

# Social care compliance handbook

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This handbook sets out the legal background to our compliance and enforcement work and the extent of 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.

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# 1. Ofsted's enforcement policy: children's social care establishments and agencies

## Introduction

1. The protection of children, young people and vulnerable adults is paramount to any decisions Ofsted makes when we undertake registration, inspection and compliance activity. We regulate children's social care providers and managers under the Care Standards Act 2000<sup>1</sup> and the regulations made under this Act. The legal term 'registered person' is used throughout this guidance to refer to a registered social care provider and manager.
2. The law gives Ofsted a range of powers to use in order to reduce any risk of harm to children, young people and adult service users, enforce compliance with the law, and improve the quality of the service provided. We consider the particular circumstances of each case; the risks to children, young people and adult service users; and the impact of our proposed action on their lives, when deciding what action we need to take.
3. The establishments and agencies covered by this handbook are:
  - adoption support agencies
  - children's homes, including secure children's homes
  - holiday schemes for disabled children
  - independent fostering agencies
  - residential family centres
  - voluntary adoption agencies.
4. This handbook sets out our policies and approach to concerns about non-compliance with the law.

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<sup>1</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

## Our policy

5. The protection of children, young people and vulnerable adults is paramount. Our enforcement policy therefore has five key components. We:
  - act immediately on any information that suggests the welfare of children, young people and/or vulnerable adults is not safeguarded
  - work in accordance with our safeguarding policy and agreed protocols
  - take action to raise standards and improve lives, as set out in our strategic plan<sup>2</sup>
  - take the most appropriate action to bring about compliance – this means that we only take compliance action that mitigates risks of harm to children and young people and is proportionate to the seriousness of the non-compliance
  - use our statutory powers when a relevant threshold is met.
6. We may bring forward an inspection when we receive information from any source which raises concerns. This includes information that may suggest that children, young people and/or vulnerable adults are at risk; that a registered person is not meeting the regulations or conditions of registration, and there is evidence that they are no longer fit for registration or carrying on the establishment or agency; or that a person is providing or managing a children's social care establishment or agency without registration.
7. We always conduct a risk assessment on receipt of any information to determine what immediate regulatory or safeguarding action is required and how soon an inspection should take place. The risk assessment also helps us to decide whether the situation requires investigative work that is not normally part of an inspection. This may include liaison with other agencies or formal interviews with the provider (or some other person) which are necessary before we can carry out a full inspection. See section '5. Responding to information and notifications of events'.

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<sup>2</sup> *Raising standards, improving lives: The Office for Standards in Education, Children's Services and Skills Strategic Plan 2011–2015* (110001), Ofsted, 2011; [www.ofsted.gov.uk/about-us/ofsteds-priorities-and-values/strategic-plan](http://www.ofsted.gov.uk/about-us/ofsteds-priorities-and-values/strategic-plan).

8. We liaise with other agencies as necessary, but we always conduct our own investigation or inspection. This is determined by our risk assessment process and the outcome of liaison with, and enquiries made by, other agencies such as the police and local authority children's services.
9. Our protocols for working arrangements with other agencies govern how we work with these agencies and are published on our website.<sup>3,4,5</sup>
10. We publish reports of all routine inspections of social care providers on our website. Where the inspection has been prompted by the receipt of specific information, we reference any evidence of non-compliance we find in the inspection report.
11. At times we carry out monitoring inspections specifically to look into concerns raised. From the end of November 2013 we will publish monitoring visit reports for those children's homes which have been judged as inadequate at two sequential full inspections. We will continue to revise our approach to publishing monitoring reports. We will ensure that as much information as possible is published to enable placing authorities to use placements that are only in the best interests of children and young people.

## Our processes

12. In working to this policy, we ensure that we:
  - keep accurate records and an audit trail of decision-making
  - are consistent in our approach
  - regularly review the progress of a case
  - revise our approach as appropriate

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<sup>3</sup> *Memorandum of understanding between the Care Quality Commission and the Office for Standards in Education, Children's Services and Skills* (20110016), Ofsted and the Care Quality Commission, 2011; [www.ofsted.gov.uk/resources/memorandum-of-understanding-between-care-quality-commission-and-office-for-standards-education-child](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-care-quality-commission-and-office-for-standards-education-child).

<sup>4</sup> *Memorandum of understanding between Ofsted and First-Tier Tribunal of the Health, Education and Social Care Chamber* (100242), Ofsted and the First-Tier Tribunal of the HESC, 2010; [www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-care](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-care).

<sup>5</sup> *Memorandum of understanding between Ofsted and the General Social Care Council* (20110018), Ofsted and the General Social Care Council, 2011; [www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-general-social-care-council](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-general-social-care-council).

- ensure all staff are suitably trained and have access to high-quality support and advice when taking enforcement action.
13. The use of our some of our statutory powers is subject to review on appeal by the First Tier Tribunal (Health, Education and Social Care Chamber). Our powers of prosecution are subject to the scrutiny of the criminal courts.

## 2. The legal basis of our work and our options for ensuring compliance: powers, principles and making decisions

### Introduction

14. The Care Standards Act 2000 (the Act) and its associated regulations provide the legal basis for our compliance and enforcement guidance and work with children's social care establishments and agencies.<sup>6</sup>
15. The Act defines Ofsted, in the person of Her Majesty's Chief Inspector, as the regulatory authority for children's social care services. The Act sets out our powers and duties relating to the inspection and regulation of children's social care providers and the powers we have to enforce compliance with the law. There are additional powers for Her Majesty's Chief Inspector in the Education and Inspections Act 2006.<sup>7</sup>
16. We have a duty to ensure that we only register people who are fit for registration as providers and managers of regulated social care establishments and agencies. This means that an applicant must demonstrate that they comply with registration regulations and will be able to comply with service-specific regulations for the type of establishment or agency they intend to provide.<sup>8</sup>
17. All registered persons must comply with the conditions of registration set out on their certificate of registration.<sup>9</sup>
18. Ofsted is not a complaints adjudicator. We have no legislative duty or power to investigate complaints against providers to determine whether complaints are upheld, partially upheld or unsubstantiated. Our role is to establish whether a registered person meets the relevant social care regulations, and whether a person remains fit for registration. We also decide whether someone is providing care for which registration is required. However, when

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<sup>6</sup> The regulation of children's social care was transferred to Ofsted from the Commission for Social Care Inspection by the Education and Inspections Act 2006, section 148; [www.legislation.gov.uk/ukpga/2006/40/section/148](http://www.legislation.gov.uk/ukpga/2006/40/section/148).

<sup>7</sup> Education and Inspections Act 2006; [www.legislation.gov.uk/ukpga/2006/40/contents](http://www.legislation.gov.uk/ukpga/2006/40/contents).

<sup>8</sup> Please see the *Guide to registration for children's social care services* (090020), Ofsted, 2013; [www.ofsted.gov.uk/resources/guide-registration-for-childrens-social-care-services](http://www.ofsted.gov.uk/resources/guide-registration-for-childrens-social-care-services).

<sup>9</sup> Please see *Conditions of registration for all regulated social care services and categories of registration for children's homes and voluntary adoption agencies* (110049), Ofsted, 2012; [www.ofsted.gov.uk/resources/110049](http://www.ofsted.gov.uk/resources/110049).

we receive concerns and complaints we take the information seriously and as part of our risk assessment.

19. The First Tier Tribunal (Health, Education and Social Care Chamber) ('the Tribunal')<sup>10</sup> considers appeals in relation to decisions we make in respect of a decision to:
  - refuse an application to register
  - restrict accommodation at a children's home or residential family centre
  - vary, impose or remove conditions of registration
  - refuse to grant consent to work with children for social care providers
  - cancel a registration.
20. In addition, a provider can appeal to the Tribunal against an emergency order imposed by a magistrate – see section '12. Taking emergency action'. The Tribunal publishes its decisions on its website.<sup>11</sup>

## **Options available for ensuring compliance: children's social care**

21. The law gives us a range of powers to regulate children's social care services, which set out the action we can take in order to enforce compliance with the law. We take the most appropriate action to ensure compliance and consider the particular circumstances of each case before deciding what action we will take.
22. The chart below sets out the statutory and non-statutory options available to us. The section on thresholds includes information that we refer to when making our decisions about enforcement action. However, it is essential that any decision about the action we take is firmly guided by our duty to ensure the safety and welfare of children, young people and vulnerable adults.

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<sup>10</sup> *Care standards guidance*, HM Courts and Tribunals Service; [www.justice.gov.uk/tribunals/care-standards](http://www.justice.gov.uk/tribunals/care-standards).

<sup>11</sup> *Tribunal judiciary decisions*; [www.carestandardtribunal.gov.uk/Public/search.aspx](http://www.carestandardtribunal.gov.uk/Public/search.aspx).

## Social care providers

### Statutory enforcement actions

Take emergency action to impose or vary a condition

Cancel the registration

Emergency cancellation

Serve a compliance notice

Impose or vary conditions

Prosecute for an offence

Notice to restrict accommodation of a children's home, holiday scheme for disabled children and residential family centre

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### Non-statutory actions

Issue a simple caution

Make a requirement at inspection

Make a recommendation at inspection

Issue a warning letter

## Deciding what enforcement action to take

23. The protection and safety of children, young people and vulnerable adults are paramount when we are deciding on a course of enforcement action. We make a risk assessment and ensure that the action we take is proportionate to the risk involved. We are likely to take stronger action where children and young people or vulnerable adults are at risk.



24. We consider the attitude and knowledge of the registered person when deciding what enforcement action is appropriate. In particular, we assess whether the registered person has understood the issue, has sufficient knowledge about their responsibilities and shows a willingness to put things right.
25. We assess the impact of any breach of regulations or offence on children, young people and vulnerable adults, and consider whether taking enforcement action will bring about the necessary compliance and improvement. The protection and welfare of children, young people and adult service users are our paramount consideration.

### **Statutory actions: a brief overview**

26. When we find that a registered person does not comply with the requirements of registration we can make **requirements in our inspection reports**. These set out what we require the registered person to do and the date by which they have to comply. We also require the registered person to write to tell us what they did to comply with each requirement. This gives them the opportunity to put things right without recourse to more formal action. We may undertake a monitoring visit to ensure that the requirements are complete and that any negative impact on children, young people and vulnerable adults' safety and welfare have been minimised.
27. We expect the registered person to demonstrate how the action taken is improving their own, knowledge and understanding as well as staffs', and how they are embedding the action that they have taken into practice. The registered person must demonstrate that the action they have taken impacts positively on children and young people's safety and welfare. As such, the requirements set out in a report remain open and continue to be monitored until the registered person has taken the appropriate steps. If there is no evidence of compliance with the requirements we have set, we consider what enforcement action we may take.
28. We may issue a compliance notice. These notices are important in enforcing the law. A compliance notice sets out the actions that a provider must take by a certain date to meet the relevant social care regulations. A registered person commits an offence if he or she does not meet the requirements within the timescales set out in a compliance notice and may be prosecuted. Non-compliance with a compliance notice is also a specific ground that Ofsted can use to seek the cancellation of the registration.
29. We can also impose conditions of registration or take action to prosecute a registered person for an offence.

30. In more serious cases we consider cancellation of registration. In the most serious cases, we can take emergency action to cancel a registration if we believe that:
- there is a serious risk to a person's life, health or well-being
- and
- we need to take immediate action in order to ensure that children's welfare is safeguarded; for guidance on the tests we use for this and other powers, see section '3. Thresholds for enforcement action'.
31. We also have the power to prevent children and young people from being admitted to a children's home or holiday scheme for disabled children, or families being admitted to a residential family centre. We may do this where we reasonably believe that there is a risk of harm to a child, young person or family if we do not do so. . If we take this action we notify placing authorities of our action to restrict accommodation. See the section on 'Issuing a notice restricting accommodation' within this guidance.
32. There are different tests that apply to all our powers (see section '3. Thresholds for enforcement action'). For example, we may decide to issue a notice of proposal to a registered person (and subsequently a notice of decision) to cancel their registration. This may be an appropriate course of action if, for example, a registered person is failing to meet the requirements or regulations and other enforcement action has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale.

### **3. Thresholds for enforcement action**

33. Ofsted decides whether a provider or manager is fit or continues to remain fit for registration. This decision is guided by our overriding principle of protecting and promoting children, young people's and adult service users. We can require a registered person to take action to comply; we do not at this time have any powers to suspend the registration of a children's social care provider. The following sections provide guidance on our thresholds for enforcement action. See section 4, 'Decision-making' about how we decide which action to take.
34. Notices we issue under the Care Standards Act 2000 are:
- Notice Restricting Accommodation - Section 22B
  - Compliance Notice - Section 22A
  - Notices of Proposal - Section 17
  - Notices of Decision - Section 19.

#### **Issuing a notice restricting accommodation**

##### **Children's home, holiday schemes for disabled children or residential family centre providers**

35. We issue a notice restricting accommodation in a children's home, holiday scheme for disabled children or residential family centre if we reasonably believe that there is a risk of harm to a child, young person or family if we do not do so.
36. The purpose of restricting accommodation is to allow time for:
- an investigation, including investigations by other agencies, into the risk of harm to children
- or
- steps to be taken to reduce or eliminate the risk of harm to children.

37. The initial period of restriction of accommodation is set at six weeks. This is monitored and is lifted if the reason it was imposed no longer applies and children and young people's safety and well-being is not at risk<sup>12</sup>

### **Extension of restrictions on accommodation**

38. If necessary, we can restrict accommodation for a further period of six weeks. We only consider restricting accommodation beyond 12 weeks if:
- the registered person(s) have not taken appropriate steps to reduce the risk of harm to children to an acceptable level – this may occur, for example, where there is partial damage to a property, for instance by water or fire, and repairs are not complete, or there are building works underway at the premises
  - there is an on-going section 47 investigation concerning a child who is, or was, living in the children's home or residential family centre and there is insufficient evidence to suggest the risk of harm to children is reduced to an acceptable level if we do not take this action
  - we decide to restrict accommodation beyond 12 weeks, we must also hold a case review to consider what enforcement action to take next. This may be that it is best to continue to restrict accommodation. However, the review must include a decision about whether to cancel the provider's registration. This is because we expect to providers to take immediate action to improve. Any decision not to cancel a provider's registration at this point must be recorded in the case review record.

### **Compliance notices**

39. Compliance notices set out the actions that a registered person must take by a certain date to meet the relevant regulations. We may issue a compliance notice if:
- we consider that the registered person is failing or has failed to comply with a requirement imposed in relation to the establishment or agency<sup>13</sup>
- or

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<sup>12</sup> The six-week time limit is not a statutory provision but is Ofsted's policy approach to the use of this power. We may, in some circumstances, set a different expiry period where it is appropriate to the particular case.

<sup>13</sup> We may issue a compliance notice against registered children's homes, holiday schemes for disabled children, residential family centres, voluntary adoption agencies, adoption support agencies and fostering agencies.

