceased to be financially viable, or is likely to cease to be so within the next six months.¹¹²

394. When using the above grounds for cancellation, we also apply the following **thresholds**. Whether:¹¹³

- a child, young person or adult service user has been exposed to, or has suffered, serious harm or injury

and/or

- 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

¹⁰⁷ Section 14(1)(b) of the Care Standards Act 2000.

¹⁰⁸ Section 14(1)(c) of the Care Standards Act 2000.

¹⁰⁹ Section 14(1)(ca) of the Care Standards Act 2000.

¹¹⁰ Section 14(1)(d) of the Care Standards Act 2000 and Regulation 12(a) of the Care Standards Act 2000 (Registration) (England) Regulations 2010.

¹¹¹ Section 14(1)(d) of the Care Standards Act 2000 and Regulation 12(b) of the Care Standards Act 2000 (Registration) (England) Regulations 2010.

¹¹² Section 14(1)(d) of the Care Standards Act 2000 and Regulation 12(c) of the Care Standards Act 2000 (Registration) (England) Regulations 2010.

¹¹³ These thresholds are set by Ofsted as a matter of policy. In order to cancel a registration, at least one ground and at least one threshold must be met. There may be circumstances in which more than one ground and/or more than one threshold are met.

and/or

- other compliance action has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale

and/or

- there is minimal evidence to suggest that the registered person is acting purposefully to resolve the matter within a reasonable timescale.

'Relevant requirements'

395. 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.¹¹⁴

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

397. 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

398. 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 it¹¹⁵
- any offence under the Children Act 1989 or regulations made under it¹¹⁶
- an offence under the regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999¹¹⁷

¹¹⁴ Section 14(3) of the Care Standards Act 2000.

¹¹⁵ Registered Homes Act 1984 (repealed).

¹¹⁶ Children Act 1989.

¹¹⁷ Adoption (Intercountry Aspects) Act 1999.

- an offence under the Adoption and Children Act 2002 or regulations made under it¹¹⁸
- an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part.¹¹⁹

Making the decision to cancel a person's registration

399. Cancellation is our strongest compliance power so we only use it where it is appropriate to do so and where we have ruled out any other lesser options as a way of ensuring compliance with the regulations.
400. In some cases, we may take other compliance action before taking steps to cancel a registration. This is dependent on the history of the registered person and the seriousness of the breach/es. For example, where a setting has received poor inspection judgements and has a history of non-compliance over a period of time, we may take other compliance action first, such as issuing a compliance notice requiring the registered person to put matters right.
401. 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 the relevant regulations, we may decide to cancel their registration. Where a combined approach as described above is being considered, legal advice **must** be sought to ensure that the approach does not jeopardise the longer-term compliance action. See 'Legal advice and policy advice' for more details.
402. In other cases, we may decide to cancel a person's registration without taking any other compliance action first. This may occur where there has been a breach resulting in serious harm or risk to a child, young person or adult service user. For example, where a service user has died, been seriously injured, committed a serious criminal offence or been put at serious risk as a result of a breach/es by the registered person.
403. We may also move to cancel a registration, without taking any previous action, where children, young people or adult service users remain at risk of serious harm.
404. Additionally, we may cancel a person's registration where there is evidence that they are no longer 'fit for registration'. For example, where a person has demonstrated a significant lack of integrity and good character (including the consideration of any new criminal convictions) and/or where the person has not exercised appropriate skill, care and competence as a registered person.

¹¹⁸ Adoption and Children Act 2002.

¹¹⁹ Health and Social Care Act 2008.

405. We will also consider cancelling a provider's and/or a manager's registration of a children's home where the home has been judged as 'inadequate' for overall effectiveness at the last two full inspections.¹²⁰ For such action to be effective, we must be able to satisfy the legal grounds for cancellation as listed above.
406. 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 and possibly contact with family and friends or their place in school or college. When we are considering cancellation, we maintain an open dialogue with placing authorities to ensure that any cancellation has the most minimal impact on service users as possible.
407. We make decisions about cancelling a registration at a case review. See 'Decision-making and case reviews' for full details. We must ensure that the case review carefully considers:
- managerial accountability (consideration of whose registration we should be cancelling)
- and
- twin-track cancellation.
408. Further details on these are below.
409. Our evidence must show 'on the balance of probabilities' that our decision to cancel a person's registration is proven and justified.
410. Where we are considering cancelling a registration, we maintain a full audit trail of our contact and communication with the registered person during the cancellation process and a full record of our evidence and decision-making.

Twin-track cancellation

411. 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.
412. 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 child, young person or adult service user, but that the registered person is also no longer fit for registration. This is because, in the event of the registered person appealing against the emergency cancellation, even if we cannot demonstrate to the Tribunal's satisfaction that the criteria for emergency cancellation is met, we

¹²⁰ See *Conducting inspections of children's homes* for further information: www.ofsted.gov.uk/resources/100194

are likely to have a strong enough case to demonstrate to the Tribunal that the registered person is no longer fit for registration.

Managerial responsibility

413. We must consider which person registered in respect of the setting we should be taking cancellation action against. We may cancel the registration of the registered provider or the registered manager or both.
414. 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 is being used as the ground for cancellation. As detailed in 'Decision-making and case reviews' the regulations will often make the 'registered person' responsible. This is both the registered provider and the registered manager.
415. We must carefully consider the action or inaction of both persons in the breach/es and consider how this affects their overall fitness. It may be appropriate for us to cancel the registration of both the registered provider and the registered manager. In these cases, we must carefully consider any evidence which suggests that a specific registered person is not responsible. For example, where a registered manager has been trying to rectify the situation but has been overruled by the registered provider.
416. In all cases, we must carefully record in Office Base our discussion about managerial responsibility and the reasons for our decision as to whom we are taking cancellation action against and why.

Drafting the notice of proposal to cancel

417. We serve notices of proposal to cancel registration in writing using our standard notice format.¹²¹
418. The inspector must draft the notice 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 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)

¹²¹ The notice of proposal and notice of decision procedure is set out in the Care Standards Act 2000.

- the registered person's right to make representations, in accordance with the Care Standards Act 2000, section 18(1).

419. Once the notice is drafted, the inspector must send it to the Social Care Compliance Inspector for review to ensure that it contains all of the relevant information required. The inspector **must** then send the notice to the legal services inbox. Legal services will allocate it to a panel solicitor for review. The final version of the notice is signed-off by the decision-maker within one day of receiving it.¹²² The review and any redrafting of the notice must be completed within **one week** of making the decision to cancel.¹²³ In order to meet this timescale, time should be booked with the panel solicitor to prevent drift.

Serving the notice

420. We must serve the notice in line with our procedures in 'Serving a notice'.

Registered persons applying to cancel their registration

421. 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).¹²⁴ Where a registered person applies to do this, and we do not have concerns about them, then we should consider their request in line with our procedures in the *Social Care Registration Handbook*.

422. 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

423. 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.

424. Where we have serious concerns about the person, we may 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

¹²² There may be occasions when the decision-maker is unable to sign the notice, such as due to illness or absence from work. Where this occurs, another colleague involved in the case review should sign the notice.

¹²³ There may be occasions where this time frame is longer, due to an external legal adviser reviewing the notice.

¹²⁴ This request must be made in accordance with regulation 13 of the Care Standards Act 2000 (Registration) (England) Regulations 2010.

become disqualified from future involvement in children’s homes, childcare and child minding. Any such notice of proposal must be served urgently.

425. 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.¹²⁵
426. 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 the inspector and compliance 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

427. 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)
- or
- served a notice of decision to cancel registration and the time limit to make an appeal has not expired or an appeal has been made and the appeal has not yet been determined by the Tribunal.
428. 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.
429. 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

¹²⁵ We consider this on a case-by-case basis and ensure that any information we share is both necessary and proportionate.

- Has the person made an appeal to the Tribunal that it has not yet determined?
430. If either of the above apply, 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.
431. 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 in Office Base as we may need this record in any future appeal to the Tribunal. 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 returning the application to voluntarily cancel as we may be criticised for not considering the request as it has the potential to achieve the same outcome as we are seeking through our cancellation by notice. That is, to stop the person from carrying on or managing the setting any longer.
432. 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 because they have ceased to be financially viable. In this case, an appropriate outcome is achieved (i.e. the person ceasing to carry on the setting) by accepting the voluntary cancellation.
433. In other cases, we may consider it is appropriate for us 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 that 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 engage the disqualification regime.
434. Following the case review, we will write to the registered person informing them of why we are, or are not, accepting their request for voluntary cancellation. The letter must include an outline of the reasons for the action we have decided to take (whether we are accepting their application to voluntarily cancel or not and why).
435. Where we decide not to accept their request, we must continue with our own cancellation action.
436. We record all decisions about requests for voluntary cancellation of registration on Office Base.

Issuing a further notice of proposal following new concerns

437. 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 fresh 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.

Representations

438. 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.

439. See 'Representations' for further details.

Monitoring visits

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

441. We consider the evidence gathered after each monitoring visit. This includes whether the evidence shows any significant change that may require further action or a cessation of the cancellation process. There may be occasions where the quality of services has deteriorated to a level where we believe there is a serious risk to a child, young person or adult service user. 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.

442. 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.

443. We publish monitoring reports of children's homes, which have been judged inadequate at two sequential full inspections.

The notice of decision to cancel

444. We issue the notice of decision after the period for representations has passed or after the representations have been heard.

445. 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.
446. Where we are using a panel solicitor, we must send the notice of decision to them for review. We must 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 the representations. We must act promptly to show the seriousness of our concerns which justify our decision to cancel registration.
447. 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.
448. 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.¹²⁶

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

449. 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. We do this because we must only use our compliance powers where we can justify that the power is being used fairly, reasonably and proportionately. As such, the Tribunal may uphold an appeal where the person has made improvements between the issuing of the notice of decision and the appeal which means that the cancellation cannot be justified.
450. However, in some cases, making improvements will not be sufficient to demonstrate that cancellation is not justified. For example, in a case where a breach has occurred resulting in serious harm or injury to a child, young person or adult service user, we may consider that the fact the breach occurred in itself is sufficiently serious for a registered person to no longer be considered fit for registration and that cancelling their registration is appropriate and justified. We must ensure that our reasons for this are clearly documented.
451. Where significant improvements have occurred, we may decide at a case review that we will no longer pursue a proposal to cancel or defend the registered person's appeal. If this occurs, we must inform the registered person and, if appropriate, the Tribunal of the reasons for our decision, namely that we

¹²⁶ Guidance on this is available on the intranet.

believe the registered person has made significant progress, 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

452. Registered persons may appeal to the Tribunal against our decision to cancel their registration. The Tribunal gives weight to evidence that demonstrates that we have made efforts to work with registered person to deal with issues. It assesses whether our step to cancel is proportionate and appropriate. See 'Appeals' for further details.
453. 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.¹²⁷

Appeals involving 'twin-track' cancellation

454. 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.¹²⁸
455. If a Tribunal overturns our decision to cancel a registration in an emergency we may decide to issue a further notice of proposal to cancel. If we decide this is the proper course of action, we should do so immediately after the appeal was upheld.

When a cancellation takes effect

456. 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.¹²⁹
457. Once the cancellation has taken effect, the inspector must send a letter to the person informing them:
- that the cancellation has taken effect
 - that they will be committing an offence if they continue to carry on or manage the setting

¹²⁷ Guidance on this is available on the intranet.

¹²⁸ *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*: www.ofsted.gov.uk/resources/100242

¹²⁹ We interpret 'determined' as when the First-Tier Tribunal (Health, Education and Social Care Chamber) has made its decision about the appeal. The only exception to this is if the Tribunal stays the effectiveness of its decision, for example until a further appeal is determined.

- that they must return their certificate of registration to Ofsted¹³⁰
- where they are an individual cancelled in respect of a children's home, that they are now a disqualified person in respect of 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.

458. When a cancellation takes effect, the social care compliance colleague must arrange for a supplementary notification to be sent to every local authority in England and Wales notifying them of this fact.¹³¹

Consequences of cancellation

459. Where 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.¹³²

460. Where the cancellation relates to a national provider, the Social Care Compliance Inspector must ensure that the senior HMI responsible for that national provider is fully briefed on the compliance action taken.

461. Where an individual has their registration cancelled in respect of a children's home, they become 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 child care. It is important to note that such disqualification can only attach to an individual and not a corporate body. Where an organisation, such as a limited company or a limited liability partnership, has had its registration cancelled the organisation does not become disqualified.

462. However, any individual who was otherwise concerned in the management of or had a financial interest in the children's home at the time either the provider's or the manager's registration was cancelled, will become disqualified.¹³³ In short, this means that the responsible individual for the children's home will become disqualified as well as the registered manager and any individual with a financial interest in the home.

¹³⁰ Paragraph 9 of Care Standards Act 2000 (Registration) (England) Regulations 2010: the certificate must be returned by delivering it or sending it by registered post or recorded delivery.

¹³¹ Guidance on this is available on the intranet.

¹³² See Memorandum of understanding between the Care Quality Commission and the Office for Standards in Children's Services, Education and Skills: www.ofsted.gov.uk/resources/20110016.

¹³³ Regulation 2(7)(c) of the Disqualification from Caring for Children (England) Regulations 2002.

463. Where a person becomes disqualified, they must apply to Ofsted for written consent if they wish to carry on, manage or have a financial interest in a children's home. 'Managing' includes any management role, including oversight, of a children's home (this will include a responsible individual). If the person wishes to work at a children's home, their employer (the registered provider) must apply to Ofsted for written consent to employ them at the home. If a disqualified person wishes to be involved in childminding or childcare, they must apply to Ofsted for a waiver under the provisions of the Childcare Act 2006.
464. It is an offence under section 65 of the Children Act 1989 for a disqualified person to carry on, manage, have a financial interest in or work at a children's home without written consent.
465. See 'Disqualification and written consent' for further information.

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

466. There may be occasions where we decide it is appropriate to cancel a provider's registration, but not the manager's registration, 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 which satisfy cancellation.
467. 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.
468. In these circumstances, we must write to the manager and ask them to apply to us to 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.
469. If the manager refuses to do this, we must take action to cancel their registration. We should do this by issuing a notice of proposal to cancel under section 14(1)(c) of the Care Standards Act 2000. In such circumstances, we **must** consult with Legal Services.

Managers registered in respect of children's homes

470. 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. This occurs by virtue of regulation 2(7)(c) of the Disqualification from Caring for Children (England) Regulations 2002. The manager must immediately apply to

Ofsted for written consent where they hold any other registrations with us otherwise they will be committing an offence.¹³⁴

471. Regarding the registration that the manager holds for the cancelled children's home, we must follow the process outlined above and write to the registered manager asking them to apply to voluntarily cancel their registration. Before ending their registration, we must record on Office Base that the manager is now a disqualified person and detail the circumstances leading to their disqualification (that is, that they are disqualified by virtue of the provider's cancellation and that we do not hold any concerns about the manager directly). This is important information that we will refer to in the future if the manager applies to Ofsted for written consent.
472. 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 manager

473. 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 this 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.
474. 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.¹³⁵ They also become disqualified from involvement in childminding and child care.

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

475. 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's.
476. 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

¹³⁴ Section 65(4) of the Children Act 1989.

¹³⁵ Regulation 2(7)(b) of the Disqualification from Caring for Children (England) Regulations 2002.

under section 14, we must write to the registered manager and invite them to apply to voluntarily cancel their registration.

477. 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

478. We do not routinely carry out a visit after a cancellation has taken effect but we will do so if we have identified a risk that is a cause for concern.¹³⁶ 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 that they may operate without registration
- where we receive information that suggests the person is providing or managing a social care setting which requires registration.

¹³⁶ Section 31(2) of the Care Standards Act 2000.

Emergency action

Introduction

479. 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 compliance power we have
- impose, vary or remove conditions of registration.

Emergency Suspension

480. We may also suspend a person's registration in an emergency, however we do not need to apply to a magistrate to do this.¹³⁷

481. See 'Suspension of registration' for further details.

Threshold

482. 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-being¹³⁸

and

- any other action is unlikely to reduce the risk to a person's life, health or well-being

and

- 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

483. Any decision to seek an emergency order must be made through a case review (see 'Decision making and case reviews'). If we decide to take emergency action, we approach our legal services team, who arrange for a private solicitor to represent us.

484. See 'Legal advice and policy advice'.

¹³⁷ Section 20B of the Care Standards Act 2000.

¹³⁸ Section 20(1)(b) of the Care Standards Act 2000.

Seeking an order

485. Once we have decided to seek an emergency order, we must act quickly because of the urgent nature of the application. 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.
486. 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 is likely to happen and that the consequences for them are serious, for example a service user may die or suffer abuse or significant harm¹³⁹
 - 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 – this means we disclose all material evidence to the court, including any evidence that does not support our case; and our witness statements contain a statement that the writer understands and has complied with their duty of full and frank disclosure to the court.
487. A magistrate only grants such an order if it appears to them that the evidence meets the threshold for an emergency order.
488. 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 and ex parte applications¹⁴⁰

489. Via our solicitor, 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.

¹³⁹ The test for ‘likely to suffer’ considers whether there is a real possibility that a child will suffer significant harm. The existence of danger, as an action or omission, is not sufficient grounds in itself. We must provide evidence to support the view that the danger poses a real possibility of significant harm, or serious risk of harm, occurring as a result.

¹⁴⁰ Inter parte – with both parties present.

490. 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.

491. We only make an *ex parte* application in exceptional circumstances, where: ¹⁴¹

- the risk is so serious that the application must be made straightaway and there is no time to notify the other party

or

- notifying the other party would risk that they would destroy evidence

or

- notifying the other party would place children, young people or adult service users at risk of harm

or

- 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 on Office Base.

492. Where we make an *ex parte* application, we carefully record the reasons why we have done so in Office Base.

Note of the hearing

493. 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.

494. The note is not a verbatim record of the hearing, but as full a summary as possible.¹⁴² We decide who will take the note during the case review.

The magistrate's order

495. 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 that the magistrate grants it.¹⁴³

¹⁴¹ Ex parte – with one party absent.

¹⁴² It is good practice to take a note at inter parte hearings as well.

¹⁴³ Section 20(1) of the Care Standards Act 2000.

496. 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 determined. The Tribunal operates an expedited process for appeals against a magistrate's orders.¹⁴⁴
497. See 'Appeals' for more details.
498. 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

499. 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.
500. 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

501. We must inform the appropriate authorities immediately after making an application for emergency action.¹⁴⁵ The appropriate authorities are:
- the local authority in whose area the setting is situated
 - any statutory authority which we think it appropriate to notify.¹⁴⁶
502. This should include any local authority that has a child, young person or family placed with the setting.
503. We record details of who we notified and reasons for this in Office Base.
504. We should also consider whether a referral to the Disclosure and Barring Service is appropriate.

¹⁴⁴ *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*. www.ofsted.gov.uk/resources/100242

¹⁴⁵ Section 20(3) of the Care Standards Act 2000.

¹⁴⁶ Section 20(6) and (7) of the Care Standards Act 2000.

505. See 'Referrals to the Disclosure and Barring Service' for further details.

Part 3: Other aspects of compliance work

Decision-making and case reviews

506. We make decisions about whether to take compliance action. Case thinking, case discussions and case reviews form a critical part of our decision-making process. From the point that we receive information about a setting to the closure of a compliance case, these 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 thinking and case discussions are for basic decision-making and case recording while case reviews are for significant decision-making.
507. See Table 3 for further information.
508. It is important to note that there is no clear order in which case thinking, case discussions and case reviews must take place. Rather, we adopt a fluid approach moving between them as a case and its circumstances require.
509. The fundamental principle underlying all of our decision-making is reducing the risk of harm to children, young people and adult service users and promoting their welfare and the quality of service that they receive.

Case thinking

510. Case thinking provides inspectors and compliance colleagues with an opportunity to record their thoughts on a compliance case. It allows us to add information to the story about a setting or registered person to provide as detailed a picture as possible about their strengths, weaknesses, opportunities and threats to properly judge their ability to provide a quality and safe service that complies with the law. It also provides an opportunity to consider if further guidance or advice is required, such as seeking legal advice early on in a compliance case. See 'Legal advice and policy advice' for further details.
511. Case thinking may occur:
- when an inspector or compliance colleague has examined documentation and/or evidence and wishes to record their findings about this (for example, an examination of the previous inspection reports for a setting and what they show)
 - following case discussions, as an analysis of what those discussions have told us about the concern and the case
 - any strategic thinking about a case. For example, if an inspector or compliance colleagues believes that advice is required from policy or legal

colleagues, or that they need to gain further information before holding a case discussion or case review.¹⁴⁷

512. We carefully record each stage of our case thinking in the compliance case in Office Base.

Case discussion

513. 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 Regulatory Inspection Manager or compliance colleague to discuss 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 Regulatory Inspection Manager or compliance colleague to identify whether it is appropriate to hold a case review to make a significant decision
- a conversation with the LADO or the police about the concern
- a conversation with a registered person about the concern
- a conversation or discussion with any other person about the concern or case.

514. See the 'Quick guide' for further details.

515. We implement decisions from the case discussion as soon as possible after we make them.

516. If a case discussion occurs, the inspector or compliance colleague must record a brief summary of the discussion and the actions arising from it in Office Base.

Case reviews

517. Case reviews are the process that we use to make significant decisions about a case, including taking statutory compliance 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 a decision about the action we will take.

518. The circumstances in which we hold a case review are set out in the 'Quick guide' and in Table 3 below.

¹⁴⁷ See 'Legal Advice and Policy Advice' for further details.

Participants in a case review

519. The attendees of a case review will depend on the complexity and nature of the case. However, as a minimum, a case review must include a decision-maker (or a person who recommends the decision), a social care compliance colleague, and a minute taker. We may include other colleagues, such as those from Policy or Legal Services, where we consider it is appropriate to do so. Full details of what decisions we make at a case review and case discussion and the level of decision-maker are available below. The decision-maker must sign a notice.

Table 3: Decision-making table for case discussions and case reviews

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other compliance process
1. Consideration of what action to take following a failure by a registered person to complete requirements set in an inspection report	Social Care Compliance Inspector or Senior Practitioner or Regulatory Inspection Manager attends case discussion or case review and makes decision.	Case discussion or case review
2. Compliance notice	Regulatory Inspection Manager or Senior Practitioner attends the case review and makes the decision.	Case review
3. Notice to refuse registration	Senior HMI attends the case review, 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	Regulatory Inspection Manager attends case review, makes the decision and notifies Senior HMI.	Case review
5. Notice to vary, impose or remove conditions of registration – other than at the provider's request	Regulatory Inspection Manager attends case review, makes the decision and notifies Senior HMI.	Case review
6. Notice to refuse a request to vary, remove or impose conditions of registration – at the provider's request	Regulatory Inspection Manager attends case review, makes the decision and notifies Senior HMI.	Case review
7. Warning letter issued after an interview under the Police and Criminal Evidence Act 1984	Regulatory Inspection Manager or Senior Practitioner attends case review and makes the decision.	Case review

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other compliance process
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 attends case review, makes the decision and notifies Regional Director.* In circumstances where a Senior HMI is not available to attend the case review, the case review must not be delayed. Rather, the Regulatory Inspection Manager should attend the case review, make a recommendation and provide a briefing to the Senior HMI who makes the decision and notifies the Regional Director.	Case review
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 attends case review, makes the decision and notifies Regional Director.	Case review
10. Notice to cancel registration	Senior HMI attends the case review, 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 attends the case review, makes the decision and notifies the Regional Director and National Director.*	Case review
12. Prosecution	Regulatory Inspection Manager attends the case reviews, makes the decision and notifies Senior HMI.	Case review
13. Offer a simple caution following an interview under the Police and Criminal Evidence Act 1984	Regulatory Inspection Manager or Senior Practitioner attends case review 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 attends case review, makes the decision and notifies Regional Director and National Director.* ~	Case review

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other compliance process
15. Suspension of registration (emergency process) or extension of suspension by emergency process	Senior HMI attends case review, makes the decision and notifies Regional Director and National Director.* ~	Case review
16. Give written consent for disqualification	Senior HMI attends case review and makes the decision.	Written consent case review
17. Representations against a notice of proposal	Senior HMI chairs the panel and makes the decision.*	Representations panel
18. Referral to the Disclosure and Barring Service	Regulatory Inspection Manager attends case review, makes decision and notifies Senior HMI.	Case review
19. Closing a compliance case	Regulatory Inspection Manager attends case review and makes the decision.	Case review

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

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

Roles in a case review

520. The following table sets out the roles and responsibilities for participants in a case review. The 'colleague' indicated in the table 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
Social Care Regulatory Inspector	<ul style="list-style-type: none"> ■ present the details of the concern/s, clearly identifying how these impact on children, young people and adult service users safety and welfare ■ detail how the concerns relate to the action or inaction of the registered provider (including the

Colleague	Role and responsibilities
	<p>responsible individual) and/or registered manager</p> <ul style="list-style-type: none"> ■ present a summary of regulations or legislation that have been breached ■ present clear, accurate and detailed evidence that can withstand challenge ■ provide a view on what compliance action should be taken ■ provide a view on what other action Ofsted should take, including informing placing authorities or preparing for press interest.
Social Care Compliance Inspector	<ul style="list-style-type: none"> ■ organise the meeting ■ chair the meeting ■ robustly review and, where appropriate, challenge the evidence provided ■ ensure that decisions are made to protect and promote the safety and welfare of children, young people and adult service users ■ ensure that all compliance options are considered and that the action taken is proportionate ■ complete the summary of the case review on Office Base, including entering actions resulting from the case review ■ attach the final version of the case review minutes onto Office Base following review by the participants.
Regulatory Inspection Manager	<ul style="list-style-type: none"> ■ support the Social Care Regulatory Inspector in presenting the case ■ ensure that the evidence presented at the case review is sufficiently robust ■ ensure that the decisions made protect and promote children, young people and adult service users' safety and welfare ■ ensure that the correct persons are identified for

Colleague	Role and responsibilities
	<p>taking action against (registered provider and/or registered manager)</p> <ul style="list-style-type: none"> ■ ensure that the correct persons are identified to be communicated with 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 ■ ensure that there is a clear and agreed plan for monitoring the setting.
Minute-taker	<ul style="list-style-type: none"> ■ draft the case review minutes ■ send the minutes to the participants for review ■ ensures the final agreed minutes are available on Office Base.
Decision-maker	<ul style="list-style-type: none"> ■ be balanced in their approach and ensure that all concerns are considered ■ ensure that decisions made protect and promote the safety and welfare of children, young people and adult service users ■ decide what compliance action, if any, we will take ■ ensure that decisions are proportionate ■ ensure that there is an appropriate timeline for completing all actions which prevents drift and delay ■ sign off minutes of the case review ■ sign off notices within five days of the case review.¹⁴⁸
Policy and/or Legal Services colleague	<p>To advise on policy and legal matters including:</p> <ul style="list-style-type: none"> ■ clarifying any areas of policy

¹⁴⁸ There may be occasions where this timeframe is longer, for example, where a notice is been reviewed by our external panel solicitors. There may also be occasions when the decision-maker is unavailable to sign the notice. In such cases, another colleague who was involved in the case review should sign it instead, so not to delay the serving of the notice.

Colleague	Role and responsibilities
	<ul style="list-style-type: none"> <li data-bbox="587 306 1305 376">■ clarifying any legal points, including the correct interpretation of the legislation <li data-bbox="587 412 1369 481">■ advising on the strength of evidence and whether it sufficiently meets the relevant thresholds.

Considerations in a case review

521. 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 provider and manager; information relating to any other setting registered to the provider or information from the manager's any previous registrations.
- *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 or a Disclosure and Barring Service check.
- *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.¹⁴⁹
- *Managerial accountability:* Clearly identifying who is accountable for the breach and who we should take action against (registered provider and/or registered manager).
- *Compliance options:* Full consideration of all compliance options open to us and why these are appropriate or not. This includes considering short-term and longer-term options, including using more than one form of compliance

¹⁴⁹ The evidential test of 'on the balance of probabilities' relates to the level Ofsted must prove when taking civil compliance action. 'Beyond reasonable doubt' is the evidential test relating to criminal compliance action.

action at the same time (where this is being considered, advice from Legal Services should 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 'Making referrals to the Disclosure and Barring Service' for more information.
- *Arrangements for serving of any notices:* Clarifying who will draft and serve notices and arranging legal review. See 'Serving a notice' 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. Booking time with external solicitors should be considered, preparing press or serious incident briefings and briefing senior managers.
- *Further compliance action:* Other compliance action we may take if the person fails to comply with our action.
- *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, if a person holds a registration with them, and/or parents and carers). This may include notifying a registered manager and/or responsible individual if we are taking action against the registered provider.
- *Regionalisation & linked settings:* The arrangements for notifying other Ofsted colleagues about the actions that we are taking, due to their involvement in other settings that are connected to the registered provider or registered manager. It is critical that we inform colleagues so they can consider this information in the context of the settings that they inspect and/or regulate. The case review must identify these settings (Office Base details linked settings) and inform the relevant colleagues.
- *Date of, or trigger for, next case review:* Identifying when the next case review will take place.