- we consider that the registered person has contravened or failed to comply with the relevant regulations

and

- we have previously set a requirement and the registered person has not taken appropriate steps to meet the regulations

and

- the non-compliance is so serious or wide-ranging that it is appropriate to issue a compliance notice, after considering all other options.<sup>14</sup>

### **Conditions of registration**

40. We may impose conditions of registration if this is the most appropriate way forward.<sup>15</sup> We do not impose conditions of registration that are already covered elsewhere by the requirements for registration.

### **Prosecutions**

41. There are a number of offences in law for which we are the prosecuting authority. In all cases, we invite a person suspected of any such offence to an interview under a Police and Criminal Evidence Act 1984 caution.<sup>16</sup>

42. If a person refuses to attend an interview under the Police and Criminal Evidence Act 1984 it does not prevent us taking action to prosecute that person if he or she has committed an offence.

### **General prosecution thresholds**

43. Our five general prosecution thresholds are:

- the registered person has committed an offence
- the offence was committed within the last three years

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<sup>14</sup> Compliance notices are issued under the Care Standards Act 2000, section 22A (power of the Chief Inspector to serve notice where a person is failing to comply with regulations).

<sup>15</sup> We impose conditions of registration using our powers under section 13(5) of the Care Standards Act 2000.

<sup>16</sup> Police and Criminal Evidence Act 1984; [www.legislation.gov.uk/ukpga/1984/60/contents](http://www.legislation.gov.uk/ukpga/1984/60/contents).

- we begin proceedings within six months of the date on which evidence, sufficient in our opinion to warrant the proceedings, becomes known to us
- there is sufficient and reliable evidence to support a prosecution according to the standard of proof needed
- prosecution is in the public interest – we consider whether other enforcement action will achieve the required outcome when deciding whether prosecution is in the public interest.

44. We ensure we can apply each of our five general prosecution thresholds, listed above, before deciding to prosecute for any offence. *The Code for Crown Prosecutors* gives more information when considering the evidential stage and the public interest stage.<sup>17</sup>

### **Providing and managing a children’s social care establishment or agency without registration**

45. We can prosecute a person who provides or manages a children’s social care establishment or agency without registration, where registration is required, if we can apply each of the five general prosecution thresholds (see above) and have reason to believe that:
- a person is operating a children’s social care establishment or agency without registration
  - a person is managing a children’s social care service without registration.

### **Intentionally obstructing a person carrying out their statutory duties**

46. We can prosecute a person who intentionally obstructs an inspector in carrying out their statutory duties under the Care Standards Act 2000 if:
- we can apply each of the five general prosecution thresholds (see above)
  - any action we took was appropriate and within our prescribed duties

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<sup>17</sup> *The Code for Crown Prosecutors*, Crown Prosecution Service, 2013; [www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html).

- taking this action is necessary to enable us to carry out our statutory duties and deter obstruction in the future.<sup>18</sup>

## **Disqualification**

### **Providing or managing a children's social care establishment or agency while disqualified**

47. It is an offence to provide or manage a children's social care establishment or agency while disqualified.<sup>19</sup> It is also an offence to be directly concerned in the management of, or have a financial interest in, a children's home if disqualified. We prosecute a person in these cases if:

- we can apply each of the five general prosecution thresholds (see above)
- or
- the person applies for a waiver/written consent but we refuse the request, and an appeal to the First Tier Tribunal (Health, Education and Social Care Chamber) is not upheld, but the person continues to operate or manage a regulated establishment or agency.

### **Employing a person who is disqualified from registration**

48. We can prosecute a registered person if he or she employs a disqualified person in a children's home. We do this if:

- we can apply each of the five general prosecution thresholds (see above)
- the registered person employed the individual knowing that the person was disqualified.

### **Failing to disclose information relating to a disqualification**

49. We can prosecute a registered person if they fail to comply with any requirement to disclose information related to any order, offence or other matter that relates to disqualification.<sup>20</sup> We do this if:

- we can apply each of the five general prosecution thresholds

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<sup>18</sup> Powers of entry and it being an offence to obstruct an inspector are set out in the Care Standards Act 2000, sections 31 and 32; [www.legislation.gov.uk/ukpga/2000/14/contents#pt2-pb5-l1g31](http://www.legislation.gov.uk/ukpga/2000/14/contents#pt2-pb5-l1g31).

<sup>19</sup> A person is disqualified from providing children's social care under the Children Act 1989, sections 65 and 68; [www.legislation.gov.uk/ukpga/1989/41/contents#pt8-l1g65](http://www.legislation.gov.uk/ukpga/1989/41/contents#pt8-l1g65).

<sup>20</sup> The Children Act 1989, section 70; [www.legislation.gov.uk/ukpga/1989/41/section/70](http://www.legislation.gov.uk/ukpga/1989/41/section/70).

- we have evidence that the registered person, or a person living and/or working in the same household or employed to work with children, is disqualified
- the registered person has not provided us with the relevant information without delay
- we consider that the registered person has not offered a reasonable excuse for not complying with the requirement to disclose information.

### **Failing to comply with the terms of a compliance notice**

50. We can prosecute a registered person if he or she fails to comply with a compliance notice. We do this if we:

- can apply each of the five general prosecution thresholds (see above)
- have served the compliance notice correctly.

### **Failing to comply with any condition imposed on the registration**

51. We can prosecute any registered person for failing to comply with a condition of their registration if:

- we can apply each of the five general prosecution thresholds (see above)

and

- we served the notices of proposal and decision to impose or vary the condition correctly

and

- the period in which the registered person may appeal against the decision has expired

and

- there is sufficient evidence to show that the registered person has failed to comply with the condition

and

- we consider that the registered person has not offered a reasonable excuse for not complying.



## Failing to notify Ofsted of a notifiable event

52. Where an adoption support agency, children's home, independent fostering agency, residential holiday scheme for disabled children or a residential family centre's provider and manager fail to notify Ofsted of a significant or notifiable event we must first ensure that children and young people are safe.
53. In all instances we must be reassured that children, young people and vulnerable adults are safe. Where incidents pose a serious risk, and we do not know action has been taken to remove or reduce this risk, we must take immediate action to ensure that we know children's safety and welfare has been sufficiently protected.
54. Where a provider and/or manager of a children's home, independent fostering agency, residential holiday scheme for disabled children or a residential family centre's provider and manager fails to notify us of a notifiable event as a minimum we must set requirements at inspection.
55. Where the information comes to light outside of inspection we must decide whether the information that should have been sent in a notice in itself, or in conjunction with other information we hold, warrants us bringing an inspection forward. A case discussion should be held where this is considered. As a minimum we must write to providers and managers outlining that there has been a breach of regulations and asking for a response as to how they will ensure that this does not occur in the future. Information about omissions to notify us or any other agency required by regulation, and actions that a provider has taken to address this, must also always be taken into account at the next inspection and a provider's compliance checked. It is also possible for us to issue a compliance notice in respect of this breach of regulations if this is considered a necessary step.
56. For a registered voluntary adoption agency providers who fail to notify us of a notifiable event have committed an offence and can be prosecuted if we have served a Regulation 29 notice; The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 Regulation 24(1) Schedule 4.
57. We would prosecute a registered person for omitting to notify us, or any other person or body, of any notification required by regulation if:
  - we have first served either a compliance notice or for voluntary adoption agencies a Regulation 29 Notice
  - we can apply each of the five general prosecution thresholds (see above)

and

- there is sufficient evidence to show that a notifiable event has occurred

and

- there is no evidence to suggest that we have received notification as soon as reasonably possible, and in any case within 14 days of the registered person becoming aware of it

and

- there is no evidence to suggest that we have received the notification without delay.

## **Making a false or misleading statement in an application to register**

58. It is an offence to make a false or misleading statement in an application to register.<sup>21</sup> We can prosecute any person if he or she knowingly makes a statement which is false or misleading in relation to an application to register under the Care Standards Act 2000 or in an application to vary a condition of an existing registration. We do this if we:

- can apply each of the five general prosecution thresholds (see above)

and

- have evidence to show that the statement in question is false or misleading

or

- have evidence to show that the person knowingly made the false or misleading statement in question.

## **Simple caution**

59. A simple caution is a non-statutory method of dealing with the commission of certain criminal offences without involving the courts. We may issue a simple caution if:

- the person admits the offence

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<sup>21</sup> Under the Care Standards Act 2000, Part II, Section 27(1); [www.legislation.gov.uk/ukpga/2000/14/section/27](http://www.legislation.gov.uk/ukpga/2000/14/section/27).

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 enforcement action is unlikely to be effective

and

- prosecution would not be in the public interest.

### **Cancellation (non-emergency)**

60. We may apply to cancel the registration of a children's social care provider or manager if:

- the registered person has been convicted of a relevant offence

and/or

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

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 regulations

and/or

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

and/or

- the registered person has failed to pay a prescribed fee

and/or

- other enforcement action, for example requirements and compliance notices, have failed to achieve, or are unlikely to achieve, the outcome needed within a reasonable timescale

and/or

- prosecution is unlikely to achieve the safety and well-being of children, young people or adult service users, 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

and/or

- we consider that cancellation is the only way to assure the safety and well-being of children.

61. We cannot cancel the registration of a registered person if we have issued a compliance notice and the time set has not expired.

### **Taking emergency action**

62. We may apply to a magistrate for an emergency order to take action against a provider. We may ask the magistrate to grant an order to:

- cancel the registration
- vary or remove conditions
- impose conditions of registration.

63. We may take emergency action 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

and

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

and

- the immediate risk to children 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.

## 4. Decision-making

### Introduction

64. Decisions about whether to take enforcement action can occur at any time, for example during registration, inspection or because information comes to light through another source. The decision must always be based on whether there are immediate or longer term risks to children and young people's safety, or a failure to act in children's best interests and fail to promote or safeguard their welfare.
65. The decision may be because of a one-off incident or it may be accumulative evidence that over time builds into a serious concern or indicates more widespread failures that impact negatively on children and young people. It is therefore important that any information that results in us reconsidering whether any regulatory action is required is considered in full and a decision made.
66. Our standard meeting for decision-making for compliance and enforcement decisions is the case review. A case review must be held within a maximum of four working days from receipt. Where the concern presents an immediate or serious risk to children and young people the review must be convened on the day the concern arises and the National Director for social care must be informed. All other case reviews must be held within four days of the concern being identified.
67. The case review considers all available evidence and information which indicates a child protection concern and non-compliance with regulations, as well as the enforcement options available, before the decision-maker reaches a decision that is proportionate and appropriate.
68. Every enforcement decision must be based on protecting children and young people, consider all the enforcement options available and review the individual facts and circumstances of the case in question. Decisions must also include consideration of managerial accountability. For example, does accountability include the provider and manager or provider only?
69. A well-documented audit trail must be kept of why the chosen power is the most appropriate power to be used to protect children and young people, why other options have been rejected and how any decisions about managerial accountability have been reached. The audit trail is essential because our practice may be scrutinised by a court or tribunal.

70. Whenever we make an overall inspection judgement of inadequate we must convene a case review to discuss this. Inspectors must submit their evidence to the social care compliance team before the review occurs, affording them sufficient time to review it.
71. We always convene a case review where there is drift from any other agencies timetable for investigation. This review primarily decides whether we will initiate an inquiry ourselves and what action we will take to challenge the delay of the other organisation. The actions we take will always put children and young people's safety and welfare as our paramount consideration.
72. **Case discussions** are informal meetings that identify whether there is a case to enact our formal decision-making procedures in order to safeguard children and young people's welfare. Where immediate and urgent safeguarding concerns are identified the case discussion must become a case review and our formal case review processes are initiated. A case discussion must as a minimum include a team manager or social care regulatory inspector and social care compliance professional. Where a team manager is not present they must be informed of the case discussion as soon as possible and review the decisions made.
73. If a case discussion is held a compliance case file is opened and a brief summary of the concerns, discussion and actions arising from the case discussion recorded by the social care compliance professional on case comments.
74. Where serious concerns arise during an inspection, a case discussion must be held during the inspection or immediately afterwards so that children and young people's welfare can be protected and appropriate enforcement action taken without delay. In all cases, the inspector will have a discussion with their team manager or the duty manager either during the inspection or as soon as possible afterwards. This discussion must always take place within one working day of the inspection.
75. We implement a decision as soon as possible after we make it. We take decisions at the level set out in the table below. We use alternative decision-making forums as indicated in the table.

## Decision-making table for case discussions and case reviews

Action	Decision-maker	Forum: case review, case discussion or other compliance process
1. Statutory requirements	Social Care Compliance inspector / Regulatory Inspection Manager	Case discussion or case review
2. Letter of concern or meeting with provider – low level concerns only	Regulatory Inspection Manager / Senior HMI	Case discussion or review
3. Compliance notice	Regulatory Inspection Manager	Case review
4. Notice to refuse registration – where a social care compliance case remains open – social care	Regulatory Inspection Manager	Case review
5. Notice to vary/refuse to vary/impose condition of registration – other than at the provider’s request and where a social care compliance case remains open	Regulatory Inspection Manager	Case review
6. Letter issued after an interview under the Police and Criminal Evidence Act 1984	Regulatory Inspection Manager	Case review
7. Issuing a notice restricting accommodation up to 12 weeks (applies only to children’s homes and residential family centre providers)	Senior HMI	Case review
8. Issuing a notice restricting accommodation beyond 12 weeks (applies only to children’s homes and residential family centre providers)	Regional Director	Case review
9. Notice to cancel registration of a social care provider	Regulatory Inspection Manager attends case review, prepares a briefing for and makes recommendation to Regional Director who makes the final decision	Case review

Action	Decision-maker	Forum: case review, case discussion or other compliance process
10. Surveillance	Regional Director authorised to decide on surveillance	Case review
11. Prosecution	Regulatory Inspection Manager attends case review and makes recommendation to Regional Director who makes the final decision	Case review
12. Offer a simple caution following an interview under the Police and Criminal Evidence Act 1984	Regulatory Inspection Manager attends case review and makes recommendation to Regional Director who makes the final decision	Case review
13. Emergency action application to Justice of the Peace	Regulatory Inspection Manager attends case review and makes recommendation to Regional Director who makes the final decision	Case review
14. Give written consent	Regulatory Inspection Manager / Senior HMI attend case review and make recommendation to Regional Director who makes the final decision	Social care written consent process
15. Representation	Senior HMI chairs panel	Social care representation panel
16. Referral to the Disclosure and Barring Service	Senior HMI	Case review

## Case reviews

76. We hold a case review whenever we need to consider taking statutory enforcement action, as set out in the table above.