Other factors in making decisions

522. It is very important that we consider the full information about a case, in context, in deciding what action we will take. In all cases, we must ask the question:

'Given all of the knowledge that I have about this setting and the people connected to it, what is the information telling me?'

Short and long-term compliance action

523. As noted in the 'Quick guide', some of our compliance powers take effect in short-time frames while others take longer to take effect, due to representation and appeal periods. We may consider using a combination of short and long-term powers to safeguard children, young people and adult service users. Where we are considering this, we **must** see advice from Legal Services.

Fitness of registered persons

524. While it is important for our decision-making to focus on specific breaches of regulations and law, it is also important that we look at our evidence in a holistic manner about a registered person's overall fitness. This may include considering:

- the integrity and good 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 about significant events)
 - has been dishonest in the information they have provided? (for example, copying a statement of purpose or policy statement from a different setting or making misleading statements in their record-keeping)
 - has offered only limited or restricted information, rather than full and accurate information?
 - has attempted to obstruct Ofsted colleagues in carrying out their duties?
 - has been tardy in providing information to Ofsted or responding to requests for information from Ofsted? (for example, a notification received late)
- the registered person's (or in the case of a registered provider who is a corporate entity – the responsible individual's) knowledge of and compliance with the regulations, including:
 - if the registered person demonstrates a full understanding of the Acts, regulations and standards for the setting or do they appear to lack an understanding of these
 - has the registered person demonstrated that the safeguarding of children, young people and adult service users is their utmost priority?

- has the registered person taken the *Working together to safeguard children 2013* guidance into account in carrying on or managing the setting?¹⁵⁰
- has the registered person taken other guidance into account in carrying on or managing the setting? This includes, where applicable, *Statutory guidance on children who run away or go missing from home or care* and *Working together to safeguard children regarding child exploitation – Safeguarding Children and Young People from Sexual Exploitation*.^{151 152}

Managerial responsibility

525. In deciding what compliance action we will take, it is very important that we identify whom we should be taking this action against. 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).
526. In considering the evidence that we have, we must carefully look at who is responsible under the regulations and what evidence we have to show how their action or inaction contributed to the breach. The regulations state whether the 'registered person', 'registered provider' or 'registered manager' is responsible. In the bulk of cases, the regulations make the 'registered person' responsible, which includes **both** the registered provider and the registered manager.
527. 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.

¹⁵⁰ *Working together to safeguard children*, HM Government, 2013; www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children.

¹⁵¹ Statutory Guidance on children who run away and go missing from home or care www.education.gov.uk/aboutdfe/statutory/g00222839/children-who-run-away-and-go-missing-from-home-or-care

¹⁵² Safeguarding Children and Young People from Sexual Exploitation www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance

528. Inspectors and compliance colleagues must check the setting-specific regulations to check which registered persons are responsible for meeting each regulation.
529. 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 day-to-day charge
 - maintaining financial viability of the setting and holding appropriate insurance.
530. Where a registered provider fails in any of the above, we must question their fitness and consider taking action against them.
531. There may be some occasions where we are taking serious compliance 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 and why we are taking steps to cancel their registration, 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 Office Base our reasons for this.
532. See 'Cancellation of registration' for further details.
533. **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 that they appoint as the responsible individual is suitable to take on the role.
534. 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 that they are not).
535. The setting-specific regulations do contain a small number of regulations which place a duty directly on the responsible individual. This includes notifying Ofsted of any offences that 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 their action or 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.¹⁵³

536. It is important to note, however, that 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 also becomes disqualified. This extends to the responsible individual and will make them disqualified.¹⁵⁴ See 'Disqualification and written consent' for further details.

Recording decisions

537. We must carefully record our considerations of the above, including our consideration of whom we are taking action against and why, as part of our compliance case in Office Base. This forms a very important part of our record and reasons for decision if we are challenged in the Tribunal.

¹⁵³ Unless they commit an offence which we can prosecute any person for, such as obstruction. See 'prosecutions' for more detail.

¹⁵⁴ Regulation 2(7)(c) of the Disqualification from Caring for Children (England) Regulations 2002.

Representations

538. 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. 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. The representations panel will review and consider this information and evidence before making their decision.

Circumstances where a person is allowed to make representations

539. 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.¹⁵⁵

540. At this stage, we have not made a final decision to take the steps outlined in the notice of proposal. This gives the registered person or applicant an opportunity to explain to us why the proposed action should not be taken.

Timescales for making representations

541. A person must make their representations to us within **28 days** of the date that the notice of proposal is served or is deemed to be served.^{156 157} 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

¹⁵⁵ Section 18 of the Care Standards Act 2000.

¹⁵⁶ Section 18(1) of the Care Standards Act 2000.

¹⁵⁷ '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).

Email: enquiries@ofsted.gov.uk

542. If a person contacts us by telephone to inform us that they intend to make representations, we ask them to provide their representations in writing. We inform them that we cannot consider their representations unless we receive it in writing within the 28-day timescale.
543. We make a record, of the call and a summary of what we have told the person, in the compliance case on Office Base.

Representations received late

544. We may, on occasion, receive representations later than 28 days after we served the notice of proposal. In these cases, 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.
545. However, we must be aware that the Tribunal does consider what improvements a person has made from the time that Ofsted first took steps against them up to the date of the appeal, including whether we have considered any new information. Therefore, if we receive representations after we have issued the notice of decision, and where they include details of improvements or other information, we should treat this as new information and consider it in a normal case review, 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.
546. If we have not yet issued the notice of decision, it is at our discretion as to whether or not we consider the representations. We look at the reasons that the registered person or applicant has given for being unable to comply with the 28-day timeframe (for example, illness) and the safeguarding risk to children, young people and other service users of a further delay to our decision-making.
547. We record the decision about whether we accept the late representations and our reasons for this on Office Base.

Content of representations

548. A registered person or applicant should include any relevant information in their representations, which 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 sought advice from a solicitor or barrister and they wish to raise legal arguments, these should be included in the written representations.

549. The registered person or applicant should also say in the written representations if they wish to attend the representations panel in person. They must also state if they intend to bring a representative with them to the panel and the capacity of that person (for example, they must state if they are bringing a solicitor or barrister with them).

Receiving the representations

550. On receipt of a written representations, the social care compliance colleague will record this in Office Base and will write to the person acknowledging the receipt of their representations. The compliance colleague will then convene a representations panel.

Convening a panel

551. The Care Standards Act 2000 does not prescribe the format of the panel or the procedure it must follow; this is at our discretion. However, we must ensure that we genuinely review the original proposal through the representations process, and be able to provide evidence that we have done this if challenged. To do this, we follow the process set out below.

552. The panel will usually consist of:

- the original decision-maker¹⁵⁸
- a senior HMI who has had no involvement in the case to date
- a compliance colleague
- a minute taker.

553. During the hearing and general deliberation of the representations, the panel may also seek the advice and assistance of colleagues from Legal Services, Social Care Policy or others where appropriate depending on the nature of the case. This may involve the attendance of such colleagues in all or part of the panel.¹⁵⁹

554. Minutes are taken of the meeting.¹⁶⁰

Notifying the person of the panel arrangements

555. Once the panel is convened, the Social Care Compliance team sends a letter of confirmation to the person confirming the arrangements. The letter must include the following information:

¹⁵⁸ There may be occasions where the original decision maker is not able to attend, for example due to illness or absence from work. In these cases, Ofsted may use an alternative colleague.

¹⁵⁹ This may occur where the person making representations is raising points of law.

¹⁶⁰ We will provide a copy of these to the person making the representations, if they request them.

- time and date of the panel meeting
- details about the format the meeting will take
- information about who will take part in the panel
- information about the person's right of appeal.

556. 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
- directions to the venue with a map where possible.

Attendance by the registered person or applicant at panel

557. 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 have an active dialogue with the person about their availability to attend the panel to avoid setting the panel on a date which is impractical for the person (for example, on a date when the person is unavailable due to a medical appointment). However, 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 safety of children, young people and adult service users remains our priority.

558. In setting a location for the panel, we should adopt at least the same 'rule of thumb' as the Tribunal, which is that the Tribunal will sit locally to the case if the travel time, to its premises, for the appellant is greater than an hour and a half. We, therefore, should hold the meeting in the locality of the person making the representation, ideally using an Ofsted office, where this meets the travelling-time rule.

559. It is not our practice to hold panel meetings at a registered setting unless there are specific reasons for doing so. In such circumstances, a Regulatory Inspection Manager or above must agree to this and record their reasons in Office Base.

560. In some circumstances, we may decide to offer the registered person or applicant the option to convene the panel by way of a telephone conference, for example, where the registered person or applicant does not wish to attend the panel in person. In these cases, we may conduct the panel over the telephone or through video conference using a webcam.

561. If the registered person or applicant brings a representative with them, the role of the representative is to advise the person making the representations, to ask

questions on his or her behalf, and/or to present reasons to the panel why we should not take the step proposed.

562. 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.
563. 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 be included in the written representations. Ofsted may seek legal advice during the course of, or after, the panel meeting and before making any decision.
564. 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

565. The senior HMI, who is the decision-maker will also chair the panel. The chair must do the following.
- Introduce themselves and the other panel members.
 - Inform the person making the representations of those panel members that have previously been involved in the decision-making processes and those that 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 witnesses 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 to the whole notice or to a specific element of it; for example, with a notice of proposal to vary conditions the provider may be making representations to just one condition.

- Explain that we review the information they present 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 they have a right of appeal to the Tribunal if we do not uphold their representations, once we have issued the notice of decision.
- Explain that after they have made their representations the panel takes a short break, after which the panel:
 - asks if there is any further information they wish to give
 - summarises 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 representation is not upheld.

Decision-making by the panel

566. The senior HMI who has had no previous involvement in the proposal, which is subject to the representations, is the decision-maker. If other members of the panel do not agree with the their decision, 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.

567. The panel considers and discusses all information before a decision is made by the decision-maker 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. The decision will either be to:

- uphold the representations
- partially uphold the representations

or

- not to uphold the representations.

568. There is no power to impose additional conditions or to undertake a different course of action. However, where a panel believes that a different course of action or other conditions are more appropriate, they may recommend this. If

this occurs, a compliance colleague, as quickly as possible after the panel, convenes a case review in order to decide on the appropriate action.

569. The following examples illustrate this point:

Example 1: if we issue a notice of proposal to cancel a registration, the panel can:

- uphold the representations and allow the registration to continue
or
- disallow the representations and agree to the cancellation
or
- partially uphold the representations and convene a case review to consider if there is sufficient remaining evidence and concerns to warrant the cancellation.

If a decision is made that the representations should be upheld and the registration to continue but the panel recommends the imposition of new conditions, in these circumstances, we must hold a case review as quickly as possible to decide whether to issue a new notice of proposal to impose conditions. We will notify the person of our decision in the representations outcome letter.

Example 2: If the representations are against the imposition of a condition, but the panel believes that a different condition is more appropriate, the decision will be to uphold the representations but the panel will recommend that Ofsted considers imposing a different condition. We must then hold a case review as soon as possible to decide on issuing a new notice of proposal as above.

If a compliance colleague decides to propose the imposition of new conditions following a case review, they should arrange to issue a new notice of proposal. If the person subsequently makes representations against this notice, we must give careful thought to whether the same panel or a different one should hear the representations. The reasons for the decision must be recorded on Office Base.

Example 3: The panel partially upholds a person's representations. This may occur where we have issued a notice of proposal to cancel a person's registration, and the person has demonstrated that they have made material improvements to address some of our concerns but not others.

Where this occurs, we must hold a case review to determine if the remaining concerns and evidence are still sufficient to proceed with our cancellation action. If so, we should issue a new notice of proposal, detailing the concerns which we did not uphold at the representations. Where we believe that we no

longer have sufficient grounds to cancel the registration, we must consider what other action, if any, we will take instead.

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

570. We may initially inform a person of the panel's decision in person or by telephone, but we must always confirm this in writing. If the decision is that the representations are not upheld, we have a legal obligation to issue the notice of decision.

571. In all cases, we write to the registered person or applicant within 10 working days of considering the representations. We send a letter stating that we:

- uphold the representations: we confirm the outcome of the representations and an explanation of how the panel reached its decision. We also confirm that the notice of proposal no longer applies.

or

- partially uphold the representations: we explain how the panel reached its decision and send a new notice of proposal

or

- do not uphold the representations: we explain how we reached our decision and send a notice of decision. Where possible, we send the notice of decision at the same time as the outcome letter from the panel. 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.

572. We inform the person in the letter that they may request a copy of the minutes from the representations panel and/or a copy of any notes taken by the panel members, should they wish to see these.

Recordkeeping and retaining notes from the panel meeting

573. The members of the panel will review the minutes for accuracy before they are signed off by the Chair. The minutes are stored as part of the compliance case in Office Base.

574. 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, this decision must be reviewed at the date of the next prescribed inspection. We may share these notes with the Tribunal during any subsequent appeal process. We shall provide a copy of these notes to the person making the representations, if they request to see them.

Disqualification and written consent

Introduction

575. The law prevents certain people from involvement in a children's home in order to help safeguard vulnerable children and young people. These people are known as 'disqualified people'.
576. Section 65 of the Children Act 1989 states that a person who is disqualified from fostering a child privately is also disqualified from carrying on or being otherwise concerned in the management of, or having any financial interest in a children's home. Also, a disqualified person may not be employed to work at a children's home.
577. It is important to note that the law on disqualification extends to children's homes only; it does not extend to any other children's social care setting regulated by Ofsted. If a person applies to register with us to provide or manage other children's social care (for example, to register as a provider of an independent fostering agency), we take into account the factors that would disqualify them from registering as a provider or manager of a children's home as part of our decision about their fitness.

Safeguarding action if a disqualified person is involved in a children's home

578. If we receive information that a disqualified person is carrying on, managing, having a financial interest in or working in a children's home without written consent, we must convene an urgent case review to consider the risk of harm to children and young people and decide on the most appropriate steps to take. See the 'Quick guide' for further information.

What makes a person disqualified?

579. The Disqualification from Caring for Children (England) Regulations 2002¹⁶¹ sets out the grounds that make a person disqualified. In summary, the regulations cover people who:
- have had a child removed from their care (for example, under a care order)
 - have had their registration as a childcare provider or childminder cancelled
 - have had their registration to provide or manage a children's home cancelled
 - have had their application to register as a childcare provider or childminder refused

¹⁶¹ The Disqualification from Caring for Children (England) Regulations 2002.

- have had their application to register to provide or manage a children's home refused
- were concerned in the management of, or had a financial interest in, a children's home in respect of which the registration of any person has been cancelled (this includes a responsible individual)
- have been convicted of certain offences.

580. The offences are an offence against a child within the meaning of section 26(1) of the Criminal Justice and Court Services Act 2000 and the offences set out in Annex E. A person who is disqualified must not:

- if they an individual, carry on a children's home, including individual providers and people who make up a partnership (other than a limited liability partnership)
- manage a children's home
- be the responsible individual for a children's home
- have a financial interest in a children's home
- work at a children's home, including as a volunteer.

581. If a person who is disqualified wishes to do any of the above, they must seek written consent from Ofsted first. Further information on the written consent process is below.

People barred by the Safeguarding Vulnerable Groups Act 2006

582. It is important to note that some people are prevented from engaging in 'regulated activity', including involvement in a children's home, because they are included on the Disclosure and Barring Service's barred list.¹⁶² Where a person who is included on the Disclosure and Barring Services' barred list is engaging, or seeking to engage, in regulated activity we will not consider any request for written consent from, or in relation to, them.

583. It is an offence for a barred person to engage in, or seek to engage in, regulated activity.¹⁶³ Where we find a person is doing so, we must immediately refer the matter to the police and to the Disclosure and Barring Service.

Application to body corporates

584. It is important to note that disqualification only applies to individuals and not to body corporates, such as a company or a limited liability partnership. This is

¹⁶² Section 3 and 7 of the Safeguarding Vulnerable Groups Act 2006.

¹⁶³ Section 7 of the Safeguarding Vulnerable Groups Act 2006.

because disqualification from involvement in a children's home follows from disqualification from acting as a private foster carer, and only an individual can be a private foster carer. However, it is important to note that where a disqualified person is a director or officer of a company that operates a children's home, and that person wishes to have a financial interest in the children's home, they must apply for written consent.

585. Furthermore, where a body corporate is registered with us or is applying for registration, we will consider the factors that would have made them disqualified in considering their fitness, had they been an individual.

Disqualification and applicants for registration

586. If a person is disqualified but wishes to apply to register with us, they must request written consent **before** applying. We cannot accept an application for registration where any of the parties to the application are disqualified. This includes:

- people making up a partnership (other than a limited liability partnership)
- an individual provider applicant
- a manager applicant
- a person put forward to be the responsible individual
- any individual having a financial interest in the children's home (this will include a director or other officer of a company that is applying to be the registered provider of a children's home, where that person has a financial interest in the home).

587. Further information on this is available in the *Social Care Registration Handbook*.¹⁶⁴

Disqualified persons who wish to work at a children's home

588. If a disqualified person wishes to work at a children's home (other than as the registered manager or responsible individual) the duty is on the registered provider to apply for written consent before they employ the person. 'Employ' includes both paid and voluntary work.

589. It is an offence for a registered person to employ a disqualified person without written consent unless they can prove that they did not know, and had no reasonable grounds for believing, the person to be disqualified.¹⁶⁵

¹⁶⁴ *Social Care Registration Handbook*:
www.ofsted.gov.uk/resources/110171

¹⁶⁵ Section 65(5) of the Children Act 1989.

590. Where a registered provider employs a person who then subsequently becomes disqualified, for example, by conviction for an offence, the registered provider must take steps to safeguard the welfare of children and young people at the home. This may include suspending the person while they apply to Ofsted for written consent.
591. We will consider the steps the registered provider has taken in determining what further action we should take.

Disqualification after registration

592. A person may become disqualified after they have become registered. This may occur, for example, where a provider, manager or responsible individual is convicted of a relevant offence. Registered persons and responsible individuals must notify us 'forthwith' of any offence that they have been convicted of.¹⁶⁶ This includes offences committed in the British Isles and overseas convictions. We may take action against a person who fails to notify us of an offence or conviction.
593. Where we receive information that a disqualified person is carrying on, managing, having a financial interest in or working at a children's home, we will conduct an urgent case review to consider the risk of harm to children and young people.
594. We will also inform the registered provider about the disqualification. We confirm in writing that we have received information indicating that they are, or their manager or staff member is, disqualified. We do this to allow the registered provider to take action before we do. This action may include: applying for written consent; providing evidence that the person is not disqualified; or suspending the disqualified person.
595. Where it is found that a registered provider has allowed a disqualified person to have a financial interest, manage or work at a children's home without written consent, we must consider how this impacts on the provider's fitness, including the suitability of their staff checks and their ability to, and attitude towards, safeguarding children and young people.

Offences committed overseas

596. Where a person is convicted of an offence overseas, it does not make the person disqualified from carrying on, managing, working in or having a financial interest in a children's home. This is because the Disqualification from Caring for Children (England) Regulations 2002 only extends to offences committed in

¹⁶⁶ From regulation 10 of the Children's Homes Regulations 2001. We expect notifications to reach Ofsted within 10 working days of the person being convicted.

the British Isles.¹⁶⁷ However, we consider any conviction for an offence committed overseas in our overall decision on a person's fitness.

597. In some circumstances, we may need to make a referral to the Disclosure and Barring Service where we are notified about an overseas conviction.¹⁶⁸ This is because some overseas convictions result in a person being automatically barred from working with children and vulnerable adults in the British Isles.

Offences for breaches of the disqualification legislation

598. It is an offence for a disqualified person to carry on or be otherwise concerned in the management of (including as a responsible individual) or have a financial interest in a children's home, without written consent. It is also an offence for a registered provider to employ a disqualified person (including on a voluntary basis), unless they did not know, and had no reasonable grounds for believing, that the person was disqualified.

599. We may prosecute a person for a breach of these sections of the Children Act 1989.¹⁶⁹

Granting written consent

600. In some circumstances, a disqualified person may apply for Ofsted to grant written consent to carry on, manage or have any financial interest in a children's home. We may also give written consent for a registered provider to employ a disqualified person at their children's home.

601. The purpose of the written consent process is for us to consider whether the facts that gave rise to the disqualification mean that the disqualified person continues to pose a risk of harm to children and young people, or whether those facts should no longer prevent the person from carrying on, managing or working in a children's home.

602. The table in Annex D sets out who must apply to Ofsted for written consent and when this application should be made.

603. In summary, if a person wishes to apply to carry on, manage or have a financial interest in a children's home, the disqualified person must apply to us themselves for written consent. If a disqualified person wishes to work in a children's home they must inform the registered provider of their disqualification. The registered provider must then apply to us for written consent to allow them to employ the person to work at the home.

¹⁶⁷ Disqualification from Caring for Children (England) Regulations 2002.

¹⁶⁸ The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 set out the circumstances where we should refer overseas offences to the Disclosure and Barring Service.

¹⁶⁹ Section 65(4) and (5) of the Children Act 1989..

Process for considering written consent

604. The person requesting written consent must complete our form, which is available on our website and provide:

- details of the precise order, determination, conviction or other ground for disqualification
- the date when the order, determination, conviction or other ground for disqualification arose
- the name of the body or court
- the sentence imposed (if any)
- a copy of the relevant order
- a statement from the disqualified person detailing why they believe that they should be granted written consent, including why they no longer pose a risk of harm to children, young people and vulnerable adults.

On receipt of request for written consent

605. On receiving the form, the inspector in discussion with the Regulatory Inspection Manager, Senior Practitioner or Social Care Compliance Inspector, must determine if:

The person is disqualified. If so, during a case discussion, we will consider whether we wish to interview the person for further information before making a decision on whether to grant written consent. If we decide to interview, we must be clear that this is not an interview under caution. Rather, we are interviewing for the purposes of gaining further information about:

- the circumstances of the conviction or order
- the attitude of the person about the conviction or order
- the risk the person poses to children or young people.
- following the interview, we convene a case review to consider the person's request for **written consent** (see below).

The person is not disqualified. This will occur if the order or offence is not listed in the disqualification regulations. In these cases, we consider the information to determine if it affects a person's fitness (for registered persons, nominated individuals or applicants for registration). The inspector will hold a case discussion or case review to determine this.

We are unable to consider the request for written consent. Ofsted has no power to consider a request for written consent where a person is not

allowed to work in 'regulated activity' because they are included on the Disclosure and Barring Service's barred list. If we receive such a request for written consent, we must return it to the person and explain that we have no power to consider it. We must also make a referral to the police and the Disclosure and Barring Service as it is an offence for a person on the barred list to seek to engage in regulated activity.¹⁷⁰

606. In all cases, we will open a compliance case in Office Base and record a summary of the information that we have received and details of our discussion and actions agreed.

Written consent case review

607. The Children Act 1989 does not prescribe the format for our consideration of written consent or the procedure we must follow; this is at Ofsted's discretion. However, we must ensure that we have given genuine consideration to the request and that we are able to demonstrate this if we are challenged in the Tribunal. To do so, we follow the process set out below.

608. We convene a case review to consider a request for written consent. Please see section 'Decision making and case reviews' for further information.

609. In making the decision, the case review considers:

- the risk to children, young people and vulnerable adults
- the nature of and severity of any offences or orders – the case review may find the following Crown Prosecution Service information helpful:
 - the sentencing manual¹⁷¹
 - legal guidance¹⁷²
- the age of any offences or orders
- repetition of any offences or orders or any particular pattern of offending
- information from the statement and/or interview with the disqualified person, including their explanation of and attitude towards the grounds for disqualification
- any other information available from other authorities, such as the police or local authority children's services department, in relation to the offence
- any mitigating circumstances given

¹⁷⁰ Section 7 of the Safeguarding Vulnerable Groups Act 2006.

¹⁷¹ *Sentencing manual*, Crown Prosecution Service, revised 2013: www.cps.gov.uk/legal/s_to_u/sentencing_manual/.

¹⁷² *Legal guidance*, Crown Prosecution Service: www.cps.gov.uk/legal/.

- any other information that we know about the setting and registered persons, including their history of compliance, current issues, concerns and inspection judgements.
610. Following the case review, the compliance colleague writes to the person requesting written consent about the decision as follows:
- the application for written consent is granted, and
 - clarifies the scope of the written consent (see below)
- or
- the application for written consent is refused, and
 - details the person’s right to appeal to the First-tier Tribunal.
611. Where we decide to give written consent, we are confirming that, despite the person being disqualified and having taken into account that information, we are allowing the person to apply to register or to look after and be in regular contact with children and young people.

Scope of written consent

612. We may grant consent to cover all children’s homes where a person is applying for consent to:
- carry on a children’s home (the registered provider/applicant)
 - manage a children’s home (including the responsible individual)
 - have a financial interest in a children’s home.
613. This means that, if the person decides to move their interests to a different home, they do not need to apply to Ofsted again for written consent.
614. This is a consistent approach, as it would be difficult for us to justify a circumstance where a disqualified person does not pose a safeguarding risk at one home but does pose a safeguarding risk at another.
615. The only exception to this is a consent granted under section 65(2) of the Children Act 1989 where a provider is making an application to employ a disqualified person at their children’s home. There is no scope for this written consent to transfer to a different employer.
616. However, in practice, it would be unlikely that we would grant consent for one provider to employ the person and later refuse consent for a different provider to employ the person, unless we receive new information to suggest that they may now pose a safeguarding risk to children.

Recording the written consent decision

617. The compliance colleague must:

- record the decision and the reasons for the decision on Office Base
- sign and ensure that the applicant for written consent (see Annex D) receives an outcome letter explaining the decision, scope and reasons for this (Ofsted's legal advisors may review the letter if necessary)
- ensure that the minutes from the case review are reviewed, signed and available on Office Base
- take forward any necessary action resulting from the decision of the case review.
-

Appeals against refusal to give written consent

618. A person may appeal to the First-tier Tribunal against our decision to refuse to give written consent.¹⁷³ Any appeal must be lodged within **three months** of the date of our decision from the written consent case review.¹⁷⁴

¹⁷³ Section 65(3)(b) and 65A of the Children Act 1989..

¹⁷⁴ Schedule to rule 20(1)(d) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

Serving a notice

619. We have the power to 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; or to 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; or to cancel registration.

620. 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

621. We can serve a notice:

- in person
- by courier
- by post using a method which can be tracked, such as registered or recorded delivery.¹⁷⁵

When the service of the notice takes effect

622. 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 timeframe in the notice) will commence from the next working day, with the exception of compliance notices (see information below).

623. Where we serve a notice by first-class post, the notice is deemed to be served on the third day after the day on which it was sent, unless it can be proved otherwise.¹⁷⁶

¹⁷⁵ Section 37(1) of the Care Standards Act 2000.

The persons to whom we serve the notice on

624. We serve notices as follows:

Type of person	Applicant or registered	Which person notice is addressed to and what address it is served at	Which person to serve the notice on
manager	applicant	Notice is addressed to the manager applicant and is served at their home address	manager applicant
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
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	One or 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	registered	Notice is addressed to all of	All of the individuals

¹⁷⁶ Section 37(3) of the Care Standards Act 2000.

Type of person	Applicant or registered	Which person notice is addressed to and what address it is served at	Which person to serve the notice on
associations (committees)		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	making up the committee
Organisation provider (Body corporates - 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
Organisation provider (Body corporates - 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 Service 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 body corporates. If in doubt, the inspector or compliance colleague should seek advice from Legal Services.

** It is important to remember that where an organisation is the provider, but where it has a single director only (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 accountants). In these cases, we must serve a duplicate notice to the secretary's or clerk's home address and/or head office address.

Notices of restriction of accommodation

625. Where we restrict accommodation, we must serve a notice on **all** people registered in respect of the children's home, residential family centre or holiday scheme. This will include serving a notice on the registered manager as well as the registered provider.¹⁷⁷

Compliance notices

626. When serving a compliance notice, we must be mindful of the tight timeframes that are often involved in the actions that we set in such a notice. The timeframe for a registered person to comply with a compliance notice starts from the date of the notice and not the effective service date.

627. Where we set a tight timeframe, we must ensure that the notice is served as soon as possible so that the registered person has sufficient time to comply with it. Where we must serve the notice at the registered address for a provider organisation, and this is some distance away from where the inspector or compliance colleague is located, we should arrange a courier so it can be served promptly. We should also provide a copy of the compliance notice to the registered manager and responsible individual (see below).