77. We always hold a case review where inspectors judge an establishment, agency or holiday scheme for disabled children to be inadequate overall at a full inspection. For children's homes we hold a case review where the home is judged as having made inadequate progress at an interim inspection which follows a full inspection where a judgement of inadequate was made. We do not hold a case review when we take non-statutory action but we may hold a case discussion.
78. We conduct a case review within two days of the inspections mentioned in the preceding paragraph. However, where there are serious concerns and inspectors believe that there are immediate safeguarding concerns a case review the case review must be immediate.
79. Each case review must include a decision-maker in line with the table above. Who attends the case review depends on the complexity and nature of the case. However, as a minimum a case review must include a decision maker and a social care compliance professional.

80. The purpose of a case review is to:
- consider the risks to children, young people and adult service users and decide whether compliance action is necessary in order to protect their safety and welfare
  - ensure that we have a consistent approach and take statutory enforcement action within our legal powers
  - review historic information relating to alleged or actual non-compliance
  - explore whether or not we have considered all other options before we make our decision
  - test that the evidence we have obtained is sufficient, robust and supports any proposed regulatory action
  - decide whether we need to obtain further evidence in order to come to a decision.
81. The role and responsibilities of the social care regulatory inspector in a case review are to:
- present the detail of the concern/s, clearly identifying how these impact on children and young people's safety and welfare and illustrating how the operation of the establishment, agency or holiday scheme for disabled children relates to the registered provider and/or manager
  - present a summary of which regulations have been breached
  - present clear, accurate and detailed written evidence which supports effective enforcement action which can withstand challenge
  - provide a view on which enforcement action should be taken, to explain and take account of any risks to children, young people and adult service users; including notifying their corporate parent and the DCS of the planning local authority.
82. The role and responsibilities of the social care compliance professional in a case review are to:
- ensure that the decisions made protect and promote children and young people's safety and welfare
  - organise the meeting for the case review
  - chair the meeting

- support the consistency of how we apply our decisions to undertake compliance activity and act promptly to protect children and young people and promote their safety and welfare
- clarify any potential risks including any legal challenge to the decisions being made
- robustly review and where appropriate, challenge the evidence provided
- ensure that all options are considered and that the action to be taken is both proportionate and consistent with other compliance decisions we make
- complete the case review pro-forma (Annex J), including the detail of any actions that are required to be completed
- ensure that the final version of the case review minutes are on file after review by the participants within three days of the review.

83. Before closing a compliance case the social care compliance professional involved with the case is also responsible for ensuring that:

- there is a clear record and an accurate chronology to the case which demonstrates the key issues of concern and actions which have been taken in order to protect children and young people's safety and promote their welfare
- they have completed a 'closing summary' which reports on the key concerns of the case and, how these have been investigated and resolved ,and the reasons for the case being closed. The closing summary should also explicitly identify any key lines of enquiry for future inspections and a deadline by which the next inspection should be completed.

84. The role and responsibilities of the Regulatory Inspection Manager in a case review are to:

- ensure that the decisions made protect and promote children and young people's safety and welfare
- support the regulatory inspector presenting the case
- ensure that steps are properly taken to safeguard and protect children living at the home and to oversee the action plan in this regard, liaising with the SHMI for the region. This includes ensuring that there is a clear and agreed plan for monitoring the establishment or agency

- ensure that the evidence presented at the case review is sufficiently robust.

85. The role and responsibilities of the minute taker are to:

- draft the case review minutes
- send to the participants to review
- save the draft document to shared folders within one day of the case review.

86. The role and responsibilities of the decision maker in a case review are to:

- ensure that the decisions made protect and promote children and young people's safety and welfare
- be impartial and ensure that all concerns are considered during the meeting
- decide whether we will take any enforcement action and where necessary what that action will be. For example, whether to issue a compliance notices or notice of intention to cancel a registration
- ensure that decisions are proportionate
- ensure that there is an appropriate timeline for completing all actions which prevents drift and delay
- sign off of the minutes of the case review within three days from the case review
- sign off notices within five days of the case review.

87. We record the decision(s) made at a case review or case discussion on 'case comments' on our regulatory support application (RSA) database. We also record a reference to a case review/discussion being held on 'Registration Comments' on the RSA in order to provide a chronology of events. We include the reasons for our decision and the reasons why other options were not appropriate.

88. In a case review we consider the:

- **History** – All compliance information from previous cases, action taken in response to that information and the response from the registered person(s) (or applicant(s)); any trends in non-compliance; when relevant, information relating to any other provision registered to the provider or information from a manager's previous registration.

- **New information** – New information gained during the course of the investigation or otherwise not previously considered in a case review. For example, information from the provider/applicant, a record of evidence or documents.
- **Identification of issues** – The key aspects of the concerns leading up to the case review, including: any non-compliance with legislation, concerns about possible risks to children, young people and/or vulnerable adults, or the fitness of an individual to be involved in providing or managing children’s social care.
- **Options** – The courses of action available to us and why alternative options to the decision we make are not appropriate.
- **Risks and impact of the decision** – The impact of a decision and any additional risks that implementing that particular decision may have for the children and young people in the care of the provider and any families and adult service users, and the registered persons.
- **Decision** – The decision and why it is appropriate. If necessary, we seek advice from a senior manager.
- **Outcome** – The necessary actions, who is responsible for each action and the timescales for completion.
- **Implications** – Possible implications, such as possible contact from placing authorities, the level of any potential media interest, implications for other provision registered to the provider, as well as any follow-up work required.
- **Date of, or trigger for, next case review if necessary** – Identification of when the next case review is required.

## 5. Responding to information and notifications of events

### Introduction

89. This section sets out how we respond to information we receive, whatever the source of that information. This includes information that may suggest that children, young people and/or vulnerable adults are at risk; that a registered person is not meeting the regulations or conditions of registration; or that a person is providing or managing a children's social care establishment, agency or residential holiday scheme for disabled children, without registration.

### Sources of information

90. We receive information from a wide range of sources. These include:
- notifications from registered persons – the law requires registered person(s) to notify us of certain matters (notifications);<sup>22</sup> the notifications that providers are required to make are listed in Annex A
  - other agencies such as the police, environmental health, fire safety, local authority children's services departments and Local Safeguarding Children Boards
  - other regulators, such as the Care Quality Commission
  - parents and carers
  - children and young people, or their representatives
  - members of staff
  - visiting professionals, such as health professionals
  - the public, including neighbours.

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<sup>22</sup> The requirement to notify Ofsted is set out in the remit-specific regulations.

91. A formal Information Sharing Agreement is in development between HMCI and the Association of Chief Police Officers (ACPO). Whilst this is being finalised each party assesses and decides if any information that they hold needs to be shared with the other body in order to protect children and young people's welfare. Additionally, Ofsted will continue to disclose the names and addresses of children's homes from its register to the police in accordance with the Care Standards Act 2000 (Registration)(England) Regulations 2010 (Amendment 2013).

## Notifications from providers

92. The following types of registered provider and manager are required by law to notify us of certain events (see Annex A), as set out in regulations:
- children's homes<sup>23</sup>
  - holiday schemes for disabled children
  - secure children's homes<sup>24</sup>
  - independent fostering services<sup>25</sup>
  - voluntary adoption agencies<sup>26</sup>
  - residential family centres.<sup>27</sup>

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<sup>23</sup> The Children's Homes Regulations 2001, regulation 30; [www.legislation.gov.uk/uksi/2001/3967/regulation/30/made](http://www.legislation.gov.uk/uksi/2001/3967/regulation/30/made).

<sup>24</sup> The Children's Homes Regulations 2001, regulation 30; [www.legislation.gov.uk/uksi/2001/3967/regulation/30/made](http://www.legislation.gov.uk/uksi/2001/3967/regulation/30/made). The Children's Homes: National Minimum Standards, standard 23.8 and conditions set by the Secretary of State in approving a home to be secure under regulation 3 of the Children (Secure Accommodation) Regulations 1991.

<sup>25</sup> The Fostering Services (England) Regulations 2011, regulation 36; [www.legislation.gov.uk/uksi/2011/581/regulation/36/made](http://www.legislation.gov.uk/uksi/2011/581/regulation/36/made).

<sup>26</sup> The Voluntary Adoption and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003, regulation 19; [www.legislation.gov.uk/uksi/2003/367/regulation/19/made](http://www.legislation.gov.uk/uksi/2003/367/regulation/19/made).

<sup>27</sup> The Residential Family Centres Regulations 2002, regulation 26; [www.legislation.gov.uk/uksi/2002/3213/contents/made](http://www.legislation.gov.uk/uksi/2002/3213/contents/made).

93. Social care providers must notify Ofsted of a range of events and concerns as identified in schedules listed in each service-specific set of regulations.<sup>28</sup> Notifications must be made within one working day of the event taking place or concern arising. If a person notifies us 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.<sup>29</sup>

## Assessing and categorising information received

94. Ofsted's national business unit (NBU) usually receives information and notifications. The NBU forwards the information to the social care compliance team categorisation mailbox if there is a safeguarding concern or, in all other cases, the social care inspector and team manager.
95. Where a social care inspector, or a Regulatory Inspection Manager, receives a notification from the NBU, he or she must assess the information in line with the relevant 'Conducting the inspection' guidance for the establishment, agency or residential holiday scheme, involved. For example, for children's homes the NBU firstly reviews each piece of information or notification and categorises these on a daily basis as non-urgent or urgent (fast track) action that we must take in order to protect children and young people. Any which are classified as 'fast track' are immediately forwarded to a duty manager. The duty manager decides and arranges the action which will be taken in respect of the concern and whether either a case review or case discussion is necessary. The duty manager must do this on the date that they receive the information. Inspectors review any non-urgent notifications within seven days of receipt and decide if any action is applicable in order to protect and safeguard children and young people or in relation to how well the establishment agency or holiday scheme for disabled children is operating.

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<sup>28</sup> The Children's Homes Regulations 2001, regulation 30, Schedule 5, The Fostering Services Regulations 2002, Regulation 43(1) Schedule 8, The Residential Family Centres Regulations 2002, regulation 26 (1) Schedule 5; The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003, regulation 24(1) Schedule 4; The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, regulation 24 (1) Schedule 4, The Residential Holiday Schemes Regulations for disabled children 2013, regulation 26 Schedule 5.

<sup>29</sup> The requirement to follow any oral notification in writing is provided in the following regulations: The Children's Homes Regulations 2001, regulation 30 (3); The Fostering Services Regulations 2011, regulation 43 (2); The Residential Family Centres Regulations 2002, regulation 26(3); The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003, regulation 19 (2); The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, regulation 24 (2). The Residential Holiday Schemes Regulations for disabled children 2013, regulation 26(2)



96. In all cases the inspector's assessment of the notification must be logged on RSA on the day that they make their assessment. Where necessary, inspectors must ask the provider for clarification of points if these indicate a risk to children and young people or do not clarify the action taken in respect of the notification sufficiently well.
97. The inspector's review must include a decision about whether there is a need to refer the matter to the social care compliance team for their consideration. Inspectors must follow the guidance outlined in Annex L of our guidance: *Conducting inspections of children's homes* when dealing with notifications about children's homes. Inspectors must also follow these principles when dealing with notifications from other agencies and establishments. Inspectors must also refer to the range of factors outlined in paragraph 88 to inform their decisions about referring notifications to the compliance team.
98. Inspectors must ensure that they review non-urgent notifications within seven working days of receipt. They must decide whether any action is necessary in order to protect and promote children and young people's welfare 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 and young people are at risk of harm? If this is the case we must hold either a case review or case discussion. Inspectors must always record their assessment of the notification or information on RSA.
99. For all notifications the inspector must ensure that the correct category of the relevant schedule has been used and clearly record on the RSA a brief summary of the reason for the notification, details of the action taken by the provider in response to the incident and the action taken by Ofsted in response to the notification, including details of any contact with the provider.
100. Inspectors will always investigate and record on RSA the reason for any delayed notification. Where investigation of delayed notifications identifies concerns, the inspector must assess and record the action Ofsted is required to take. Where required, the inspector will trigger a case review.
101. When the social care compliance team receive information, they categorise it based on the risk to children, young people and other service users. They categorise information within one working day of receipt.
102. The social care compliance team consider a range of factors in assessing and determining the risk. These include:
  - whether the information suggests that there is a risk of harm to children, young people and other service users, including the need to take urgent action to safeguard them

- the nature and severity of any non-compliance with regulations or conditions of registration
- whether the registered person has committed an offence
- the length of time since the last inspection
- the outcome of the last inspection
- whether there is a history of complaints about the registered person(s)
- the registration status of the establishment or agency including, for example, if it has no registered manager
- the nature of notifications from the registered person (including, for example, a very high or very low number of notifications, notifications arriving late, or notifications containing limited or vague information)
- the patterns of information (for example, possible links between different information received)
- involvement of other agencies (for example, the police or Local Safeguarding Children Board)
- compliance history of the registered person(s), including the current status of any active compliance and enforcement cases
- whether the registered manager manages more than one establishment or agency
- organisational history, including the provider's response across all of their registered settings to previous inspection and compliance and enforcement case outcomes
- any other information known about the registered person(s).

103. All information about a provider, manager, establishment or agency must be considered in conjunction with a decision about whether a notification requires further action. Information may not suggest a risk when viewed in isolation but may well suggest fundamental problems or risks when viewed in the context of other recent events and information, for example information in the public arena.

104. Any notification that a manager or member of staff has been suspended because of an allegation of abuse must always result in a case review. The case review must be held within a maximum of two days of receipt of the information. However, the case review must be held **immediately** where there remain questions about the safety and welfare of children and young people.
105. Where there are any potential concerns about the safety and welfare of children and young people a case review must be held on the day of notification and an inspection must occur within 24hrs of notification. The case review must clearly identify what management oversight will be in place.
106. The notification must also result in notices to any placing authorities and for residential holiday schemes for disabled children, parents. The reason for notifying parents whose children attend holiday schemes for disabled children is because the Residential Holiday Schemes for Disabled Children (England) Regulations 2013 include parents within the definition of a placing authority where no local authority arranged for a child/young person's placement.

### **Taking action following categorisation**

107. The social care compliance team must ensure that it categorises the information appropriately and takes action in line with the degree of risk.
108. Where we receive information that we have categorised as high risk, we must take immediate action to safeguard children, young people and service users, for example by conducting a monitoring inspection and/or alerting child protection agencies such as the police.
109. Where the social care compliance team categorises the information as lower risk, we may consider taking alternative action – see section 8, 'Planning visits to check compliance'. At all times, the decision we make on the action that we take must be proportionate to the risk involved. We must also ensure that we carefully record the action that we have taken and our reasons for this.

## **Provider notifications and notifications of a serious child care incident from local authorities**

110. In addition to receiving provider notifications (see paragraphs 92 to 93 for further detail on provider notifications) Ofsted receives serious incident notifications from local authorities. At times these two types of notification will be about the same concern. These detail how responsible agencies are dealing with issues that arise from the concern. We must always receive both types of notification where the incident relates to a regulated setting because the requirements for both types of notification are different.
111. The criteria regarding provider notifications to Ofsted can be found in each service specific set of regulations. (See footnote to paragraph 92 for detail of these regulations)
112. The criteria for a local authority to notify Ofsted of a serious child care incident is detailed in the Local Authority Circular (2007) 25. Notifications must be made about a serious child care incident where the incident:
- relates to a child's death, including when a child dies by suicide and abuse or neglect is suspected to be a factor in the child's death
  - should be brought to the attention of Ofsted and the Government because of concern about professional practice or implications for Government policy
  - raises issues about a local authority's professional practice that may need to be considered further in the context of performance assessment
  - may lead to a serious case review (this includes where a child has sustained a potentially life threatening injury through abuse or neglect, serious sexual abuse, or sustained a serious and permanent impairment of their health or development through abuse or neglect)
  - has attracted, or is likely to attract, media attention.
113. All serious incident and provider notifications are sent initially to the NBU. Serious incident notifications should be sent immediately that the local authority is aware of the concern and provider notifications are made within one day but the written notification may take up to three days to receive.

114. The NBU immediately emails the serious incident notification to the relevant regional Senior HMI social care and the Operational Lead for serious incident notifications, copying in the inspection support team in the Midlands who keep a central record of all serious child care notifications. For information on how we manage provider notifications please see the paragraphs 92 to 107.
115. Two different local authorities may be involved: the local authority that placed the child and the local authority where the child/young person/ family are placed. Usually the notification is sent by the local authority where the child/young person/family are living. Whichever senior HMI social care receives the serious child care notification must ensure that the other regional Senior HMI has the notification and ensures that a provider notification has also been received.
116. A case review must be held immediately regarding any registered setting to decide what action we must take to ensure children, young people and adult service users are safe and have their welfare protected. Please refer to the section on Decision making (Chapter four) in this handbook for more guidance on case reviews. The case review must also establish that we have a notification from the provider and a notification from the local authority because they are required to supply both to us. We must take immediate action to receive these where an appropriate notification has not been received. Decisions must also include consideration and a record of whether cancellation is appropriate at this time.

## 6. Processing information – child protection concerns

### Introduction

117. This section sets out our role in child protection concerns. It gives an overview of how we process and share child protection information with statutory child protection agencies – the police, local authority children’s services and the National Society for the Prevention of Cruelty to Children (NSPCC). It explains how we work jointly with such agencies, for example through strategy discussions and joint visits, to protect the welfare of children and young people.
118. We have our own safeguarding children policy, Ofsted safeguarding policy and procedures.<sup>30</sup> 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 detailed in Children Act 2004,<sup>31</sup> the Green Paper Every Child Matters and Working together to safeguard children.<sup>32</sup>
119. 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. This section contains further information about Local Safeguarding Children Boards.
120. 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*.<sup>33</sup> This document includes details of our ‘whistleblowing hotline’.<sup>34</sup>
121. 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

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<sup>30</sup> *Ofsted safeguarding policy and procedures* (100183), Ofsted, 2010; [www.ofsted.gov.uk/resources/ofsted-safeguarding-policy-and-procedures](http://www.ofsted.gov.uk/resources/ofsted-safeguarding-policy-and-procedures).

<sup>31</sup> Children Act 2004; [www.legislation.gov.uk/ukpga/2004/31/contents](http://www.legislation.gov.uk/ukpga/2004/31/contents).

<sup>32</sup> *Working together to safeguard children*, HM Government, 2013; [www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children](http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children).

<sup>33</sup> *Whistleblowing to Ofsted about safeguarding in local authority children’s services* (100036), Ofsted, 2010; [www.ofsted.gov.uk/resources/whistleblowing-ofsted-about-safeguarding-local-authority-childrens-services](http://www.ofsted.gov.uk/resources/whistleblowing-ofsted-about-safeguarding-local-authority-childrens-services).

<sup>34</sup> [whistleblowing@ofsted.gov.uk](mailto:whistleblowing@ofsted.gov.uk)

children, we follow the approach outlined in our guidance: *Management of cross-remit concerns about children's welfare*.<sup>35</sup>

## Child protection concerns

122. A child protection concern is anything that involves abuse or neglect that amounts to ill treatment or any action or omission that may cause harm to a child or young person.<sup>36</sup>
123. We do not have a statutory responsibility for child protection matters. We work together with other statutory agencies by sharing information that we hold to protect the welfare of children and young people.
124. We do however, have a statutory responsibility to decide whether a registered person remains fit for registration with Ofsted. We make this decision as quickly as possible, taking into account involvement by other agencies. We gather our own evidence to make our decision, even if we are also taking account of other evidence provided by child protection agencies. We do not delegate our investigatory powers, or our decision-making responsibility, to a child protection agency about a registered person's continued fitness.
125. Where registered person(s) have concerns about a child or young person's behaviour that may indicate abuse, for example a child is exhibiting over-sexualised behaviour, they must tell the relevant local authority. If they also tell us, or do so instead of telling the local authority, we must tell them to inform the local authority children's services department. However, we also pass the information to the local authority children's services department or, where appropriate, the NSPCC.<sup>37</sup>
126. We refer all child protection information to the children's services department at the local authority, or the NSPCC where required, and/or the police. Our criteria for referral may differ from those of other agencies and we do not assume that local authority children's services actively take forward our referral as a child protection investigation. If the local authority and/or the police decide not to investigate, we continue to look into whether or not the registered person(s) meet the requirements for continued registration.

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<sup>35</sup> *Management of cross-remit concerns about children's welfare* (110147), Ofsted, 2012; [www.ofsted.gov.uk/resources/management-of-cross-remit-concerns-about-childrens-welfare](http://www.ofsted.gov.uk/resources/management-of-cross-remit-concerns-about-childrens-welfare).

<sup>36</sup> Children Act 1989, section 31(9); [www.legislation.gov.uk/ukpga/1989/41/section/31](http://www.legislation.gov.uk/ukpga/1989/41/section/31): 'ill-treatment includes sexual abuse and forms of ill-treatment which are not physical'.

<sup>37</sup> *Protocol between Ofsted and Local Safeguarding Children Boards* (070146), Ofsted, 2010; [www.ofsted.gov.uk/resources/protocols-between-ofsted-and-other-organisations-relation-childcare](http://www.ofsted.gov.uk/resources/protocols-between-ofsted-and-other-organisations-relation-childcare).

## Using Working together to safeguard children 2013 and statutory guidance on children who run away and go missing from home or care in relation to child protection concerns

127. We follow the objectives set out in the document *Working together to safeguard children 2013*.<sup>38</sup> The Government issued this document under section 7 of the Local Authority Social Services Act 1970 and section 11(4) and 16 of the Children Act 2004,<sup>39</sup> which requires local authority children's services to act under the general guidance of the Secretary of State. Establishment, agency and holiday scheme providers and managers are expected to fully comply with the document.
128. Working together to safeguard children sets out the key objectives for organisations to work together to safeguard and promote the welfare of children and young people. It also sets out the roles and responsibilities of Local Safeguarding Children Boards. In any decision we make about sharing information our overriding concern must be the welfare and protection of children, young people and vulnerable adults.
129. Working together to safeguard children describes key elements of abuse and neglect. It identifies the concept of significant harm, introduced by the Children Act 1989, which is the threshold for compulsory intervention in family life. The concept of significant harm is also the threshold for us to take emergency action under section 20 of the Care Standards Act 2000.<sup>40</sup> Working together to safeguard children also identifies the role that children's social care providers and managers play in the lives of children and young people. It suggests that providers should ensure that they, and their staff, know how to recognise and respond to potential indicators of abuse.

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<sup>38</sup> *Working together to safeguard children*, HM Government, 2013; [www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children](http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children).

<sup>39</sup> Local Authority Social Services Act 1970; [www.legislation.gov.uk/ukpga/1970/42](http://www.legislation.gov.uk/ukpga/1970/42). Children Act 2004; [www.legislation.gov.uk/ukpga/2004/31/contents](http://www.legislation.gov.uk/ukpga/2004/31/contents).

<sup>40</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/section/20](http://www.legislation.gov.uk/ukpga/2000/14/section/20).



130. The guidance calls for a strategy discussion to take place if information suggests that a child or young person is suffering, or is likely to suffer, significant harm. Child protection strategy discussions include the local authority, police and other agencies as appropriate. In cases involving registered person(s), Ofsted is one of those other agencies.
131. We must also take account of statutory guidance on children who run away and go missing from home or care to ensure that where children and young people are at risk of going our actions are child centred, follows agreed local protocols and is likely to prevent any reoccurrence of harm or prevent it from occurring in the first place. For further information please refer to *Statutory Guidance on Children who run away and go missing from home or care*.<sup>41</sup>
132. We must also take account of the Supplementary guidance to: *Working Together to Safeguard Children regarding child exploitation - Safeguarding Children and Young People from Sexual Exploitation*<sup>42</sup>. This should be taken into account when deciding what information we should share. Attention should be paid to Chapter 5 - Preventing sexual exploitation which explores the measures that should be in place to help prevent exploitation from occurring and Chapter 6 – Managing individual cases, which provides guidance on identifying children and young people who are being exploited or are at risk of being exploited provides guidance on sharing information at 6.23.

### **Receiving information about child protection or children at risk of being harmed**

133. When we receive information that contains a child protection concern we:
- encourage the person providing the information to pass details on to the relevant local children's services department. This is the department in the local authority where the incident occurred or the child/young person resides

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<sup>41</sup> Statutory Guidance on children who run away and go missing from home or care  
<http://www.education.gov.uk/aboutdfe/statutory/g00222839/children-who-run-away-and-go-missing-from-home-or-care>

<sup>42</sup> Safeguarding Children and Young People from Sexual Exploitation  
<https://www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance>

- pass the information to the social care compliance team. They are responsible for informing and liaising with the child protection agencies – local authority children’s services (or the NSPCC) and/or the police, This may result in the person who provided the information receiving a call from those agencies if the agency needs additional information or clarification.

134. When a registered person, a manager of an adoption agency or a member of staff from an establishment, agency or holiday scheme for disabled children, informs us of a child protection concern we must tell them to pass details to the local authority children’s services child protection team. We must ensure that the local authority receives this information by forwarding it ourselves immediately.

### **Referring concerns to local authority children’s services (or the NSPCC) and/or police**

135. We refer all child protection concerns to the duty function of the local authority children’s services department (or to the appropriate referral point that the local authority has in place to receive child protection referrals) and/or the police.

136. Referrals must be made to child protection teams must be made immediately and no longer than two hours of receiving information. Concerns include children who are missing or who are or are at risk of being sexually exploited. We must make a referral in relation to a service specific notification, where it is clear that no notification has been made.

137. If we do not get feedback within one working day from the child protection team about the action that they are taking, the Social Care Compliance Professional must follow this up with them and ask for a written update. Where the Social Care Compliance Professional is dissatisfied with the action taken by the child protection team they must refer this to a duty manager on the date it is received. As a minimum a case discussion must be held immediately to decide what further action we will take. Any concerns about the care and protection of children by the local authority must be immediately referred to the Director of Children’s Services.

138. Where a concern involves an allegation made against a person who works with children or young people, we refer the matter to the local authority designated officer (LADO). The LADO is usually the person responsible within the children’s services department for:

- managing and overseeing individual allegation cases from across the children’s workforce

- liaising with us, children's services, the police, the Crown Prosecution Service and other relevant agencies
- monitoring progress of all cases to ensure they are dealt with in accordance with recommended timescales
- coordinating and collating reports to provide information to the Local Safeguarding Children Board and the Department for Education.

139. If the LADO or their deputy is not available, we refer the concern to the duty officer.

140. We contact the relevant local authority children's services, local authority designated officer and/or the police within two hours of receiving the information. We confirm the information to the local authority children's services department or LADO in writing, within 24 hours. The information provided must be clear and unambiguous and should include the name of the social care compliance professional as a point of contact in Ofsted.

141. We pass any information we receive, even if it is partial or incomplete, to the appropriate agency. Partial or incomplete information may supplement existing information held by the other agencies. They decide whether the information is significant and meets their threshold to investigate. Local authority children's services may have varying thresholds for accepting child protection referrals. It is their responsibility to decide which concerns they will investigate. We pass on any information that meets our threshold for a referral. Our threshold is any information we receive that indicates a concern that involves abuse or neglect amounting to ill treatment or any action or omission that may cause harm to a child or young person.

142. A statutory agency may share information with us about a child protection concern that involves a registered person. We record any information received, including verbal concerns, on the RSA database. We do not record information that could be subject to data protection, such as the name and address of the child who is at the centre of the concern. If the concern is complex, we may ask the statutory agency to send written confirmation of the referral. However, whether we have the written confirmation or not we must always take timely, appropriate action to ensure that children are protected.

143. Wherever possible, we work in partnership with other agencies so that we do not jeopardise investigations by local authority children's services or the police. We keep in contact with all agencies involved to be clear about any action the other agencies take, and how that links with any action we may take against the provider's registration. Strategy discussions are one way in which we maintain contact with other agencies. However, we are responsible

for any actions or decisions we take about the continued fitness and registration of the registered person.

144. We share information with child protection agencies under the following legislation:

- Education and Inspections Act 2006, section 149<sup>43</sup>
- Data Protection Act 1998.<sup>44</sup>

We also take account *Working together to safeguard children 2013*<sup>45</sup> when sharing information.

145. In addition, whenever an establishment, agency or holiday scheme for disabled children is judged inadequate for overall effectiveness, the inspector must alert the following groups to the concerns that have been identified:

- the placing or responsible local authority for any child, young person or adult and the host authority where this is different to the placing authority
- parents where a child is placed under Section 20 of Children Act or, in the case of residential holiday schemes for disabled children, all parents whose children are attending the scheme at the time of the concern.

146. If an inspector makes a judgement of inadequate progress at an interim inspection of children's homes, placing authorities must also be notified.

147. In addition, where it is agreed at a case review that placing and responsible local authorities should be notified this must be done within the timescales identified in the next paragraph.

148. In all circumstances identified in paragraphs 145 to 147 the inspector sends an email to the Director of Children's Services in the placing 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.

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<sup>43</sup> Education and Inspections Act 2006, section 149;  
[www.legislation.gov.uk/ukpga/2006/40/section/149](http://www.legislation.gov.uk/ukpga/2006/40/section/149).

<sup>44</sup> Data Protection Act 1998; [www.legislation.gov.uk/ukpga/1998/29/contents](http://www.legislation.gov.uk/ukpga/1998/29/contents).

<sup>45</sup> *Working together to safeguard children*, HM Government, 2013;

149. The inspector gives feedback to the placing, or responsible local authority in line with the feedback given to the provider. He or she 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.
150. The details of the email and any phone calls must be recorded on RSA for future reference.
151. We interact in this manner with placing and responsible local authorities pursuant to HMCI's powers in paragraph 8 of schedule 13 of the Education and Inspections Act 2006 to provide assistance to other public authorities in the exercise of the placing authorities' functions.