Notifying other people about the serving of a notice

628. We may provide a copy of a notice to a registered manager, registered provider and/or responsible individual in certain circumstances. This is not the same as serving the person with a notice. Rather, it is letting them know about important things that are happening at the setting which we believe that they should be aware of. For example, where we have served a compliance notice on a provider, we should provide a copy of the notice to the responsible individual and the registered manager sent to the setting address so that they know what action the provider needs to take to comply with the regulations.

629. Similarly, if we have served a notice of decision to cancel a provider's registration, we must inform the responsible individual and registered manager about this because the cancellation will affect them (if the cancellation applies to a children's home, both the registered manager and responsible individual will become disqualified). Further information on this is available in the notice template suites on Office Base.

¹⁷⁷ Section 22B(6) of the Care Standards Act 2000.

Recording the serving of the notice

630. When we serve a notice in person, we must ensure that the notice is served on the person/s indicated in the table above. When serving the notice in person, we must record the name of the person to whom we have handed the notice in the Ofsted pocket notebook, as well as the date and time the notice was served. This information must be recorded in the compliance case in Office Base.
631. If we serve the notice by post or by courier, we must retain the details of the postage or courier as evidence (the registered or special delivery slip or courier delivery details) and record these on Office Base.
632. A person may argue that we have not served them with a notice. In these cases, where we have evidence that we have served the notice correctly and there is no information to the contrary, we will have done everything to demonstrate that service of the notice took place. The onus is on the registered person or applicant to prove the contrary.

Appeals

Introduction

633. In some cases registered persons or applicants for registration may appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against decisions we make¹⁷⁸.

634. 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 person¹⁷⁹
- suspend a registration (by notice or in an emergency)
- refusal to lift a suspension of registration
- restrict accommodation (for children's homes, residential family centres and residential holiday schemes for disabled children only).

635. In addition, providers may appeal to the 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.¹⁸⁰

Timescales for making appeals

636. A registered person or applicant has **28 days** after:

- the date on which we serve a notice of decision

¹⁷⁸ Section 21 of the Care Standards Act 2000..

¹⁷⁹ A decision made under section 65 of the Children Act 1989. Appeals are made under section 65A of the Children Act 1989..

¹⁸⁰ We may apply to a magistrate for an emergency order under section 20 of the Care Standards Act 2000..

or

- the date on which the magistrate makes their order in which to appeal against the action.¹⁸¹

637. The only exception to this is where a person is appealing against our decision not to grant written consent for a disqualification.¹⁸² In this case, the person has **three months** to appeal.¹⁸³

638. The Tribunal counts time limits for an appeal from the first working day after we serve the notice.¹⁸⁴ This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.

639. Any submission to the Tribunal, such as lodging papers, must be completed by **5pm** on the day due.

Expedited appeals

640. Ofsted has agreed an expedited appeals process with the 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.

641. We must comply with the timescales for expedited appeals as set out in the memorandum of understanding.¹⁸⁵

Appeals to the Tribunal

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

The Secretary of the First-Tier Tribunal (Health, Education and Social Care Chamber)
Mowden Hall

¹⁸¹ Section 21 (2) and (2A) of the Care Standards Act 2000.

¹⁸² Section 65A of the Children Act 1989.

¹⁸³ Schedule (a) under rule 20(1)(d) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

¹⁸⁴ 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'.

¹⁸⁵ *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*: www.ofsted.gov.uk/resources/100242

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Telephone: 01325 392712

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Email: cst@hmcts.gsi.gov.uk

643. A person must appeal to the Tribunal in writing. On receiving an appeal, the Secretary of the Tribunal sends the information from the person appealing (the appellant) to us. Unless the appeal is being dealt with under the expedited procedure, we must respond to the Tribunal within the timescales set out below.
644. On receiving the notice of an appeal, the Senior HMI Social Care decides whether to defend the appeal, taking into account the recommendations of the compliance colleagues and any legal advisors involved in the matter.

Initial response to the Tribunal in the event of an appeal

645. We must prepare the necessary documents and a covering letter of instruction and forward it initially to the legal team in Ofsted who decide whether the matter will be dealt with in house or by an external solicitor. 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.
646. 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 the written notice of decision
 - a copy of any order made by a magistrate and a copy of the statement.
647. 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.

648. We may send and receive documents to and from the Tribunal by:

- Post
- Delivered by hand
- Fax
- Email, where the Tribunal permits this.¹⁸⁶

Responding to notification of an appeal

649. The Secretary to the Tribunal writes to us once he or she has received our response and asks:

- for the name and address of any witness, the nature of their evidence and whether we wish the Tribunal to consider additional witness evidence
- whether we wish the Tribunal to give directions, or whether we wish for a preliminary hearing for directions¹⁸⁷
- for a provisional estimate of the time we require to present our case
- for the earliest date by which we consider we are able to prepare our case – this is unlikely to be the date on which the hearing will begin.

650. The compliance colleague, in consultation with the appointed legal adviser, prepares the response to a request and must send it to the Secretary 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
 - a suspension of registration
 - a magistrate's order for emergency cancellation or variation of conditions of registration¹⁸⁸
- **20 working days** of receipt in relation to all other appeals.

¹⁸⁶ Paragraph 13 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

¹⁸⁷ A directions hearing is where the court or Tribunal sets the actions and timescales that both parties must adhere to, prior to the Tribunal hearing.

¹⁸⁸ *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber*. <http://www.ofsted.gov.uk/resources/100242>

651. When the Secretary receives the information from the appellant and from us, the Secretary will send copies of the appellant's information to us and ours to the appellant. If, on viewing the information, we wish to amend or add to any of our information we must send this to the Secretary within **five working days** of receipt.

Strike outs

652. In certain circumstances, we may apply to the 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.

653. It is important to ensure that, before applying for a strike out, we are satisfied that it is appropriate to do so and there are clear grounds for doing so.

654. 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 2008.¹⁸⁹ This states:

(1) With the exception of paragraph (3), this rule does not apply to mental health cases.

(2) The proceedings, or the appropriate part of them, are automatically struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(3) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them

and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(4) The Tribunal may strike out the whole or a part of the proceedings if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or part of them

(b) the applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly

¹⁸⁹ The First Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008.

or

(c) the Tribunal considers there is no reasonable prospect of the applicant's case, or part of it, succeeding.

(5) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (3) or (4)(b) or (c) without first giving the applicant an opportunity to make representations in relation to the proposed striking out.

655. We must not apply to the Tribunal to strike out an appeal if we have evidence that we did not serve the notice in accordance with section 37 of the Care Standards Act 2000.¹⁹⁰

How to apply to strike out an appeal

656. Where a social care compliance colleague believes that there are grounds to apply to strike out an appeal, they must seek advice from Legal Services.

657. The legal adviser will contact, advise and assist the compliance colleague in making the application for a strike out.

Withdrawal of an appeal

658. 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.¹⁹¹

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

660. The Tribunal will notify each party to the case that a withdrawal has taken effect.

Notice of the Tribunal hearing

661. 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,

¹⁹⁰ 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.

¹⁹¹ Rule 17 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

except in expedited appeals where the Tribunal will give us notice as soon as the hearing is set.

Preparation for the Tribunal hearing

662. A compliance colleague will take responsibility for coordinating and managing our response, including managing advice from solicitors.
663. 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.
664. 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.
665. The responsible compliance colleague must:
- advise all inspectors and other witnesses of any set dates and timescales once the Principal Judge of the Tribunal or nominated Chair has made directions
 - arrange (with an appointed solicitor or counsel) for each inspector identified to prepare statements, setting completion dates – they must also arrange for non-Ofsted witnesses to prepare statements
 - check all statements for consistency – this is an important part in preparing for the case; the purpose is to achieve consistency in the evidence provided and identify any possible weaknesses in the evidence
 - make sure that if one witness refers to another witness, the second witness has included a comparable point in his or her statement; for example, where two inspectors visit a provider and one refers to the other having a conversation with a provider, the person having the conversation needs to include evidence of it
 - arrange for duplicate Disclosure and Barring Service disclosures, where necessary – the Disclosure and Barring Service can provide an exact copy of any disclosure that we have previously requested
 - complete a cover sheet for the information going to the Tribunal.
666. The compliance colleague will 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

Burden of proof

667. In the case of an appeal by a registered person, the burden of proof rests with us to show that our decision is correct as set out in the relevant Acts. It is our responsibility to demonstrate that a registered person is no longer fit for registration or that our decision is appropriate in the circumstances, such as, why we are imposing a condition on the registration. We must be able to provide sufficient evidence to support our decision, including evidence that the person has not met the requirements or relevant regulations.¹⁹²
668. In the case of an appeal brought by an applicant for registration appealing against a decision to refuse registration, the law places the burden of proof on the applicant to demonstrate his or her fitness as required by the relevant requirements of registration under the Care Standards Act 2000.¹⁹³

Being available for the hearing

669. The responsible compliance colleague must ensure that colleagues are present and available at the required time on the day of the hearing. This may be earlier than the actual start of the proceedings so that meetings and discussions can take place. Staff may need to remain after the day's activities, if required.
670. The provisional timescale for presentation of evidence can change, depending on any cross-examination by the appellant or questioning by Tribunal members. The compliance colleague must ensure that colleagues and witnesses are available to give evidence when called. The Tribunal may call witnesses earlier or later than the anticipated time, possibly even on an earlier or subsequent day.

The evidence

671. The hearing does not limit evidence to events that occurred up to the time we made the decision to take enforcement action. The Tribunal will consider any evidence we gather following our decision. The Tribunal decided this in *C v Ofsted* and has followed this in subsequent cases.¹⁹⁴ For example, in the decision to cancel a registration, the Tribunal will consider improvements the provider makes after we make our decision. Monitoring visits are very likely to

¹⁹² *C v Ofsted* [2002] 0087.EY, paragraph 8, www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320.

¹⁹³ The Care Standards Tribunal confirmed this in 2008 in *SJ v Ofsted* [2004] 0344.EY, paragraph 27 to 31 (www.carestandardtribunal.gov.uk/Public/View.aspx?ID=330) and *JD v Ofsted* [2007] 0986.EY, (290108); www.carestandardtribunal.gov.uk/Judgments/j470/Duncan%20Decision%20291007.doc.

¹⁹⁴ *C v Ofsted* [2002] 0087EY paragraphs 25 and 64; www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320.

be necessary before the appeal hearing, as these allow us to provide more current evidence about the fitness of the provider and manager and/or the provision of care. Monitoring visits also enable us to maintain contact with the registered person(s).

672. We are required to disclose all relevant documents to the Tribunal. This is likely to include case review notes and notes from inspection visits as well as correspondence that we have sent to the appellant and other agencies involved in the case. We must comply with the principles of full and frank disclosure, including information and evidence that may not support the action that Ofsted has taken.
673. We may call witnesses if necessary, including witnesses other than our employees, where our case relies on or refers to their evidence, such as the police, a member of local authority children’s services or the Health and Safety Executive. Witness statements carry greater weight when the witness is available for cross-examination.¹⁹⁵

After the hearing

The outcome

674. 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:¹⁹⁶

- a notice stating the Tribunal’s decision
- written reasons for the decision

and

- notification of any rights of review or appeal against the decision and the timeframes for lodging these.

675. This information may be sent electronically if we have indicated to the Tribunal that we are content to send and receive information this way. If an applicant claims not to have received the above information, we should direct them to contact the Tribunal to get a copy of this.

¹⁹⁵ C v Ofsted [2002] 0087.EY, paragraph 63;
www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320.

¹⁹⁶ Paragraph 30 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

676. The decision takes effect on the date on which the Tribunal makes it.¹⁹⁷ Once we have received the Tribunal's decision, we write to the appellant informing them that the decision has now taken effect. We warn the person in the letter that, where we have cancelled their registration, 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

677. 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 named individuals. The content of any varied or new conditions must follow our guidance in Annex I and Annex M of the *Social Care Compliance Handbook* (for example, the condition must follow on from 'The children's home must ...') The compliance colleague is responsible for raising any such concerns with the Tribunal about the wording that they have ordered. The compliance colleague must contact the relevant legal advisor if the matter cannot be resolved at that time.

678. The compliance colleague must record the decision on Office Base. If the Tribunal decides that a registration should continue, but with amended conditions, then 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

679. 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 – detailed guidance is available on the intranet.

A review of the Tribunal decision

680. In certain circumstances we, or the appellant, may apply to the Principal Judge of the Tribunal for a review of the Tribunal's decision.¹⁹⁸ 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.

¹⁹⁷ 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.

¹⁹⁸ Rule 49 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008..

681. We should make an application to the Principal Judge no later than **28 working days** after receiving the decision. A senior HMI must authorise an application to ask for a review and must seek legal advice before making such an application.
682. 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 practicable:
- a record of its decision
 - a statement of its reasons for its refusal to review or the outcome of its review
 - details of any rights to appeal to the Upper Tribunal and the timeframes for this
 - details of any rights to make representations.
683. A party may only apply to appeal to the Upper Tribunal if they have first applied to the First-tier Tribunal for a review of the decision.

Appeals to the Upper Tribunal

684. Either party may apply to the Upper Tribunal for permission to appeal to it. 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 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.¹⁹⁹
685. We will only consider appealing to the Upper Tribunal in exceptional circumstances. The Regional Director is responsible for making the decision on whether to appeal to the Upper Tribunal.
686. 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.

¹⁹⁹ Rule 21(3)(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008..

Referrals to the Disclosure and Barring Service

Introduction

687. We have a statutory power²⁰⁰ 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 Disclosure and Barring Service's barred lists).

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

689. The Disclosure and Barring Service Board is responsible for making decisions about whether to include a person in a barred list.

When to make a referral

690. Section 45 of the Safeguarding Vulnerable Groups Act 2006 provides a power for us to refer persons to DBS to consider for inclusion in a list of people who are barred from working with children or vulnerable adults, where the following criteria are met:

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

or

- the person has engaged in relevant conduct (conduct that has harmed or posed a risk of harm to a child or vulnerable adult)

or

- 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)

and

- the person is or has been, or might in future be, engaged in regulated activity²⁰¹

and

²⁰⁰ Under section 45 of the Safeguarding of Vulnerable Groups Act 2006

²⁰¹ The legal definition of regulated activity is set out in schedule 4 of the Safeguarding Vulnerable Groups Act 2006.

- 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.²⁰²

691. 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, or
- incite another to harm a child or vulnerable adult.

692. 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
- people employed (even if unpaid) to work directly with children, young people or vulnerable adults by a registered person
- applicants for registration.

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

Duty on employers to refer to DBS

694. 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.²⁰³ If we become aware that the registered person has

²⁰² Paragraphs 1 and 7 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006.