## Working directly with other agencies

### Strategy discussions<sup>46</sup>

152. Local authority children's services arrange strategy discussions in accordance with statutory guidance.<sup>47</sup> The discussions are held to help them decide 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'<sup>48</sup> that clearly sets out their threshold criteria of assessment.
153. The strategy discussion is an opportunity for all agencies represented to share the information 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. However, legal advice must be sought because in some cases we may require parental permission to share information, such as when a Section 20 order is in place for a child or young person.

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<sup>46</sup> 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](http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children).

<sup>47</sup> *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>

<sup>48</sup> *Working together to safeguard children*, (HM Government, 2013), page 14; [www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children](http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children).

154. 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.
155. In many cases, the available information does not constitute strong evidence. Therefore the strategy discussion is 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.
156. 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.
157. Where we are concerned that decisions by an external agency are causing unacceptable delay we convene a case review within one day of the concern to decide whether we must initiate our own inquiry.

### **Attendance at strategy discussions**

158. Ofsted’s staff attend strategy discussions where the investigation concerns a registered person. We also attend where there welfare concerns are sufficiently serious that we need to consider their impact on the overall operation of the establishment, agency or holiday scheme for disabled children (indicating that there are concerns about the registered persons). For instance, we attend where there are concerns about an on-going culture of restraint practice in a children’s home. Decisions about whether to attend strategy discussions should include the Regulatory Inspection Manager in the area where the concern has arisen or a duty manager for that area.
159. 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 in order 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**

160. 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 action which protects children and young people and promotes their welfare. Where necessary we must therefore challenge decisions that we consider do not adequately protect children and young people's welfare.
161. We must also work collaboratively with other agencies to ensure children and young people are protected and their welfare promoted by sharing and receiving information which supports a multi-agency approach and allows us to take robust, proportionate and effective enforcement action where necessary.
162. 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 suitable remain registered as providers and managers of social care. We must confirm that where necessary we will use our regulatory powers to ensure that children and young people are not at risk from being provided with care and support from unsafe or unregistered settings.
163. 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 background detail 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 establishment or agency safe for children, young people and where appropriate 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 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.

164. We take the action outlined in paragraph 163 is to ensure that all agencies are clear about our role, for example to clarify that we regulate services 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.

165. We also explain to other agencies that registered person(s) can appeal to the First Tier Tribunal (Health, Education and Social Care Chamber) ('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.



166. 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.
167. We may need to clarify that we do not have the authority to suspend staff who work in establishments and agencies registered to provide children's social care, and have no power to direct a provider 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.
168. Local authority children's services may decide to investigate the concern under section 47 of the Children Act 1989,<sup>49</sup> or the police may decide to make enquiries as to whether an offence has occurred. 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 see the section on joint visits with statutory agencies below).
169. The information considered at a strategy discussion may suggest that a child, young person and/or vulnerable adult, living at an establishment or who is provided with services by an agency or holiday scheme, 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. See section 4, 'Decision-making'.

## **Joint visits with other statutory agencies**

170. In some circumstances, we may agree to undertake a joint visit to a registered person with a representative from a different statutory agency, such as the local authority. We must carefully plan such visits with the relevant agency so that both parties are clear and in agreement before the visit about:
- the purpose of the visit
  - their respective roles

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<sup>49</sup> Children Act 1989; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

- 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, and what arrangements will be in place to share information after the visit
- any other specific tasks to be undertaken at the visit or as a result of the visit.

171. When carrying out a joint visit with another agency, we must be very clear about the role they are playing during that visit. We must discuss this in advance with the representative who is to carry out the visit. We must also explain to the registered provider, at the outset of a joint visit with another agency, the respective roles of the agencies.

172. In any joint visit, our responsibility is to determine whether or not the registered person continues to meet the requirements for registration. We gather our own evidence to help us reach that decision. Whilst 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 do not rely solely on the evidence gathered by the other agency in order to reach a decision as to whether or not the registered person continues to meet the requirements for registration.

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

173. Where there are concerns about non-compliance as a result of a child protection concern, we convene a case review.

174. 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 in line with our enforcement powers (refer to section 4. Decision-making).

175. 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.
176. We must work as closely with the other agencies as possible and keep them informed of any action we intend to take. We must also request information from them on a regular basis.
177. Our case records must clearly identify other agency's timelines for completing investigations. Where there is delay we must convene a case review to decide whether we should instigate an inquiry of our own.

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

178. Where an external agency investigates concerns and makes decisions about the welfare of children and young people, we continually re-assess whether the registered person continues to meet statutory requirements for registration 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.<sup>50</sup> 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.
179. 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 the RSA. Some compliance cases will remain open until we know the outcome of an investigation by other agencies or until any legal action is complete.

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<sup>50</sup> The statutory requirements are those made under the Care Standards Act 2000 and the relevant regulations for children's social care.

## Serious case reviews

180. Local Safeguarding Children Boards have a duty to investigate 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 in the child's death. These investigations are known as 'serious case reviews'.
181. There are also other circumstances where a Local Safeguarding Children Board convenes a serious case review, or another type of review such as a domestic homicide review. These include, for example, where a child sustains a serious injury, impairment to their health, suffers serious sexual abuse, or where a person has died as a result of domestic violence. As part of these reviews, the Local Safeguarding Children Board investigates the places that the child attended or lived in, such as a children's home.
182. 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
  - 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.
183. Other professionals involved with children, such as GPs, may attend a Local Safeguarding Children Board meeting on request.

184. 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*.<sup>51</sup>
185. 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 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.
186. 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.

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<sup>51</sup> *Working together to safeguard children*, HM Government, 2013;  
[www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children](http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children).

## 7. Making referrals to the Disclosure and Barring Service

### Introduction

187. We have a statutory power 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 barred lists).
188. 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.
189. 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

190. Section 45 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, 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:<sup>52</sup>

- 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 if future be, engaged in regulated activity

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<sup>52</sup> Protection of Freedoms Act 2012; [www.legislation.gov.uk/ukpga/2012/9/section/64/enacted](http://www.legislation.gov.uk/ukpga/2012/9/section/64/enacted); and Safeguarding Vulnerable Groups Act 2006; [www.legislation.gov.uk/ukpga/2006/47/contents](http://www.legislation.gov.uk/ukpga/2006/47/contents).

and

- we consider that the Disclosure and Barring Service may consider it appropriate for the person to be included in a barred list.

191. The legal definition of regulated activity is set out in schedule 4 of the Safeguarding Vulnerable Groups Act 2006.<sup>53</sup>

192. 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 resigned or been dismissed from a regulated activity
- people employed (even if unpaid) to work directly with children by a registered person
- applicants for registration.

193. In some cases, we may decide to refer an individual for consideration for inclusion before we have gathered all the evidence relating to misconduct, For example where a social care provider applies for cancellation before we complete our investigation and we have not issued a notice of our proposal to cancel.

194. Employers have a statutory duty to refer an individual to the Disclosure and Barring Service if they have removed the person because they have harmed or posed a risk of harm to a child or vulnerable adult. If we become aware that the registered person has not taken this step, we make the referral ourselves.

195. Where a provider refers an individual to the Disclosure and Barring Service, we can forward any additional evidence we hold that may assist them in reaching a decision.

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<sup>53</sup> Safeguarding Vulnerable Groups Act 2006;  
<http://www.legislation.gov.uk/ukpga/2006/47/contents>.

196. 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. Our clear priority is to establish if, on the basis of the referral a provider remains fit to operate and a manager remains fit to manage.
197. The Disclosure and Barring Service has the power to levy penalties on employers who fail to provide information to them, without reasonable excuse, when required by law to do so. This constitutes an offence under the Safeguarding of Vulnerable Groups Act 2006.

### **Making the decision to refer to the Disclosure and Barring Service**

198. The decision to refer a person to the Disclosure and Barring Service is made by a senior HMI, on the recommendation of a Regulatory Inspection Manager, following a case review.
199. The Disclosure and Barring Service considers each referral against the evidence available before deciding whether to include the individual on a barred list. In some cases, the Disclosure and Barring Service may seek additional information from us.
200. Prior to the Disclosure and Barring Service 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 Disclosure and Barring Service relied on in reaching this position. The Disclosure and Barring Service 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 they are barred from (children and/or vulnerable adults).
201. If someone who is relevant to Ofsted's functions (see paragraph 45) is included on a barred list, the Disclosure and Barring Service, on application by us, confirm this in writing to us and also inform the individual by letter.

### **Making a referral**

202. Once we make a decision to refer a person to the Disclosure and Barring Service for them to consider including on a barred list, the Regulatory Inspection Manager completes the Disclosure and Barring Service referral form for the senior HMI to sign. The form is available on the Disclosure and Barring Service website.<sup>54</sup>

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<sup>54</sup> Disclosure and Barring Service referral form; [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/).



## 8. Planning visits to check compliance

### Introduction

203. This section details how we check compliance or inspect when we receive information or allegations relating to a social care establishment, agency or registered person. It includes information on how we decide, plan and carry out an investigation. It also details the processes for seizing and recording evidence.
204. We may receive information or concerns from a range of different sources. This information is categorised based on risk factors – see section 5, 'Responding to information and notifications of events'.
205. The risk assessment completed as part of the initial categorisation of the information we received must take into account any previous history of concerns and be available to Ofsted's decision makers when agreeing next steps.

### Legal powers

206. We have powers under sections 31 and 32 of the Care Standards Act 2000 to:
- enter premises
  - require a registered person to provide us with information about their establishment or agency
  - seize documents
  - interview staff
  - require any person to provide us with assistance that is within the person's control and which enables us to exercise our powers.
207. We use these powers when we carry out an inspection, a compliance visit, a monitoring visit or require a registered person to submit information to us.

### Options for exploring and examining concerns

208. Where we receive information or allegations that suggest a breach of regulations or legislation, we may:

- conduct an inspection<sup>55</sup>
- conduct a compliance visit<sup>56</sup>

or

- write to the registered person(s) asking them to look into the matter and provide us with a comprehensive response to their findings and the action they have taken.

209. If we decide that we should explore a concern at inspection the inspection should occur immediately in order to ensure children and young people's safety. We should use inspection to investigate a concern where we need to find out whether there has been a breach in regulations or where we have significant concerns across a range of issues.
210. For children's homes only, where we give an overall judgement of inadequate we re-inspect within eight weeks of the last inspection. This inspection is another full inspection of the home.
211. If a manager or member of staff in any children's social care establishment or agency is suspended or dismissed for alleged abuse of children, young people or vulnerable adults we always speak to the police force involved immediately. We also conduct an urgent case review on the same day that the information is received. The case review must set out the arrangements for an urgent compliance visit. Regulatory Inspection Managers and Senior HMI must retain strong oversight of the decisions made at the case review and follow up to ensure that swift action protects and promotes children, young people and adult service users.
212. At the inspection, compliance visit or monitoring visit, we use the information from the concerns we have received to form lines of inquiry for observations or interviews. Where an inspection is carried out, we cover all the elements which are usually considered and judged at a full or interim inspection, and do not solely concentrate on the concerns raised.

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<sup>55</sup> Under section 31(2) and (7) of the Care Standards Act 2000; <http://www.legislation.gov.uk/ukpga/2000/14/section/31> and The Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007; [www.legislation.gov.uk/uksi/2007/694/contents/made](http://www.legislation.gov.uk/uksi/2007/694/contents/made).

<sup>56</sup> Using our right of entry powers under section 31(2) and (7) of the Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/section/31](http://www.legislation.gov.uk/ukpga/2000/14/section/31).

213. We have a commitment to carrying out such a visit or inspection immediately after making the decision to examine the concern through an inspection, a compliance visit or a monitoring visit. The monitoring visit primary concern must be children, young people and adult service users' safety and welfare. From the end of November 2013 we will publish monitoring visit reports for those children's homes which have been judged as inadequate at two sequential full inspections. We will continue to revise our approach to publishing monitoring reports. We will ensure that as much information as possible is published to enable placing authorities to use placements that are only in the best interests of children and young people.
214. We may conduct a compliance visit where we need to explore a potential breach in regulations or where we have significant concerns across a range of issues. We do this 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
  - concerns about the registered person(s) might impact on the welfare of a child, young person or vulnerable adult and could prompt enforcement action
  - the 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.
215. We may write to a registered provider asking them to conduct their own investigation into concerns we have received and to provide us with a comprehensive report on their findings and action taken. 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 vulnerable adults and where the provider's compliance with regulations, and inspection and regulatory history, do not give cause for concern.

216. Any decision to ask a provider to undertake a 'provider-initiated response', which is where we allow a provider to investigate a concern themselves and report back to Ofsted their findings, must always be made with the agreement of the allocated social care inspector and their Regulatory Inspection Manager. The letter to the provider must be sent with two days of the decision that a provider initiated response is appropriate. The letter must clarify that the provider must respond to us within one week from the date of the letter.
217. We ask the provider to investigate the concern, determine their findings and, where appropriate, provide Ofsted with a comprehensive plan of the action that they have taken, or will take, to address the concern within a prescribed timescale. We assess the provider's response and any action plan they provide to determine if these adequately deal with the concern.
218. Inspectors must check the information received from a provider-initiated response at the time it is received and must write a summary of the response, with their analysis of the content, and a conclusion about whether this satisfactorily deals with the concern within registration comments on RSA. Regulatory inspectors must ensure that their managers get a copy of the provider response and see the summary and inspector's analysis on RSA within two days of its receipt. Regulatory Inspection Managers must sign off the summary and analysis on RSA.
219. However, where we find that the **action plan is inadequate**, we must undertake an **urgent inspection** or compliance visit within one day of receipt. The decision is taken by inspectors and their team managers and must be recorded on the RSA. Where advice is required a case review should be called.
220. Where it is agreed by the inspector and Regulatory Inspection Manager that the action plan satisfactorily deals with the concern, inspectors must write asking for confirmation from the provider that they have done what they said they would do within their action plan at the key completion dates they provided and receive a satisfactory response which must be summarised and logged on RSA comments, detail of who agreed that this is satisfactory must be included in the summary. The summary must be available on RSA within five days of the decision that the provider response is satisfactory.
221. If no response, or an inadequate response, is received an immediate inspection must be undertaken. Inspectors must also check the actions are complete when they next inspect the establishment, agency or holiday scheme for disabled children.

## Decision-making

222. In order to decide which of the compliance options outlined on page 16 we should use, we must consider the risks and impact of the information that we hold, including the previous regulatory and inspection history of the provider. A Regulatory Inspection Manager or above makes the decision as to whether to conduct a compliance visit, an inspection, or to write to the provider.

223. A decision to conduct an inspection is made between the social care compliance team and Regulatory Inspection Manager or above. In all cases, we must respond immediately to serious concerns that suggest children, young people or adults are at risk.

224. In making the decision about which option to choose, we must consider:

- whether the information suggests that there is a risk of harm to children, young people and adults, including the need to take urgent action to safeguard them
- the nature and severity of non-compliance
- whether the registered person has committed an offence
- the length of time since the last inspection
- the outcome of the last inspection
- whether there is a history of complaints about the registered person(s)
- the registration status of the establishment or agency including, for example, if there is no registered manager
- the nature of notifications from the registered person (including, for example, a very high or very low number of notifications, notifications arriving late, or notifications containing limited or vague information)
- involvement of other agencies (for example, the police or Local Safeguarding Children Board)
- compliance history of the registered person(s), including the current status of any active compliance cases
- whether the registered manager manages more than one establishment or agency
- 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), including for example reports the provider has written about the quality of the service provided.

225. The inspector and social care compliance professional must carefully record their consideration of these factors. The social care compliance professional and, where appropriate, a Regulatory Inspection Manager or above determine which level of action to take based on the level of risk and their professional judgement. The decision must be recorded and agreed by the Senior HMI. The inspector and social care compliance professional must carefully record the decision taken and reasons for this.

### **Planning for an inspection or a compliance visit**

226. We must plan carefully for a compliance visit or inspection that includes an investigation of a concern. We must consider the following:

- Do we need to involve child protection agencies and/or should we take any action to protect children, young people or adult service users?
- Do we need to contact the person who raised the concern to gain further information?
- Should the inspection or compliance visit be announced or unannounced?

227. If we are investigating a concern through an inspection, we must comply with our notice periods as set out in the *Conducting the inspection* guidance for that type of establishment, agency or holiday scheme for disabled children.

228. However, we have discretion over the notice period for compliance visits to any type of establishment or agency, including those where we normally only inspect on an unannounced basis. In some instances, we may conduct investigation visits on an unannounced basis, such as where it is important for us to observe how the establishment or agency is operating at any given time. There may also be circumstances where it is appropriate to give notice, for example where it is important for the provider or manager to be on-site to respond to our enquiries.

## **Informing registered persons about the nature of a concern**

229. Where we are investigating a concern through an inspection or conducting an investigation visit, we must make clear to the registered person(s) or person in charge at the time of inspection or visit that we are also investigating a concern. This is important to ensure that we maintain transparency and act fairly and impartially towards the registered person(s). If there is no registered person available we must advise the person in charge to inform the person of the visit and the detail of the concerns.
230. We should tell the registered person(s) or person in charge about any information that we receive that suggests non-compliance. Our normal practice is to share all of the information about the concern with the registered persons so they have sufficient information to be able to address the concern. Where we relay our concern to a person in charge who is not a registered person we should ask and record how they will inform the registered person(s) what we have said.
231. There are circumstances where it is not appropriate or suitable to share all the information about the 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 within the social care compliance case file on RSA.
232. The inspector 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 allegation (for example where the concern relates to the registered manager). Other questions inspectors should ask include:
- What observations of practice do we need to see?
  - Who do we need to interview?
  - What documents do we need to inspect and/or seize?
  - What action may we need to take if the provider is non-compliant, including where we identify concerns about the welfare of children and young people?
  - Is it appropriate to take a witness statement?

- Do we need to caution the registered person(s) under the Police and Criminal Evidence Act 1984?<sup>57</sup>
- What do we do if the provider refuses entry to the setting?
- If more than one inspector is doing the inspection or visit, what is the division of work, including who is leading the visit or inspection?

## **Lines of questioning we should pursue**

233. The inspector must generally draft lines of questioning before the inspection or investigation visit together with, as appropriate, the social compliance team. This is to help us gain information relevant to the investigation and result in evidence that allows us to decide whether a registered person is meeting the requirements of registration and/or whether the person has committed an offence. The lines of questioning should act as a guide and prompt, although inspectors should continue to use their professional judgement.
234. If an inspector is making a joint visit with another agency, he or she must plan questions beforehand and share these with the other agency before the visit begins. This helps to ensure that both parties are clear about their roles and responsibilities. We should also decide how information will be shared between the agencies after the visit and who will take the lead in keeping the other agency informed of progress in the investigation.
235. If a complainant tells us their name, we must try to keep their details confidential even if they do not ask us to. However, we explain to the complainant that this may not be possible in all cases, and sometimes the provider or manager may be able to work out who has made the complaint. If we take any action against a registered person that results in a court case or an appeal to the First Tier Tribunal (Health, Education and Social Care Chamber), it will not be possible to keep the complainant's identity confidential at this stage.

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<sup>57</sup> Police and Criminal Evidence Act 1984; [www.legislation.gov.uk/ukpga/1984/60/contents](http://www.legislation.gov.uk/ukpga/1984/60/contents).



## Recording evidence

236. The inspector must make notes throughout the visit or inspection in the agreed format. The inspector must record evidence that demonstrates either that the registered person is meeting requirements or that they are failing to comply with requirements. This is to ensure we can make an appropriate decision on the next steps including any statutory or non-statutory action in relation to the failure.

237. The evidence must:

- 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
- detail what time of day the visit commenced and ended
- 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 enforcement outcomes
- provide a record, which underpins and secures the decisions and inspection judgements.

238. When the inspector judges that they need photographic evidence or need to seize physical evidence, they must record the details in their Ofsted pocket notebook in line with Home Office guidance.

239. Where we are investigating a concern as part of an inspection, the inspector should report on any breaches of regulations in the inspection report in the same way as they would if they found non-compliance at any other inspection, and raise requirements as necessary. If he or she considers that a higher level of enforcement is needed, they must consult with the social care compliance team before taking such action.

## Providing feedback

240. The inspector must summarise the information at appropriate times during the investigation or inspection and share this with the registered person(s) or person in charge. This helps the inspector 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 whether there is any more evidence they wish us to consider.

241. When giving feedback to the registered person(s) or person in charge, the inspector must:
- use plain language
  - support the judgements with clear explanations and illustrations
  - make sure that judgements comply with the requirements and associated guidance and legislation
  - explain Ofsted's options for further action, both non-statutory and statutory – this must be done where there is evidence that the registered person has failed to meet requirements, or the conditions of their registration. This may result in enforcement action.
242. In giving feedback, the inspector must:
- be clear about whether the registered person is complying with requirements, including any conditions of registration
  - give a clear basis for any action the provider must take by identifying issues that are central to improvement and/or safeguarding
  - ensure that what they are telling the registered person is fully consistent with the inspection or investigation evidence
  - ensure that Ofsted takes action proportionate to the risk involved – see section 2, 'The legal basis of our work and our options for ensuring compliance: powers, principles and making decisions'
  - write down the responses to any feedback provided by registered person(s).
243. When we intend to take statutory action, the inspector must explain that he or she must review the evidence with colleagues before making a final decision on the next steps to take.
244. The inspector gives the registered person(s) an estimated timescale in which they will receive a decision or update.

## **After the visit**

245. We must record all the information necessary for us to undertake our investigatory work on the RSA. Evidence should not include anything that could identify individual staff, individual children, young people or family members, unless necessary for the protection of a child. Where we need to

refer to these people on the RSA then we do so in an anonymised form in order to protect their identity. We record:

- the outcome of the investigation, including any action that we, or the provider, has taken or will take
- any evidence of compliance and non-compliance
- any action we are taking in response to any non-compliance
- detail of who attended the feedback and any response they make.

246. The inspector must:

- complete any electronic notes within 24 hours of the compliance visit or inspection
- arrange to transfer any evidence, including photographic and seized evidence, to the social care compliance team, who are responsible for storing this evidence securely in line with guidance in
- consult the social care compliance team about the next steps to take, usually through the case review process.

## Using photographs as evidence

247. Photographs can help support future enforcement action. We may take colour photographs using a Polaroid®, film or digital camera; this includes disposable cameras.

248. If the inspector wishes to take photographs during an investigation, he or she 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.

249. In any court or tribunal hearing, we must provide copies of every photograph taken rather than just those that we intend to rely on as evidence. This is because the law requires us to share all the evidence we are relying on with a defendant or in an appeal against our decision. We must also disclose any material that in our opinion might undermine our own case. Alternatively, we must provide a written statement that there is no such material.<sup>58</sup>

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<sup>58</sup> Criminal Procedure and Investigations Act 1996;  
[www.legislation.gov.uk/ukpga/1996/25/contents#pt1-pb2-l1g3](http://www.legislation.gov.uk/ukpga/1996/25/contents#pt1-pb2-l1g3).

250. We may need to enlarge a photograph to show more detail in evidence. If we do so we must give a copy of any enlargement to the defendant or appellant. This applies whether it is a film or digital photograph.

## **Seizing evidence**

251. The inspector may wish to seize evidence during an investigation to support enforcement action. Any person authorised under section 31(2) of the Care Standards Act 2000 has the authority to seize and remove any document or other material under section 32(1) of the Care Standards Act 2000.<sup>59</sup>

252. An inspector must not seize an item to examine it later to see if it provides evidence. An inspector must also not seize evidence as part of a visit where we suspect non-compliance but have no evidence to support any suspicions. Where a registered person is keeping duplicate records, the inspector may seize both sets even if one does not show a failure to comply. This may show that the registered person was aware of the breach and seizing both sets can help in removing 'reasonable excuse' as a defence.

253. The inspector may seize any item if it is evidence that a person present has committed an offence. The inspector must tell that person what the offence is and our grounds for believing they have committed the offence. If an inspector is obstructed, they may give a Police and Criminal Evidence Act caution – see '16. Prosecutions'.

254. If we seize any 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.

## **Pocket notebooks**

255. Inspectors must carry their pocket notebooks at all times when visiting a registered an establishment, agency, holiday scheme for disabled children or if they are having a separate meeting with a registered person.

256. Inspectors must use their pocket notebook when they are talking with a registered person and suspect that the registered person has committed, or is about to commit, an offence for which we may prosecute. Inspectors must record:

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<sup>59</sup> Section 32(1) of the Care Standards Act 2000 allows an authorised person to 'seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Part'.

- any comments a registered person makes after issuing a caution under the Police and Criminal Evidence Act 1984
- any observations made by the inspector 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 about to obstruct, an inspector.

## **Storing completed pocket notebooks**

257. We store completed pocket notebooks for six years. Completed notebooks must be held in our Nottingham office until the date for destruction. Inspectors should send their notebooks to the Nottingham office for retention when these are full or when they leave. The social care compliance team arrange for appropriate destruction of the pocket notebook after six years.

## **Disclosure**

258. When we receive a request for disclosure of a pocket notebook or its contents, we must decide what action to take in line with the relevant legislation. Inspectors and the social care compliance team should consult with legal services and the information rights team about disclosure requests.

## 9. Surveillance

### Introduction

259. The purpose of the Regulation of Investigatory Powers Act 2000<sup>60</sup> is to ensure the proper and considered use of surveillance as part of any investigation. The Regulation of Investigatory Powers Act 2000 works with existing legislation, in particular the Intelligence Services Act 1994,<sup>61</sup> the Police Act 1997<sup>62</sup> the Serious Organised Crime and Police Act 2005 and the Human Rights Act 1998.<sup>63</sup> In brief, we must conduct all surveillance according to the Human Rights Act 1998, and in particular Article 8, Right to Respect for Private and Family Life.
260. The Regulation of Investigatory Powers Act 2000 ensures that any use of investigatory powers is compliant with human rights and sets out:
- when we can carry out directed surveillance
  - who should authorise each use of the power
  - what use we can make of the material gained.
261. We only use directed surveillance in the regulation of children's social care providers where we need to provide evidence that a provider has committed, or is committing, an offence which seriously jeopardises the safety and welfare of children, young people and where appropriate adult service users' safety and we have exhausted all other methods of gathering evidence, such as unannounced visits.
262. Section 26(2) of the Regulation of Investigatory Powers Act 2000 defines directed surveillance as surveillance that is covert but not intrusive (that is, surveillance carried out in a manner designed to ensure that persons are unaware that surveillance is taking place) and undertaken:
- for a specific investigation or specific operation
  - in a manner that is likely to result in obtaining private information about a person or people

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<sup>60</sup> Regulation of Investigatory Powers Act 2000; [www.legislation.gov.uk/ukpga/2000/23/contents](http://www.legislation.gov.uk/ukpga/2000/23/contents).

<sup>61</sup> Intelligence Services Act 1994; [www.legislation.gov.uk/ukpga/1994/13/contents](http://www.legislation.gov.uk/ukpga/1994/13/contents).

<sup>62</sup> Police Act 1997; [www.legislation.gov.uk/ukpga/1997/50/contents](http://www.legislation.gov.uk/ukpga/1997/50/contents).

<sup>63</sup> Human Rights Act 1998; [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents).

- in a way that is premeditated rather than the chance observations of, for example, an inspector attending a setting to conduct an inspection.

263. All inspectors must at all times understand the police and local authority can and must intervene where there is serious risk of harm to children and young people.

264. Only staff who have received approved training carry out surveillance. Inspectors or social care compliance team staff carrying out surveillance, as well as authorising officers, must always be familiar with the Home Office code of practice for covert surveillance and property interference.<sup>64</sup>

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

265. The Regulation of Investigatory Powers Act 2000 requires that the person granting authorisation for surveillance believes that the authorisation is necessary on one of several identified statutory grounds. Only one ground applies to Ofsted which is that the surveillance is necessary to prevent or detect a crime. This means we can use surveillance when we suspect a person has committed, or is committing, an offence under the Care Standards Act 2000<sup>65</sup> or certain relevant regulations. For example, we may carry out directed surveillance if we believe a person is providing children's social care without registration and, in doing so, they are committing an offence.

266. Only authorising officers can authorise the use of surveillance (see section 4. Decision-making). The authorising officer balances the seriousness of carrying out surveillance against our responsibility to safeguard and protect children, young people and adult service users. Surveillance is not proportionate if it is excessive given the circumstances of the case, even if the offence is serious, where we can realistically obtain the required information by other means. Proportionality also includes demonstrating that the methods and tactics, to be used when carrying out a particular surveillance operation, are the least intrusive. A lack of resources is not a valid reason for using more intrusive and therefore less proportionate methods.

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

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<sup>64</sup> *Code of practice for covert surveillance and property interference*, Home Office, 2010; [www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert](http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert).

<sup>65</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

268. The authorising officer decides if the application to carry out surveillance is an appropriate and proportionate response using the following four elements of proportionality:

- how the size and scope of the operation is balanced against the gravity and extent of the misdemeanour or offence
- how and why the methods to be adopted will cause the least possible intrusion on the target and others
- why the use of the power is appropriate and the only reasonable way of obtaining the information or evidence
- what other means of obtaining the information have been considered and why these are not appropriate.

269. We only use surveillance where we are unable to obtain the evidence by other means, such as an unannounced visit. Surveillance may be a proportionate response if observation is the only way to gather our own evidence that the registered provider is committing an offence.

270. We must demonstrate how using surveillance is proportionate on the authorisation forms. We explain:

- how the size and scope of the surveillance operation is necessary to achieve the aim of the operation
- how the methods used will minimise intrusion and that there is no other way to find evidence of the suspected offence
- what other methods we considered to obtain the evidence and why they were – or are likely to be – unsuccessful.