²⁰³ Under section 35 of the Safeguarding of Vulnerable Groups Act 2006.

not taken this step, we make the referral ourselves. We also let the DBS know that the employer failed to make the appropriate referral.

- 695. 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.
- 696. 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 suitability to work with children, young people and adults. Our clear priority is to establish, with consideration to the failure to refer, if a provider remains fit to operate and if a manager remains fit to manage.
- 697. 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.

Making the decision to refer to the DBS

- 698. The decision to refer a person to the DBS is made in line with our decision-making table. See 'Decision-making and case reviews' for more information.
- 699. 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.
- 700. Prior to the DBS making a barring decision, the person is invited to make representations as to why they should not be barred and provided with all the information the DBS relied on in reaching this position. The DBS must decide whether the individual is unsuitable to work with children and/or vulnerable adults in the future. Once listed, the individual must not work in regulated activity with a group that they are barred from (children and/or vulnerable adults).
- 701. Where 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. The DBS will confirm this in writing to us and 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.

Making a referral

702. Once we make a decision to refer a person to the DBS, the decision-maker completes and signs the Disclosure and Barring Service referral form. The form is available on the DBS website.²⁰⁴

²⁰⁴ Disclosure and Barring Service referral form; www.homeoffice.gov.uk/agencies-public-bodies/dbs/.

Working with other agencies and serious case reviews

Introduction

703. This section sets out our role in child protection concerns, including how we work jointly with other agencies, including in strategy discussions and serious case reviews, in order to protect children and young people.
704. We have our own safeguarding children policy, Ofsted safeguarding policy and procedures.²⁰⁵ This applies to all our staff, and to those who provide contracted services for us. It provides our 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, the Every Child Matters and Working together to safeguard children.^{206 207}
705. We have a number of protocols with other agencies, which set out in detail our agreed working arrangements with them. These protocols are published on Ofsted's website.²⁰⁸ This section contains further information about Local Safeguarding Children Boards.
706. Ofsted's processes and procedures for dealing with whistleblowing referrals are set out in Whistleblowing to Ofsted about safeguarding in local authority children's services.²⁰⁹ This document includes details of our 'whistleblowing hotline'.²¹⁰
707. If we identify evidence that suggests local authorities may not be fully meeting their statutory duties in relation to the welfare and well-being of children, we follow the approach outlined in our guidance: *Management of cross-remit concerns about children's welfare*.²¹¹

²⁰⁵ *Ofsted safeguarding policy and procedures*: <http://www.ofsted.gov.uk/resources/100183>

²⁰⁶ Children Act 2004.

²⁰⁷ *Working together to safeguard children*, HM Government, 2013; www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children.

²⁰⁸ Memorandum of understanding between the Care Quality Commission and the Office for Standards in Children's Services, Education and Skills: www.ofsted.gov.uk/resources/20110016 and Memorandum of understanding between Ofsted and the General Social Care Council: <http://www.ofsted.gov.uk/resources/20110018>.

²⁰⁹ *Whistleblowing to Ofsted about safeguarding in local authority children's services* (100036), Ofsted, 2014; <http://www.ofsted.gov.uk/resources/100036>

²¹⁰ whistleblowing@ofsted.gov.uk

²¹¹ *Management of cross-remit concerns about children's welfare*: www.ofsted.gov.uk/resources/110147

Notifying local authorities and/or parents following an inadequate inspection

708. Whenever a setting is judged inadequate for overall effectiveness or judged as making inadequate progress at an interim inspection, the inspector must alert the following persons to the concerns that have been identified:²¹²
- the placing authority for any child, young person or adult and the host local authority where this is different to the placing authority²¹³
 - in the case of residential holiday schemes for disabled children, all parents whose children are attending the scheme at the time of the concern.
709. In addition, where it is agreed at a case review that placing and host local authorities should be notified this must be done within the timescales identified below.
710. Where we must notify a local authority in the situations above, the inspector sends an email to the Director of Children's Services in the placing authority and in the host local authority by the end of the working day following the inspection. Inspectors follow this email up with a telephone call to ensure receipt. Where there are a large number of placing authorities, the inspector should discuss arrangements for making these telephone calls with the duty manager.
711. The inspector gives feedback to the placing or host authority in line with the feedback given to the provider. They must summarise the key concerns clarifying that this is an indication of the likely inspection judgement but that it is subject to confirmation by Ofsted on publication of the report.
712. The details of the email and any phone calls must be recorded on Office Base for future reference.

Strategy discussions²¹⁴

713. Local authority children's services arrange strategy discussions in accordance with statutory guidance.²¹⁵ The discussions are held to help them decide

²¹² We share this information under paragraph 8 of Schedule 13 of the Education and Inspections Act 2006.

²¹³ Under paragraph 8, Schedule 13 of the Education and Inspections Act 2006.

²¹⁴ This meeting can be known by other names such as a 'section 47 meeting' or strategy meeting. However, *Working together to safeguard children* (HM Government, 2013) refers to this as a strategy discussion. The purpose and tasks of strategy discussions are set out on page 33: www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children.

²¹⁵ *Working Together to Safeguard Children* (HM Government, 2013), The purpose and tasks of strategy discussions are set out on page 33: <http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children>

whether the information that they hold in relation to a child or young person indicates a risk of harm or significant harm and, if so, the steps they need to take in response. Each local authority should have a 'threshold document' that clearly sets out their threshold criteria of assessment.²¹⁶

714. The strategy discussion is an opportunity for all agencies represented to share the information that they hold where there are concerns about the risk of harm to a child, young person, children and/or young people. Multi-agency child protection procedures require us to share all information that would otherwise be confidential, including any information for the purpose of preventing or detecting a crime.
715. Those attending strategy discussions consider all available information, including any allegations made. The purpose of the strategy discussion is to decide the most appropriate way forward to protect children and young people, and which agencies are the most appropriate to take the first steps – not to decide the outcome of the case. For example, children's services may ask other agencies (such as the police or health authority) to assist in carrying out an investigation and may allocate tasks for action within an agreed timescale.
716. The strategy discussion in the first stage is for colleagues in children's services to assess how to gather further evidence. For example, they may request that the police obtain a warrant to search premises or they may contact schools, hospitals or GPs for further information.
717. At the end of the meeting, agencies should be clear about who is doing what, the next stages, and the date of, or prompt for, the next strategy discussion. Where urgent action is required, this should also be clearly set out.
718. Where we are concerned that decisions by an external agency are causing unacceptable delay, we must not allow this delay to affect our own investigation. We will continue to investigate to determine whether a person remains fit for registration, although we must take care to avoid prejudicing another agency's investigations.

Attendance at strategy discussions

719. Ofsted's staff attend strategy discussions where the investigation concerns a registered person. We also attend where the welfare concerns are sufficiently serious that we need to consider their impact on the overall operation of the setting (indicating that there are concerns about the registered persons). For instance, we attend where there are concerns about an ongoing culture of restraint practice in a children's home. Decisions about whether to attend

²¹⁶ *Working together to safeguard children*, (HM Government, 2013), page 14;
www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children.

strategy discussions should include the Regulatory Inspection Manager in the area where the concern has arisen.

720. We only usually attend strategy discussions where the concern relates to a member of staff when there is evidence of non-compliance by the registered person. For example, if a serious allegation relates to a member of staff, we may wish to attend the strategy discussion to assess whether the registered person(s) are taking appropriate action in response to the concern. Where we attend a strategy discussion in these circumstances, we make it clear that our regulatory role is only in relation to the registered person(s), and that we only have regulatory responsibility for registered person(s) – we have no regulatory responsibility for other members of staff.

Our role at strategy discussions

721. At strategy discussions, we have a responsibility to ensure that our contributions put children and young people's safety and needs at the centre of decision-making. We must ensure that our actions support robust, timely steps that protect children and young people and promote their welfare. Where necessary, we must therefore challenge decisions that we consider do not adequately protect children and young people's welfare.

722. We must also work collaboratively with other agencies to ensure that children and young people are protected and their welfare is promoted by sharing and receiving information that supports a multi-agency approach and allows us to take robust, proportionate and effective compliance action where necessary.

723. We must ensure that those attending the strategy discussion clearly understand our role in protecting children. This being to ensure that only people who are fit remain registered as providers and managers of social care. We must confirm that, where necessary, we will use our compliance powers to ensure that children and young people are not at risk from being provided with care and support from unsafe or unregistered settings.

724. Our contribution, therefore, must be that we:

- always share information that is relevant to the child protection concern being investigated. For example, if we have clear, relevant evidence of historical concerns about a provider
- identify any limitations on 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. This includes any decisions/actions we have taken to date in respect of the concern that has led to the strategy discussion being convened

- confirm the detail of any notifications we have made to local authorities, parents and other relevant agencies
 - provide information about any actions we intend to take to make the setting safe for children, young people and adult service users, including when these will be complete. However, we must also confirm that we will work closely with the statutory agencies to ensure our actions do not impede their investigation in any way
 - explain our regulatory functions in relation to a particular setting and how we will use our powers effectively to promote children and young people's safety and well-being. 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 the important nature of this role may require us to undertake our own investigation into a provider and/or manager's fitness in order to protect all those who are provided with services by the setting. Therefore, Ofsted will follow its own timescales to ensure that the registered provider, and/or manager, remain fit to operate if necessary. This may result in Ofsted initiating and completing its investigation before the child protection investigation is completed
 - clarify the extent of our involvement within future meetings and investigations. Our involvement will be based on our current understanding of the issues presenting. Please note that should the presenting issues change, our involvement may require changing. Therefore, where we intend to take no further action, we should ask that we receive minutes from future meetings so that we can reassess if additional involvement is necessary.
725. We take the action outlined above to ensure that all agencies are clear about our role, for example to clarify that we regulate settings but do not manage them but have a statutory duty to ensure that children, young people and adult service users are safe and to take action where we have evidence that they are not safe.
726. 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 the Tribunal, and/or supply witness statements.
727. We must also agree with the other organisations the information that we can share with the registered person(s) about the concern. This is important because the police or children's services may not want us to share any or all of their evidence. 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.

728. We may need to clarify that we do not have the authority to suspend staff who work in a setting and nor do we have the power to direct a registered person to do so. However, we give the registered person information that we hold and then assess how he or she responds to that information. If the registered person does not take sufficient steps to safeguard children and young people, we may take action against them.
729. 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.²¹⁷ 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 – see 'Quick guide' for further details).
730. The information considered at a strategy discussion may suggest that a child, young person and/or vulnerable adult using a setting is at risk of harm or may be harmed. We must decide what action we will take to ensure that children, young people and adult service users are safe and any real and apparent risks are minimised. We must then take swift action to ensure their safety.

When we carry out a case review because of non-compliance as a result of a child protection concern

731. Where there are concerns about non-compliance as a result of a child protection concern, we convene a case review.
732. The purpose of the case review is to consider what action we need to take to protect children and young people. This is especially important where an investigation by another agency is likely to take some time to complete. We must not wait for the completion of that investigation before taking action ourselves. The review considers and decides what action, if any, we need to take.
733. We decide what compliance issues we must consider, and what action we can take, during the investigation(s) by the other agency. If we delay taking appropriate action to ensure that a registered person is complying with statutory requirements, it can be difficult to argue that any subsequent action we take is justified. This is particularly the case where it has been several months since the initial incident. This may compromise any defence of an appeal to the Tribunal against our action.
734. We must work as closely with the other agencies as possible and keep them informed of any action we intend to take. This is important from a perspective of ensuring that individual activities taken by each agency do not compromise

²¹⁷ Children Act 1989.

the other's investigations. We must also request information from them on a regular basis.

735. Our record in Office Base must clearly identify other agency's timelines for completing investigations and the actions that we have taken.

At the close of an external agency investigation

736. 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. This includes assessing his or her: understanding of child protection; ability to keep children safe, and; compliance with local child protection procedures.²¹⁸ The assessment also includes an assessment of how much the registered persons have improved and learnt from any child protection incident in order to protect children, young people and adult service users' safety and welfare in the future.
737. Whenever a case closes, we must consider the information from the outcome of the investigation in determining when to schedule our next inspection or whether we should conduct monitoring inspections. We must record this decision on Office Base. Some compliance cases will remain open until we know the outcome of an investigation by other agencies or until any legal action is complete.

Serious case reviews

738. Local Safeguarding Children Boards 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.
739. These reviews are known as 'serious case reviews'.²¹⁹ Membership of Local Safeguarding Children Boards includes representatives from:
- the district council
 - the police
 - the local probation board
 - the youth offending team
 - strategic health authorities and primary care trusts

²¹⁸ The statutory requirements are those made under the Care Standards Act 2000 and the relevant regulations for children's social care.

²¹⁹ The circumstances where serious case reviews are held are set out in Regulation 5 of the Local Safeguarding Childrens Boards Regulations 2006.

- National Health Service Trusts and National Health Service Foundation Trusts
 - organisations providing services for young children to enable their participation in training and education
 - the Children and Family Court Advisory and Support Service
 - the governor or director of any secure training centre
 - the governor or director of any prison that ordinarily detains children.
740. Other professionals involved with children, such as GPs, may attend a Local Safeguarding Children Board meeting on request.
741. The primary purpose of a serious case review is to consider whether there are any lessons that can be learnt about the ways in which organisations work together to safeguard and promote the welfare of children. Guidance on the process that Local Safeguarding Children Boards follow is in *Working together to safeguard children 2013*.²²⁰
742. Each agency may be requested by the Local Safeguarding Children Board to submit a report to the management of their involvement in each case. Ofsted, although not a member of any Local Safeguarding Children Board, may be requested by the Local Safeguarding Children's Board to conduct an individual management review in certain circumstances. Where Ofsted is requested to conduct an individual management review, the outcome of that review, alongside reports of other agencies, is sent to the Local Safeguarding Children Board's lead investigating officer who reports on where agencies can improve practice.
743. Individual management reviews are conducted by a person who is at least of HMI grade, who has experience in the area of concern but, has had no previous involvement in the case. The HMI produces a report and makes recommendations to the relevant responsible senior owner, normally the relevant director. We always consider the recommendations and, where appropriate, compile an action plan to implement the recommendations in order to improve our practice.

²²⁰ *Working together to safeguard children*, HM Government, 2013;
www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children.

Legal advice and Policy advice

Introduction

744. This section sets out when compliance colleagues and inspectors should seek legal and/or policy advice and the procedures to be followed.

When to obtain legal advice

745. Where inspectors and compliance colleagues believe that a case may result in statutory compliance action, it is important that they 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.