271. The use of surveillance can be considered as proportionate where it provides evidence of only one aspect of an offence. The use of surveillance is unlikely to be proportionate if it does not provide direct evidence of an offence, such as where it only provides information that enables us to make other enquiries. For example, where we plan to obtain information concerning car registration numbers, which enables us to approach the Driver and Vehicle Licensing Agency for names and addresses of the owners so that we can continue our investigation.

### **Application to conduct surveillance**

272. We set out in the application to the authorising officer:



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

273. Additionally, the application must set out:

- the details of any potential collateral intrusion<sup>66</sup>, the justification for the intrusion and steps taken to limit the intrusion
- the arrangements made to ensure the surveillance remains covert.

### **Authorising officer's duties**

274. Authorising officers are trained to understand the Home Office code of practice for covert surveillance and property interference before authorising surveillance. Authorising officers, and not Ofsted, are personally responsible for any decision they take. A court may hold the authorising officer to account, even if they have ceased working for Ofsted. Authorising officers set a timescale for review when authorising surveillance.

### **Granting authorisation**

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

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<sup>66</sup> The Home Office guidance: Covert Surveillance and Property Interference describe collateral interference as 'the risk of obtaining private information about persons who are not subjects of the surveillance...'. *Code of practice for covert surveillance and property interference*, Home Office, 2010; [www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert](http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert), p28, point 3.8.

- surveillance is an appropriate and proportionate response and supports our action to protect children, young people and adult service users' safety and/or welfare
- the surveillance is to provide evidence that someone is committing an offence for which Her Majesty's Chief Inspector is the prosecuting authority, for example, operating an unregistered children's home
- the persons nominated to carry out surveillance are trained in covert surveillance
- all sections of the surveillance authorisation form are complete, and the request provides an outline of the intended approach and includes all necessary information, as set out above, for the authorising officer to reach a decision.

276. When approving a surveillance authorisation request, the authorising officer includes:

- an account of why they are authorising the surveillance
- what they are authorising, the time period approved
- where the surveillance will take place
- why it is a proportionate response.

This is because it is likely that a court will cross-examine an authorising officer on this if there is a legal challenge.

277. When refusing an application, the authorising officer must:

- set out the reasons for the refusal
- state whether they are willing to consider a further authorisation request and, if so, the issues for consideration by the applicant.

278. Hard copies of every application that is made in relation to social care are forwarded to the early childhood policy team for storage and retention, in line with Ofsted's file retention policy.

279. The authorising officer is responsible for:

- liaising with our legal advisors before making the final decision when minded to grant an application

- informing Her Majesty's Chief Inspector of a surveillance operation, once authorised, to ensure there are no wider implications that may affect our ability to carry out the operation.

### **Reviewing authorisation**

280. The authorising officer reviews each authorisation after the surveillance is complete in order to assess whether there is a need to renew or cancel it. The review considers:

- if the surveillance continues to meet the criteria set out in the request form
- if the surveillance remains a proportionate response
- if we can gather the evidence in any other way
- all evidence gathered by surveillance at that time
- any additional information that may have a bearing on the case.

### **Renewing authorisation**

281. We send the application for renewal to the authorising officer that authorised the original surveillance. The authorising officer reads the original request along with the renewal surveillance form. The authorising officer checks that the renewal form includes details about:

- any significant changes to the information in the previous authorisation
- the reason it is necessary to continue surveillance
- the content and value to the investigation of the information gathered so far
- the estimated length of time for the additional surveillance.

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

282. Once the surveillance is authorised, a senior HMI social care, or more senior officer, who has undertaken and completed approved training in surveillance, is responsible for the operation (the responsible officer).

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

### **Cancelling authorisation**

286. The responsible officer completes a request to cancel the authorised surveillance once we have completed the surveillance operation, or we have decided not to continue with it for any reason.
287. Only the authorising officer can cancel the authorisation. The authorising officer cancels the authorisation as soon as possible after the surveillance has ended, or as soon as he or she is satisfied that the surveillance no longer meets the criteria set out in the latest request form.

### **Storage of information**

288. In line with the Home Office code of practice for covert surveillance and property interference, we hold a central record of all authorisations. This is held by the early childhood policy team. We make the record available to the relevant commissioner or inspector from the Surveillance Commission, on request. We hold a record for each authorisation for at least three years from the date that each authorisation is closed by the authorising officer.
289. The social care compliance team retains the following documentation:
- a copy of the application, a copy of the authorisation or refusal from the authorising officer, together with any supplementary documentation
  - a record of the period during which we have undertaken the surveillance
  - the frequency of reviews prescribed by the authorising officer
  - a record of the result of each review of the authorisation

- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested
- the date and time of any instruction given by the authorising officer
- all the log books and personal issue books.

290. The social care compliance professional must ensure that all of the documentation listed in paragraph 289 is retained appropriately within five working days from the date that the authorisation for surveillance is closed. They are also responsible for ensuring that a note that surveillance activity took place is recorded on RSA as part of the CIE case record within five working days from the date the authorisation for the surveillance closes.

291. We store all information electronically and in hard copy, with access rights only available to the responsible officer and authorising officer, in line with our retention policy.<sup>67</sup>

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

292. We keep any surveillance material (such as logs or photographs) in a secure place for as long as is relevant to any future criminal or civil proceedings. If a court case or tribunal hearing takes place, we make the material available to it. The court or tribunal may ask us to disclose the information to the other party in the hearing.

293. We destroy any surveillance material we gather during an investigation whenever an operation has ceased and we no longer require that material for a prosecution or criminal action.

294. The responsible officer must ensure that the handling, storage and retention of the products of surveillance are in line with our policy and the Home Office code of practice for covert surveillance and property interference, and that we consider data protection requirements.

295. If the authorised surveillance shows evidence of other criminal offences we secure the evidence in the normal manner and inform the relevant police force or prosecuting authority.

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<sup>67</sup> *Handling and retention of inspection evidence*, (100122), Ofsted, 2010;  
[www.ofsted.gov.uk/resources/handling-and-retention-of-inspection-evidence](http://www.ofsted.gov.uk/resources/handling-and-retention-of-inspection-evidence)

## 10. Compliance notices

### Introduction

296. Compliance notices are important in enforcing the law, and are part of the enforcement powers that we use to regulate children's social care providers and managers – see section '2. The legal basis of our work and our options for ensuring compliance: powers, principles and making decisions'.
297. A compliance notice must be as specific as possible, setting out the actions that the registered person must take by a certain date to meet the relevant regulations.
298. The aim of a compliance notice is to remedy a specific matter rather than place a general obligation on a provider to continue to meet the relevant statutory framework. The Care Standards Act 2000 already requires registered person(s) to meet the service-specific regulations.<sup>68</sup>
299. A registered person commits an offence if they do not take the action(s) set out in a compliance notice within the specified time. We can prosecute a registered person who does not take the action required in a compliance notice.

### Legal basis for serving compliance notices

300. We serve compliance notices under the following regulation:
- section 22A of the Care Standards Act 2000.<sup>69</sup>
301. We may issue a compliance notice against a registered person who is registered in respect of the following:
- adoption support agencies
  - children's homes, including secure children's homes
  - holiday schemes for disabled children
  - independent fostering agencies

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<sup>68</sup> Care Standards Act 2000; [www.opsi.gov.uk/acts/acts2000/ukpga\\_20000014\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000014_en_1).

<sup>69</sup> Inserted by the Children and Young Persons Act 2008; [www.legislation.gov.uk/ukpga/2008/23/contents](http://www.legislation.gov.uk/ukpga/2008/23/contents).

- residential family centres
- voluntary adoption agencies.

## **When to serve a compliance notice**

302. We only serve a compliance notice when we have evidence of a breach, or breaches, of regulations. Section 22A of the Care Standards Act 2000 specifies that the breaches of regulations that can be the subject of a compliance notice are those 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.

303. We do not need to serve compliance notices prior to bringing criminal proceedings for offences such as failure to comply with the conditions of registration or making false statements in applications.

## **Decision to serve a compliance notice**

304. Before we serve a compliance notice, we must be able to demonstrate that there are grounds for considering that the registered person has failed to comply with the requirements as set out in regulations.

305. We must have documentary evidence that shows the failure to comply. Examples of evidence include an inspection report, an investigation report, photographs and records from the establishment or agency (copies or originals). We record the reasons for the decision in the RSA database.

306. 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 matter is not serious enough to take any further action, such as prosecution or cancellation, then it is not appropriate to serve a notice.

307. The decision to serve a compliance notice must be made through a case review, as set out in section '4. Decision-making'.

## Drafting a compliance notice

308. The inspector generates a notice from the RSA 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 professional within a further two days and signed off by the decision-maker who chaired the case review within one day.
309. For each failure to comply with a specific regulation we draft a separate compliance notice. This reduces the ability for a notice to be partially met. Partially met compliance notices cannot be used as grounds for stronger enforcement such as cancellation or prosecution. Non-compliance with a compliance notice however, is a specific ground for cancellation.
310. Wherever possible, the timescales for completion of each action should be the same. If the timescales for completion cannot be the same, we issue separate notices for each date for completion.
311. When drafting a notice we should ensure that the safety and welfare of children, young people and adult service users must be our paramount importance, with the most important aspect of the concern first and the best evidence we have which illustrates this.
312. There are specific minimum legal requirements that we must include. These are:
- specify which requirement we believe the registered person is failing, or has failed, to comply with
  - specify how the registered person is failing, or has failed, to comply with the legal requirements
  - specify the steps the registered person must take to comply with the requirements or to prevent the re-occurrence of the failure
  - specify the period of time in which the registered person must complete each requirement
  - specify the establishment or agency to which the failure to comply with requirements relates
  - inform the registered person that it is an offence to fail to comply with the requirement set out in the notice, and the consequences of non-compliance.



313. We include in the notice sufficient evidence of the failure to comply with regulations as is necessary to prove that the breach has occurred. We do not include a history of problems at the establishment or agency, but concentrate on the evidence relating to the breach or breaches listed on the notice.
314. The timeframe for the registered person to comply with the notice starts from the date of the notice and not the effective service date. This means the date of the notice and the effective service date must be the same. This is preferable in all cases but, crucial when a registered person is required to undertake emergency action.
315. It is also helpful to remember that, in some instances, compliance notices can be used in conjunction with other compliance activity, for example a notice to restrict accommodation in a children's home, residential family centre or residential holiday scheme for disabled children, cancellation or imposing conditions of registration. This is more appropriate where there are long term issues of non-compliance.
316. We allow a minimum period of 24 hours for a provider to take urgent action. If we require a registered person to take certain action urgently then we must consider delivering the notice by hand so that the registered person is able to take immediate action and ensure that they comply with the timescale set. Otherwise, the provider may have failed to comply with the notice before we have served it.

## **Serving a compliance notice**

317. The Care Standards Act 2000, section 37, sets out the legal requirements for the service of compliance notices.<sup>70</sup>
318. We serve all compliance notices to the registered provider and/or registered manager.<sup>71</sup> We can either serve the notice:
- in person
  - by courier
  - by post using a method which can be tracked, such as recorded delivery.

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<sup>70</sup> Care Standards Act 2000, section 37; [www.legislation.gov.uk/ukpga/2000/14/section/37](http://www.legislation.gov.uk/ukpga/2000/14/section/37).

<sup>71</sup> When serving a compliance notice, we check whether the legislation makes requirements of the registered provider, the registered manager or both (the term registered persons applies to both).

319. When we serve a notice in person we record the name of the registered 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 'CIE case comments' on the RSA.
320. If we serve the notice by post, we must decide at the case review who will be responsible for posting it and recording the details on the RSA. We may use this as evidence if there is a dispute about service of a notice at a later date.
321. A notice is effectively served on the day in which the registered person receives it. If we have sufficient evidence that the registered person did not receive the notice, for example if it is returned to us by Royal Mail, then the notice cannot take effect. In these cases, we must make all attempts to effectively serve the notice, including delivery by hand.
322. Registered person(s) 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, the court or the First Tier Tribunal (Health, Education and Social Care Chamber) ('the Tribunal') presumes that service of the notice took place. The onus is on the registered person to prove the contrary.

### **The person on whom we serve the notice**

323. Compliance notices can only be served on registered person(s), as defined within the Care Standards Act 2000 and service specific regulations. This includes the registered manager, a partner of a partnership, an individual provider, an officer of a registered organisation.
324. For a notice to be served effectively under the Care Standards Act it must be addressed to the correct registered person at the correct premises. It must also be sent using the method prescribed in Section 37 of the Care Standards Act 2000. We therefore serve compliance notices as follows:
- the registered manager - the notice is addressed to the registered manager and served at their home address or the address of the establishment, agency or holiday scheme for disabled children which they manage
  - the registered provider - an individual provider (a person who is both the provider and registered manager)– the notice is addressed to the individual provider and served at their home address or the address of the establishment, agency or holiday scheme for disabled children which he or she operates

- a partnership - the notice is addressed to one partner at the principal office of the partnership or the address of the establishment, agency or holiday scheme for disabled children which the partnership operates
- an organisation (Limited Companies, Trusts, unincorporated associations) - the notice is addressed to the chair, secretary or clerk of the organisation and served at the principal office of the organisation. (If the organisation is a limited company we send the notice to the address registered at Companies House.) We only serve a compliance notice on a responsible individual if they are also a registered person, as defined by the Care Standards Act 2000 and regulations made under that Act. However, we should provide the responsible individual with a copy of the notice. It is likely that the responsible individual will be the person who takes action to ensure compliance
- a local authority – the notice is addressed to, and served on, the director of children’s services. However, we should provide the responsible individual with a copy of the notice. It is likely that the responsible individual will be the person who takes action to ensure compliance.

## Monitoring a compliance notice

325. We conduct a visit to assess compliance with a compliance notice. The purpose is to ensure that the registered person has met each specified action within the prescribed timescale. Where we set a number of actions on a compliance notice, or serve multiple compliance notices with different completion dates, then we schedule follow-up visits for each completion date on each notice.
326. We must complete a monitoring visit the day after the specified completion date for each action or notice, or at the very latest within five working days from that date. We must not complete a monitoring visit to check on full compliance with a notice before the completion date for a particular notice or this may invalidate the compliance notice. 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 6-8 weeks of an inadequate judgement. If, however, we are concerned about the safety and welfare of children during this period an urgent visit must take place.
327. Consideration should be given as to who is best placed to undertake the monitoring visit or second full inspection of an inadequate setting. It may not always be appropriate for the same inspector to carry out the inspection where for example an inspector has undertaken a significant number of visits to the service. Complex monitoring visit may require the Regulatory Inspection Manager and inspector to undertake a visit.

328. 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 information on RSA, including:
  - the last inspection report and evidence
  - social care compliance case comments
  - the minutes of any case reviews
  - the compliance notices
  - any information from the case, such as the action plan and notifications from the setting
- complete the planning section of relevant RSA toolkit and develop key lines of enquiry before the visit.