746. Inspectors and compliance colleagues **must** seek legal advice when they are:

- considering using a combination of 'short-term' and 'long-term' compliance actions
- preparing and facilitating emergency action
- responding to a notice of an appeal to the First-tier Tribunal
- drafting notices
- considering the sufficiency of evidence and soundness of a case in a possible prosecution
- carrying out a prosecution
- considering cancelling a manager's registration, following the cancellation of the provider's registration, in respect of the setting.

747. Inspectors and compliance colleagues may also seek legal advice to:

- consider the appropriateness of compliance action in complex cases
- check the interpretation of legislation after consultation with the relevant policy team
- check legal notices where these arise from complex cases
- provide advice following representations
- refer information to and respond to requests from the Disclosure and Barring Service

748. This advice may be provided through various forms, including written and verbal advice and through advising at case reviews and/or representations

panels.²²¹ There may be other occasions where it is appropriate to seek legal advice.

Information to provide when seeking legal advice

749. When seeking legal advice, it is crucial for inspectors and compliance colleagues to make it clear that the advice they are seeking **is related to a specific compliance case**, and not general legal advice. This is because there may be other factors related to the case that may influence the advice given.

750. When seeking legal advice, especially the reviewing of a notice, the inspector and/or compliance colleague **must** provide the following to Legal Services:

- a copy of the certificate of registration of the person subject to the action.
- a copy of the case review minutes which details 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 the CJSM 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.

Consideration of legal advice at case reviews and representations panels

751. There may be occasions where legal advice is considered at a case review or representations panel or where a legal adviser attends such a meeting to provide advice. In these cases, the draft minutes must be sent to the legal colleague who provided the advice for their confirmation that the minutes are correct. This provides the person with the opportunity to check to make sure that the legal advice that they provided was correctly interpreted.

²²¹ Where points of law form part of the representations.

Who provides the legal advice

752. The Legal Services team may provide advice themselves, or may engage a private firm from a panel of solicitors to provide the advice. Panel solicitors will usually be used for litigation in the Tribunal and for emergency action in the magistrate's court.
753. All requests for legal advice, including for emergency action in the Magistrate's court, must be sent to the legal services mailbox where it will be allocated.
754. Ofsted's legal services team is responsible for arranging the payment of all legal bills.

Seeking policy advice

755. An inspector or compliance colleague may need to seek advice from colleagues in the Social Care Policy Team about a compliance matter. This may occur where:
- advice is needed on the correct interpretation of Ofsted's policy
 - advice is needed on a situation that is not covered by Ofsted's policy
 - advice is needed on how to apply a policy to a particular situation or set of circumstances
 - advice is required on the correct interpretation of the legislation (policy colleagues may be able to advice on straight-forward matters, otherwise they may forward the query to the Legal Services team for their view)
 - the compliance case is likely to result in policy documents or procedures needing to be amended in the future.
756. Where an inspector or compliance colleague is seeking advice from policy, they must make it clear that the advice they are seeking **is related to a specific compliance case**, and is not a general policy query. This is because there may be other factors related to the case that may influence the advice given.

Participation of policy colleagues at case reviews

757. There may be occasions where a policy colleague attends a case review or where advice that they have provided is considered in a case review. In these circumstances, the draft minutes must be sent to the policy colleague who provided the advice for them to confirm that the minutes are correct. This provides the person with the opportunity to check to make sure that the policy advice that they provided was correctly interpreted.

Joint working between Legal Services and Policy colleagues

758. Policy colleagues and legal advisors may consult and work jointly to provide advice on compliance cases.

Press and serious incident briefings

Introduction

759. We write press and serious incident briefings when a serious incident has happened in a setting that Ofsted regulates, which raises concerns for Ofsted. Such concerns may be in relation to the provision, our practice, the quality of our work and/or our reputation.
760. The purpose of the Serious Incident Briefing (SIB) is to set out in a single document what is known about the event or issue and the inspection and compliance history. The SIB records what has happened, what we have done and what needs to be done as a result.
761. This guidance sets out the arrangements for providing briefings to the press team and for senior managers who need to be aware of particular incidents that occur.
762. The process for briefing has two distinct elements:
- cases where we need to brief the press team so that they can respond to specific press enquiries about what has happened in the setting or what action we have taken, or where we need to brief the Department for Education about a matter that may attract the interests of ministers or MPs
 - full briefings to give relevant directors pertinent information about an incident that has occurred and the action that Ofsted is taking or not taking in response.

When to write press briefings

763. We write a briefing for the press team when an incident is likely to, or has already, come to the attention of the media. We write and circulate the press briefing as soon as the incident has come to Ofsted's attention, usually the same day. We only write a press briefing for cases involving a specific regulated setting; we do not write a press briefing every time we receive a general media enquiry.
764. There are some occasions where we receive a media enquiry about a regulated setting that does not concern a specific incident, such as an enquiry about the setting's last inspection. We do not write a briefing for these cases which can be dealt with through telephone or email communication with the press office.
765. Standard media enquiries not involving a specific setting are dealt with through the social care policy team, who discuss and agree a line to take with the press team. This is usually when the media raise an issue about a matter of Ofsted's standard policy or practice.

766. It may be appropriate to seek legal advice for some press briefings, to ensure that we do not compromise our compliance action.

When to write serious incident briefings

767. We only write a full serious incident briefing when:

- a child, young person or adult service user dies, sustains a serious injury, or suffers alleged abuse at a regulated social care setting
- a serious incident occurs at a setting or involving or linked to a provider, manager or member of staff at the setting, which has attracted national media interest
- a serious incident has occurred and it appears that there may be reputational risk for Ofsted and/or concern about action that has been taken or not taken by Ofsted.

768. The range and type of incident, which could be regarded as 'serious', is considerably wide and it is not possible to give a clear definition of every type of incident that could be regarded as serious. Therefore, we use our professional judgement in assessing whether an incident meets the criteria for a briefing.

769. We write serious incident briefings as soon as possible but within a **maximum of three working days** of Ofsted becoming aware of the incident. Cases which attract a high level of media interest or are of severe concern will require the SIB to be produced as a matter of urgency.

How to write the briefings

770. We write press and serious incident briefings using the templates provided at the end of this guidance. The templates contain further guidance about what we include in each briefing. If we need to write a full serious incident briefing, we can copy and paste the relevant sections of the press briefing into the full briefing template, with other sections added. However, we always make sure, when writing the serious incident briefing, that any information that is copied from the press briefing remains accurate.

Quality assurance of briefings

771. It is very important that all information contained in a briefing is accurate, written in plain English and that we state very clearly the decisions made by Ofsted and the reasons for action being taken or not taken. Responsibility for the quality assurance of the briefing rests with the **case decision maker**.

Who receives the briefings

772. We send the press briefings and SIBs to the senior HMI, Regional Director, National Director and the Press team. The Regional Director, National Director and/or press team decide whether the incident is of such profile that they need to inform HMCI and/or Chair of the Ofsted Board, with consideration to:

- the profile of the incident
- the level and type of media interest
- the potential risk to Ofsted's reputation from our action or inaction in relation to the incident.

773. The Regional Director and National Director determine what further action, if any, is required in cases, for example, where there is potential reputational risk for Ofsted.

774. We copy **press briefings** to the:

- Regional Director
- Social Care Policy team
- Regional Senior HMI Social Care
- Relevant Regulatory Inspection Manager
- case decision maker.

775. We copy **SIBs** to the:

- Regional Director
- Senior HMI
- Chair of the Ofsted Safeguarding Group
- Social Care Compliance team in ARC
- Press team
- Social Care Policy team (only where there are policy or inspection framework issues).

Storing the brief

776. Each serious incident and press briefing must be uploaded onto Office Base as part of the compliance case.

Annex A: Template for press briefing

Serious incident – press briefing

To: (insert name of Director, Social Care Policy & Frameworks)

From: (insert name of author of briefing and job title)

cc for information:

URN:

Name and address of setting:

Name of registered provider (and responsible individual, if applicable):

Name of registered manager:

Any other registrations/applications for registration held by the provider or manager:

Any other settings that the responsible individual is connected to:

Description of incident

The first sentence should be a summary of the incident, so that recipients can see in one sentence what the issue is.

Subsequent sentences should include:

- succinct description of the incident and date when it occurred
- details of when and how Ofsted was notified, including whether a notification was received late
- initials, age, gender and ethnicity (if known) of the child/children, young people or adult service users involved in the incident
- potential safeguarding issues for other service users
- impact on any other registrations that the provider and/or manager hold with Ofsted
- impact on service users in the event of compliance action being taken.
-

Action taken by Ofsted in response

We write the press briefing at an early stage so if Ofsted is still considering what action to take, please make this clear.

If known, include:

- what action Ofsted has taken
- who Ofsted is taking action against (provider and/or manager)
- what action Ofsted plans to take next
- why Ofsted has taken/not taken action
- liaison with other agencies - if so which
- which managers are involved in the decision-making
- whether the provider and/or manager knows what action Ofsted is taking.
-

Contact for further information

Insert name of the case manager/decision maker.

Annex B: Template for serious incident briefing

Serious incident – full briefing

To: (insert name of Director, Social Care Policy and Frameworks)

From: (insert name of author and job title)

cc for information:

Initial briefing or update briefing:

If update briefing, date/s of initial/previous briefings:

URN:

Name and address of setting:

Name of registered provider (and responsible individual, if applicable):

Name of registered manager:

Any other registrations/applications for registration held by the provider or manager:

Any other settings that the responsible individual is connected to:

Description of incident

The first sentence should be a summary of the incident, so that recipients can see in one sentence what the issue is.

Subsequent sentences should include:

- succinct description of the incident with the date it occurred
- details of when and how Ofsted was notified, including whether a notification was received late
- initials, age, gender and ethnicity (if known) of the child/children, young people or adult service users involved in the incident
- potential safeguarding issues for other service users
- impact on any other registrations that the provider and/or manager hold with Ofsted
- impact on service users in the event of compliance action being taken.

Chronology

Include: all registration, inspections, notifications, complaints and compliance cases (earliest first)

Date	Nature of event	Action taken	Outcome (with date if case closed)

Action taken by Ofsted in response to current incident

Include:

- what action Ofsted has taken
- who Ofsted is taking action against (provider and/or manager)
- what action Ofsted plans to take next
- why Ofsted has taken/not taken action
- liaison with other agencies - if so which
- whether the provider and/or manager knows what action Ofsted is taking
- whether external or internal legal advice has been sought.

Contact for further information:

Insert name of the case manager/decision maker

Annex C: Events that registered providers must tell us about

Type of information		Residential family centres	Children's homes	Secure children's homes ²²²	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	√	√

²²² 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 ²²²	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 Disclosure and Barring Service of an individual working for the service or setting (previously a Protection of Children Act (POCA) referral) ²²³	√	√	√	√	√	√	√
4	Outbreak of any infectious disease – and advised to notify by a registered medical practitioner	√	√	√	√			√

²²³ 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 ²²²	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
5	Involvement, or suspected involvement, of child in sexual exploitation ²²⁴	√ including a parent under 18 years	√	√	√			√ Involvement or suspected involvement in sexual exploitation
6	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
7	A serious complaint	√ about the centre or persons working there	√ about the home or persons working there	√ about the home or persons working there	√ about a foster carer approved by the agency		√ about any adopter approved by the agency	√ about the scheme or an employee

²²⁴ 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 ²²²	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	Instigation and outcome of any child protection enquiry	√ including a parent under 18 years	√	√	√		√	√
9	A child/young person goes missing			√ ²²⁵				
10	Information relating to criminal convictions and cautions relating to a registered person or responsible individual	√	√	√	√	√	√	√

²²⁵ By virtue of the Children's Homes: National Minimum Standards, standard 23.9.

* 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 ²²²	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	Appointment of receiver, manager, liquidator or provisional liquidator, or a trustee in bankruptcy	√	√	√	√	√	√	
12	Where provider is an individual, that they have made an arrangement with their creditors from which they have not been discharged	√	√	√	√			
13	Absence of the registered person, registered manager, agency manager or branch manager for 28 days or more	√	√	√	√ registered manager only	√	√	

Type of information		Residential family centres	Children's homes	Secure children's homes ²²²	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
14	Appointment (including change) of a registered manager (including date of appointment) or responsible individual	√	√	√	√	√		√
15	Change to the name or address of the registered company	√	√	√		√	√	√
16	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		√	√	√	√	√	

Type of information		Residential family centres	Children's homes	Secure children's homes ²²²	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	Premises significantly altered/extended or additional premises acquired	√	√					
18	A person other than the registered provider or registered manager is carrying on or managing the establishment or agency	√	√	√	√	√	√	√
19	Change of manager						√	
20	Agency ceasing to act or exist					√	√	
21	The registered person ceases to carry on	√	√	√			√	
22	Death of the registered person, responsible individual, manager or branch manager	√	√		√ manager only	√	√	√ registered provider only

Type of information		Residential family centres	Children's homes	Secure children's homes ²²²	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
23	Creation of and subsequent review of the statement of purpose and children's guide – within 28 days	√ resident's guide, not children's guide	√		√	√	√	√
24	Review of behaviour management policy		√	√				√
25	Review of quality of care	√	√	√	√			√
26	Report as to financial viability where it is likely that the establishment or agency has become financial inviable or is likely to be so within the next 6 months	√	√	√	√	√	√	

Annex D: Who should apply for written consent and when

Table 1: Disqualification from carrying on, being concerned in the management of, or having a financial interest, in a children’s home under section 65(1) of the Children Act 1989

Disqualified person	Application or existing registration²²⁶	Who must apply for written consent?	When does the written consent need to be applied for?	Who do we send the outcome of the written consent panel to?	Who has the right of appeal under section 65A of the Children Act 1989?
Individual Provider-whether registered solely or as part of a partnership	Application	Individual provider applicant	Prior to lodging application for registration	Provider applicant	Provider applicant
Registered provider	Existing registration – Where provider becomes disqualified after registration	Registered provider	As soon as the person becomes disqualified	Registered provider	Registered provider
Manager	New application (new manager for new or existing setting)	Manager applicant	Prior to lodging application for registration	Manager applicant	Manager applicant
Registered manager	Existing registration (for example, the manager becomes	Registered manager	As soon as the manager becomes disqualified	Registered manager	Registered manager

²²⁶ Please note that a disqualified individual may at any time apply for written consent to Ofsted to carry on, be concerned in the management of or have a financial interest in a children’s home in the future. Their application for written consent does not have to be attached to a registration.

Disqualified person	Application or existing registration²²⁶	Who must apply for written consent?	When does the written consent need to be applied for?	Who do we send the outcome of the written consent panel to?	Who has the right of appeal under section 65A of the Children Act 1989?
	disqualified after registration)				
Person who wishes to have a financial interest in a children's home	Application or existing registration	Person who wishes to have a financial interest	Before the person gains a financial interest in the home	Person who wishes to have a financial interest	Person who wishes to have a financial interest
Person who has a financial interest in a children's home	Where person becomes disqualified after they have a financial interest in a children's home	Person with the financial interest	As soon as the person becomes disqualified	Person with the financial interest	Person with the financial interest
Nominated responsible individual	New registration	Nominated responsible individual	Before the application by the provider is made	Nominated responsible individual	Nominated responsible individual
Nominated responsible individual	Existing registration – change of RI	Nominated responsible individual	Before the registered provider notifies Ofsted of the change to the responsible individual	Nominated responsible individual	Nominated responsible individual
Responsible individual	Where the responsible individual becomes disqualified after taking up this role	Responsible individual	As soon as the person becomes disqualified	Responsible individual	Responsible individual

Table 2: Person disqualified from working in a children’s home under section 65(2) of the Children Act 1989²²⁷

Disqualified person	Application or existing registration	Who must apply for written consent?	When does the written consent need to be applied for?	Who do we send the outcome of the written consent panel to?	Who has the right of appeal under section 65A of the Children Act 1989?
Proposed responsible individual	Proposed responsible individual for new setting	Provider applicant	Before the provider applicant employs the person they wish to appoint as responsible individual	Provider applicant	Provider applicant
New responsible individual	New responsible individual of an existing setting	Registered provider	Before the registered provider employs the new responsible individual	Registered provider	Registered provider
Responsible individual	Of existing setting who becomes disqualified after appointment (and continues to work for the provider at the children’s home or in a management role other than RI)	Registered provider	As soon as the person becomes disqualified	Registered provider	Registered provider
Registered manager	Registered manager who becomes	Registered provider (if they intend to	As soon as the person becomes disqualified	Registered provider	Registered provider

²²⁷ Please note that where a disqualified individual applies for and is granted written consent by Ofsted, such as in the capacity of being concerned in the management of a children’s home, their employer does not need to obtain further written consent to employ them in such a role.

Disqualified person	Application or existing registration	Who must apply for written consent?	When does the written consent need to be applied for?	Who do we send the outcome of the written consent panel to?	Who has the right of appeal under section 65A of the Children Act 1989?
	disqualified after registration (and continues to work for the provider at the children's home or in a management role other than RM)	continue employing the person in that capacity)			
Person who works at a children's home	Where person becomes disqualified after commencing employment	Registered provider	As soon as the person becomes disqualified	Registered provider	Registered provider
Person who intends to work at a children's home	Person is disqualified before commencing employment	Registered provider	Before the employee commences employment at a children's home	Registered provider	Registered provider

Annex E: List of events, offences and convictions which trigger disqualification from involvement in children's homes

The following sets out the grounds that make a person²²⁸ disqualified from carrying on, being concerned in the management of, having a financial interest in, or working at, a children's home. For the offences listed below, an individual is only disqualified if they have been convicted of the offence.²²⁹

What is a 'conviction'?

The Children Act 1989 and associated regulations do not provide a definition of 'conviction' and the definition differs between legislation. We use the following definition of conviction for the purposes of sections 65 and 68 of the Children Act 1989.

A 'conviction' includes:

- being convicted (found guilty) of an offence
- receiving a probation order before 1 October 1982
- being found not guilty of an offence by reason of insanity
- being found to be under a disability and to have done the act charged against them in respect of the offence.

A 'conviction' does not include:

- an absolute discharge
- a conditional discharge
- a formal caution.

If inspectors or compliance colleagues are uncertain as to whether an act amounts to a conviction, they should contact Legal Services for further advice.

Disqualified persons

Please read the following in conjunction with the:

- Children Act 1989, sections 65 and 68²³⁰

²²⁸ See the 'Disqualification and written consent' section of the *Social Care Compliance Handbook*.

²²⁹ Section 68(2A) of the Children Act 1989.

²³⁰ Sections 65 and 68 of Children Act 1989.

- The Disqualification from Caring for Children (England) Regulations 2002.²³¹

The disqualifying offences include (although not an exhaustive list):

- those listed in the above legislation
- any offence involving bodily injury to or death of a child.²³²

An individual will be disqualified from carrying on, being concerned in the management of, having a financial interest in, or working at²³³, a children's home if the individual:

- has been subject to any order relating to the care of children (see Table 1 below)
- has been 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 (see Table 1 below) or has taken specified regulatory action
- has been convicted of any offence listed in Table 1 below
- has been convicted of any of the offence which involved bodily injury to, or death of, a child.

²³¹ The Disqualification from Caring for Children (England) Regulations 2002

²³² The definition of 'bodily injury' is quite broad. Case law has established that 'bodily injury' need not be permanent but should not be 'so trivial or trifling as to be effectively without significance'. In general terms something like bruising, a cut or swelling could constitute 'bodily injury'. It is vital that Ofsted has evidence of the 'bodily injury', ideally in the form of photographs, medical evidence, police statements or statements from those involved. Whether or not something constitutes 'bodily injury' will need to be established on a case-by-case basis. If you are in doubt, contact Legal Services who will be able to advise you.

²³³ 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.

Table 1: Instances which will bring about disqualification from carrying on, being concerned in the management of, having a financial interest in, or working at, a children’s home

Specific Circumstance/event	Description including legislation
Care Orders	<ul style="list-style-type: none"> ■ The individual is a parent of a child with respect to whom an order has been made at any time under- <ul style="list-style-type: none"> – section 31(1)(a) of the Children Act 1989 (care order); or – Article 50(1)(a) of the Children (Northern Ireland) Order 1995 (care order). ■ One of the following orders has been made at any time with respect to a child so as to remove the child from his care, or prevent the child living with him-- <ul style="list-style-type: none"> – an order under section 31(1)(a) of the Children Act 1989; – any order that would have been deemed to be a care order by virtue of paragraph 15 of Schedule 14 to the Children Act 1989 (transitional provisions for children in compulsory care), had it been in force immediately before the day on which Part IV of the Act came into force; – a supervision order which imposes a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 or section 12AA of the Children and Young Persons Act 1969 (requirement to live in local authority accommodation); – an order under Article 50(1)(a) of the Children (Northern Ireland) Order 1995; or – a fit person order, parental rights order, or training school order under the Children and Young Persons Act (Northern Ireland) 1968.
Supervision and Supervision orders	<ul style="list-style-type: none"> ■ A supervision requirement has been imposed at any time with respect to a child so as to remove that child from the individual’s care, under-

Specific Circumstance/event	Description including legislation
	<ul style="list-style-type: none"> – section 44 of the Social Work (Scotland) Act 1968 – section 70 of the Children (Scotland) Act 1995. ■ A compulsory supervision order, within the meaning of section 83 of the Children's Hearings (Scotland) Act 2011 or an interim compulsory supervision order, within the meaning of section 86 of that Act, has been made at any time with respect to a child so as to remove that child from the individual's care.
Rights and powers over a child	<ul style="list-style-type: none"> ■ The individual's rights and powers with respect to a child have at any time been vested in a local authority in Scotland- <ul style="list-style-type: none"> – under section 16 of the Social Work (Scotland) Act 1968; or – pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995.

Offence for which the individual has been convicted	Description and relevant legislation
Any other offence not specifically referred to in the regulations involving bodily injury to a child	To be determined on a case by case basis
Offences in England and Wales	<ul style="list-style-type: none"> ■ The individual has been convicted of an offence under any of the following-- <ul style="list-style-type: none"> – section 49 or 50(9) of the Children Act 1989 (offences relating to the abduction of a child in care); – section 78, 79D or 79F(6) of Children Act 1989 the Act (offences relating to child minding and day care); – section 70 of the Children Act 1989, section 16

	<p>of the Foster Children Act 1980, or section 14 of the Children Act 1958 (offences relating to private fostering); or</p> <ul style="list-style-type: none"> – paragraph 1(5) of Schedule 5 to, section 63(10) of, or paragraph 2(3) of Schedule 6 to, the Children Act 1989 (offences relating to voluntary homes and children's homes). <p>■ The individual has been convicted an offence in relation to a children's home under or by virtue of any of the following provisions of the Care Standards Act 2000 -</p> <ul style="list-style-type: none"> – section 11(1) (failure to register) – section 24 (failure to comply with conditions) – section 25 (contravention of regulations) – section 26 (false descriptions of establishments and agencies) – section 27 (false statements in applications)
<p>Offences in Scotland</p>	<p>■ The individual has been convicted of:</p> <ul style="list-style-type: none"> – An offence of rape. – An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. – The common law offence of plagium (theft of a child below the age of puberty). – An offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences relating to indecent photographs of children). – An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust). <p>■ An offence under any of the following--</p> <ul style="list-style-type: none"> – section 59(1) or 171(2) of the Children's Hearings (Scotland) Act 2011, section 83 or 89 of the Children (Scotland) Act 1995 or section 17(8) or 71 of the Social Work (Scotland) Act 1968 (harbouring offences); – section 6 of the Child Abduction Act 1984 (taking or sending child out of United Kingdom);

	<ul style="list-style-type: none"> – section 78 of the Act (offences relating to child minding and day care); or – section 15 of the Foster Children (Scotland) Act 1984 (offences relating to private fostering). ■ An offence under or by virtue of section 60(3), 61(3) or 62(6) of the Social Work (Scotland) Act 1968 (offences relating to residential and other establishments). ■ An offence in relation to a care home service, child minding or day care of children, under or by virtue of any of the following provisions of the Regulation of Care (Scotland) Act 2001-- <ul style="list-style-type: none"> – section 21 (offences in relation to registration); – section 22 (false statements in applications); or – section 29(10) (offences in regulations). ■ An offence in relation to a care home service, child minding or day care of children, under or by virtue of any of the following provisions of the Public Services Reform (Scotland) Act 2010-- ■ section 78 (offences under regulations); ■ section 80 (offences in relation to registration); or ■ section 81 (false statements in applications).
<p>Offences in Northern Ireland</p>	<ul style="list-style-type: none"> ■ The individual has been convicted of: <ul style="list-style-type: none"> – An offence of rape. – An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968. – An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs). – An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse). – An offence contrary to Article 15 of the Criminal

	<p>Justice (Evidence etc) (Northern Ireland) Order 1988 (possession of indecent photographs of children).</p> <ul style="list-style-type: none"> – An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust). – ■ An offence under any of the following-- <ul style="list-style-type: none"> – Article 68 or 69(9) of the Children (Northern Ireland) Order 1995 (offences relating to the abduction of a child in care); – Article 132 of the Children (Northern Ireland) Order 1995, or section 14 of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to child minding and day care); – Article 117 of the Children (Northern Ireland) Order 1995, or section 9(1) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to private fostering); or – Article 79(3), 81(4), 95(3) or 97(4) of the Children (Northern Ireland) Order 1995, or section 127(5) or 129(3) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to voluntary homes and children's homes). ■ The individual has been convicted of: <ul style="list-style-type: none"> – An offence contrary to section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions) where the prohibited goods included indecent photographs of children under the age of 16. ■ An offence by virtue of- <ul style="list-style-type: none"> – section 7 of the Sex Offenders Act 1997 (extension of jurisdiction: England and Wales and Northern Ireland) – section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual offences outside the United Kingdom).
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	<ul style="list-style-type: none"> ■ An offence contrary to section 32(3) of the Children and Young Persons Act 1969 (detention of absentees). ■ An offence contrary to article 10(2) (offences relating to absconding) or article 11(1) (offence of intentional obstruction) of the Children's Hearings (Scotland) Act 2011 (Consequential and Transitional Provisions and Savings) Order 2013.
Children's Home registration	<ul style="list-style-type: none"> ■ The individual has been refused registration in respect of a children's home under section 13 of the Care Standards Act 2000 ■ The individual's registration in respect of a children's home has been cancelled under section 14 or 20(1) of the Care Standards Act 2000 ■ The individual has been concerned in the management of, or had any financial interest in, a children's home, in respect of which the registration of any person has been cancelled under section 14 or 20(1) of the Care Standards Act 2000.
Voluntary homes registration	<ul style="list-style-type: none"> ■ The Individual has at any time been refused registration in relation to a voluntary home or a children's home, or who carried on, was otherwise concerned with the management of, or had any financial interest in, a voluntary home or a children's home the registration of which was cancelled, under, as the case may be-- <ul style="list-style-type: none"> – paragraph 1 of Schedule 5 to the Children Act 1989 – paragraph 1 or 4 of Schedule 6 to the Children Act 1989 – section 127 of the Children and Young Persons Act (Northern Ireland) 1968 – Article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995.
Fostering-prohibitions/restrictions	<ul style="list-style-type: none"> ■ The individual is a person in respect of whom: <ul style="list-style-type: none"> – a prohibition has been imposed at any time

	<p>under--</p> <ul style="list-style-type: none"> – section 69 of the Act, section 10 of the Foster Children Act 1980 or section 4 of the Children Act 1958 (power to prohibit private fostering) – Article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering) – section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children) – a notice in writing has been given by a Health and Social Services Board under section 1(3) of the Children and Young Persons Act (Northern Ireland) 1968 (withholding consent to the care and maintenance of the child being undertaken by a person)
Registration in respect of the provision of nurseries or day care, or child minding	<ul style="list-style-type: none"> ■ The individual has at any time been refused registration in respect of the provision of nurseries or day care, or for child minding, or had any such registration cancelled under, as the case may be-- <ul style="list-style-type: none"> – Part X or XA of the Children Act 1989 – section 1 or 5 of the Nurseries and Child-Minders Regulation Act 1948 – Part XI of the Children (Northern Ireland) Order 1995 – section 11(5) or 15 of the Children and Young Persons Act (Northern Ireland) 1968 – Part 2 of the Children and Families (Wales) Measure 2010
Scottish registrations	<ul style="list-style-type: none"> ■ The individual has at any time been refused registration or had such registration cancelled- <ul style="list-style-type: none"> – under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments) – in respect of a care home service, child minding or day care of children, under Part 1 of the Regulation of Care (Scotland) Act 2001 – Part 5 of the Public Services Reform (Scotland) Act 2010
Scottish permanence orders- parental	<ul style="list-style-type: none"> ■ The individual has had, by virtue of the making of

responsibility	a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007, all parental responsibilities or parental rights in relation to a child removed
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