329. During a second full inspection of a children's home inspectors must always:

- 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
- complete the planning section of relevant RSA toolkit and develop key lines of enquiry before the visit
- make additional requirements if there are additional areas of concern.

330. During a monitoring visit inspectors must always:

- 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
- make additional requirements if there are additional areas of concern

- complete the planning section of relevant RSA toolkit and develop key lines of enquiry before the visit.

331. For both the above two paragraphs it is very likely that other actions will be required but, these are the minimum expectations in relation to checking compliance with a compliance notice that inspectors must complete.
332. When following up the requirements on a compliance notice we consider what action the registered person has taken and whether this led to them satisfactorily complying with the requirement/s set out in the notice. If this is the case then we tell the registered person that we are satisfied that they have complied with the notice and confirm this in writing. Regulatory Inspection Managers are responsible for ensuring that all actions and records in relation to any monitoring visits are accurate and as a minimum reflect the key lines of enquiry agreed for the visit.
333. There are some circumstances which are less straightforward when assessing compliance, for example if no children and young people are living at the children's home. If this is the case we may decide it is best to give notice of the monitoring visit. It is more difficult because it is much more likely that there will be times when the establishment or agency is not staffed and therefore compliance could not be assessed. 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.
334. Where a compliance notice is met the decision to close the case must be ratified by decision maker either through case discussion or case review. The social care professional is responsible for sending a letter (SCL1126) to the relevant registered persons confirming that the compliance notice has been met.

### **Further enforcement action**

335. Where a compliance notice is not met an offence has been committed under section 22A(4) Care Standards Act 2000 and a further case review must be convened to consider what other compliance action we will take, including asking the person to attend an interview under caution. The review must be convened within two days of the failure to comply or earlier if more urgent action is required.
336. At any time when we are monitoring of a compliance notice, we can take further action against a registered person if they fail to comply with legal requirements.

337. 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 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 serve a new compliance notice or consider other forms of enforcement action.
338. 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. We consider what action, if any, we need to take about the additional failure, including whether we should serve a further compliance notice. 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.
339. If a registered person has failed to comply with the notice, we caution the provider, in line with the Police and Criminal Evidence Act 1984 Codes of Practice,<sup>72</sup> and invite the person to an interview under caution. Following the interview, we will consider what action we should take. We will do this in a case review. This may include:
- writing to the provider informing them that the failure is an offence – in exceptional circumstances we may allow a further period of time for the provider 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 cancel the registration
  - applying to a magistrate for an emergency order to cancel registration, or impose or vary conditions of registration.
340. A registered person must fully comply with each requirement set out in the compliance notice within the deadline specified for each requirement in that same notice. Partially complying with the requirements, for example by complying with some but not all of the requirements, is not sufficient and where the necessary threshold is met we may caution the registered person, as set out above.

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<sup>72</sup> Police and Criminal Evidence Act 1984 Codes of Practice;  
<http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/>

## 11. Cancellation of registration

### Introduction

341. This section provides guidance on cancelling the registration of a registered person. It does not apply:

- to cancellation of registration due to non-payment of fees
- where a social care provider applies to us to cancel their registration.<sup>73</sup>

These are different to cancellation as a form of enforcement action and are not covered in this section.

### Our powers to cancel registration

342. We have two ways of cancelling a provider or 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). Information on taking emergency cancellation action is set out in detail in section '12. Taking emergency action'.

343. A cancellation will stop a person from carrying on a social care establishment, agency or holiday scheme for disabled children. It will also prevent them from managing a social care establishment, agency or holiday scheme for disabled children.

### Considering when to cancel a person's registration

344. Cancelling a person's registration is the strongest of our enforcement powers. We do not take action to cancel a person's registration unless we have clear and compelling evidence that this is the only option available to us to safeguard the welfare of children, young people and adult service users.

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<sup>73</sup> Care Standards Act 2000, section 15(1) (b); [www.legislation.gov.uk/ukpga/2000/14/section/15](http://www.legislation.gov.uk/ukpga/2000/14/section/15).

345. Where a children's home is judged inadequate for overall effectiveness at a full inspection, it will not have an interim inspection to check on progress, instead it will have another full inspection within six to eight weeks. The first inadequate judgement is an 'amber rating'. If, at this second full inspection, the home is judged inadequate for overall effectiveness this will flag a 'red rating' and a case review must be held immediately. The case review must decide and programme immediate serious steps which assure compliance. The review must seriously consider whether it is appropriate to cancel the provider and/or manager's registration.
346. If a registered person fails to satisfy any of the legal requirements we can determine that the person is no longer fit for registration. The law states that if a registered person ceases to be fit for registration, by failing to satisfy one of the requirements, the registration authority '... may cancel the registration'. This is a discretionary power; we do not have to cancel.
347. The grounds for cancelling the registration of a children's social care provider are set out in the Care Standards Act 2000.<sup>74</sup> We have the power to exercise discretion as to whether we cancel registration. The grounds on which we may cancel the registration of a person in respect of an establishment or agency are:
- (a) that the person has been convicted of a relevant offence
  - (b) that any other person has been convicted of such an offence in relation to the establishment or agency
  - (c) that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements
  - (d) that we have served a compliance notice relating to an establishment or agency and the person on whom the notice was served has failed to take the step specified in the notice<sup>75</sup>
  - (e) any ground specified by regulations.

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<sup>74</sup> Care Standards Act 2000, section 14(1); [www.legislation.gov.uk/ukpga/2000/14/section/14](http://www.legislation.gov.uk/ukpga/2000/14/section/14).

<sup>75</sup> As inserted by the Children and Young Persons Act 2008; [www.legislation.gov.uk/ukpga/2008/23/contents](http://www.legislation.gov.uk/ukpga/2008/23/contents).



348. The relevant offences referred to in (a) and (b) above are set out in the Care Standards Act 2000<sup>76</sup> and include:

- (a) any offence under Part II of the Care Standards Act 2000 or Regulations made under it
- (b) any offence under the Registered Homes Act 1984 or regulations made under it<sup>77</sup>
- (c) any offence under the Children Act 1989 or regulations made under it<sup>78</sup>
- (d) an offence under the regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999<sup>79</sup>
- (e) an offence under the Adoption and Children Act 2002 or regulations made under it<sup>80</sup>
- (f) an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part.<sup>81</sup>

349. The relevant requirements referred to immediately above are set out in the Care Standards Act 2000, section 14(3) and include:

- (a) any requirements or conditions imposed by or under Part II of the Care Standards Act 2000; and
- (b) the requirements of any other enactment which appear to the registration authority to be relevant.

350. The relevant grounds specified by regulations referred to in (a) above (paragraph 347), are set out in regulation 12 of The Care Standards Act 2000 (Registration) (England) Regulations 2010. Under regulation 12, we may cancel registration if the registered person:

- (a) has failed to pay at the time prescribed under section 16(3) of the Act the annual fee payable by him by virtue of that subsection;

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<sup>76</sup> Care Standards Act 2000, section 14(2); [www.legislation.gov.uk/ukpga/2000/14/section/14](http://www.legislation.gov.uk/ukpga/2000/14/section/14).

<sup>77</sup> Registered Homes Act 1984 (repealed); [www.legislation.gov.uk/ukpga/1984/23](http://www.legislation.gov.uk/ukpga/1984/23).

<sup>78</sup> Children Act 1989; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

<sup>79</sup> Adoption (Intercountry Aspects) Act 1999; [www.legislation.gov.uk/ukpga/1999/18/contents](http://www.legislation.gov.uk/ukpga/1999/18/contents).

<sup>80</sup> Adoption and Children Act 2002; [www.legislation.gov.uk/ukpga/2002/38/contents](http://www.legislation.gov.uk/ukpga/2002/38/contents).

<sup>81</sup> Health and Social Care Act 2008; [www.legislation.gov.uk/ukpga/2008/14/contents](http://www.legislation.gov.uk/ukpga/2008/14/contents).

- (b) has in relation to any application by him:
  - (i) for registration
  - or
  - (ii) for the variation or removal of a condition in relation to his registration, made a statement which is false or misleading in a material respect or provided false information
- (c) the establishment or agency has ceased to be financially viable, or is likely to cease to be so within the next six months.

### **Making the decision to cancel registration**

- 351. In some cases, we may take other enforcement action before taking steps to cancel a registration, for example enforcement action that requires the registered person to put matters right, where the registered person(s) have continually failed to do so. In these cases, we may have lost confidence that the registered person will continue to meet the relevant regulations and national minimum standards and therefore cancellation is justified.
- 352. Where children, young people and adult service users are at immediate risk of harm we may decide to move to cancel the provider or manager's registration immediately, without taking any previous action.
- 353. It is important to remember that cancelling the registration of a children's home results in children and young people losing their home, and quite possibly contact with family and friends or their place in school or college. Therefore, it is important that we are clear why this action is necessary in order to protect their safety and well-being, and that there are no other enforcement actions that would bring about compliance.
- 354. It is important to maintain a full audit trail, including minutes of meetings with the registered person and letters sent to them. This demonstrates the efforts we have taken to resolve issues before taking action to cancel the registration.
- 355. We cancel a registration by notice, unless there are grounds to make an application to a magistrate for an emergency order to cancel the registration and the criteria for emergency cancellation are met – see section '12. Taking emergency action'.
- 356. We convene a case review to consider cancellation of registration. The case review:

- considers whether the safety and welfare of the children and young people and adult service users' best interests are served by cancelling the registration – this includes both the short and long-term impact on them
- reviews the case to ensure that we are satisfied that the evidence we have is robust and sufficient to take the action we intend to take – this must meet the test for cancellation, which includes having clear and compelling evidence that meets the required standard of proof on the balance of probability
- sets a clear timeframe for the cancellation in order to minimise the risk to children, young people and where appropriate adult service users
- arranges to provide a briefing to enable the relevant decision-maker (see section '4. Decision-making') to decide whether to cancel the registration
- collates sufficient documentation to brief senior management on the intended action
- identifies whether a referral to the Disclosure and Barring Service is appropriate<sup>82</sup>
- determines any monitoring visits that should take place
- identifies whether we should inform the Care Quality Commission of the action we are taking, if the provider and/or manager hold a registration with them.

## The notice of proposal to cancel

357. A timeline for serving a notice of proposal and notice of decision is provided as Annex K. Notices must however, Notices of Proposal all be completed within one week of the decision to cancel a registration.

### Drafting the notice

358. We serve notices of proposal to cancel registration under the Care Standards Act 2000.<sup>83</sup>

359. We serve a notice of proposal to cancel a person's registration in writing. The notice of proposal must include:

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<sup>82</sup> The requirement for referral to the Disclosure and Barring Service is set out in the Safeguarding Vulnerable Groups Act 2006 and commenced on 12 October 2009.

<sup>83</sup> Care Standards Act 2000, section 17(4)(a); [www.legislation.gov.uk/ukpga/2000/14/section/17](http://www.legislation.gov.uk/ukpga/2000/14/section/17).

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

360. The timescale for completing the requirements set out in the compliance notice must relate to the seriousness of the issue of concern and the safety and welfare of children, young people and adult service users but must always be completed within as quickly as possible.

361. We use standard formats for notices of proposal to ensure that our notices are consistent.

362. Where a panel solicitor is acting for Ofsted, we must send the notice of proposal to the panel solicitor for review, to ensure that it contains all the relevant information required.

363. The inspector generates a notice from the RSA 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 professional within a further two days and signed off by the decision-maker who chaired the case review within one day. Additional time will be required for the panel solicitor to review but time should be booked with them as part of the case review so as to prevent drift.

### **Serving the notice**

364. We must serve all notices either by hand, registered mail or recorded delivery.

### **Providers requesting to cancel their registration**

365. Registered person(s) may apply to cancel their registration under section 15 of the Care Standards Act 2000. However, a registered person cannot do this if we have issued a notice of proposal or a notice of decision to cancel their registration.

366. If a person has applied to cancel their registration under section 15, and the cancellation has not yet taken effect, we are allowed to issue a notice of proposal to cancel an enforcement action under section 14 and to proceed to the notice of decision to cancel, where appropriate.<sup>84</sup> We may do this where we have serious concerns about the quality of service provided by a registered person, so that they consequently become disqualified from providing care in the future.

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

367. In some cases, after issuing a notice of proposal to cancel a provider'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.

### **Representations**

368. 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. We cannot move to a decision to cancel until the time allowed for representations has passed or the representations have been heard. A registered person must make their written representations within 28 days of service of the notice of proposal.

369. We may, in rare circumstances, delay making the decision based on information given by the registered person during the representation, where we believe that it is reasonable to do so. Further information on the representations process is available in section '19. Representations'.

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

370. We cannot move to a decision to cancel the registration until the time allowed for the representation has passed after effective service of the notice of proposal.

371. A notice of decision issued after a representation will include 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.

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<sup>84</sup> Section 14(1) of the Care Standards Act states that 'the registration authority may *at any time* cancel the registration of a person...'

372. Where we have reason to believe that the registered person may appeal and we have therefore appointed a panel solicitor, we must send the notice of decision to the panel solicitor for review.
373. 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.

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

374. A person remains registered until 28 days after we have served the notice of decision or, where the person appeals, until the appeal is determined.<sup>85</sup> An appeal may take several months to process. When a cancellation takes effect, the social care compliance team must arrange for a supplementary notification to be sent to every local authority in England and Wales notifying them of this fact.

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

375. 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 significant efforts to work with registered persons to deal with issues. It assesses whether the step is proportionate and appropriate. Further information on appeals is available in section '20. Appeals'.
376. 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.

### **Monitoring visits**

377. 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 time 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.

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<sup>85</sup> 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.

378. During the case review the decision-maker must decide on and record the frequency and scope of monitoring visits to the registered person. Consideration must be given as to whether additional compliance action should be taken in conjunction with cancellation such as restricting accommodation or placing conditions of registration on a setting.

### **Actions following a monitoring visit**

379. We give feedback to the registered person(s) or person in charge at the end of each visit. The feedback must be factual and based on what we observe or are told during the visit. However, we do not give feedback at the time of the visit if we gather evidence that needs to be considered first in a case review, for example where there are sufficient concerns to consider an application for emergency cancellation. We can present evidence obtained during the monitoring visit to the Tribunal hearing.
380. We consider the evidence gathered after each monitoring visit. This includes whether the evidence shows any significant change that may require further action, including whether the situation has deteriorated and whether children, young people and adults are at risk of significant harm. If children, young people and adult service users are at risk of significant harm we must take immediate action to secure their welfare and safety. A case review must be held on the day of the monitoring visit. The review must consider whether it is appropriate to use additional enforcement action, for example restricting accommodation at a children's home, holiday scheme for disabled children or residential family centre and/or whether to refer the matter to child protection agencies. The decisions taken must appropriately deal with the level of concern and include a view about whether emergency cancellation is appropriate.
381. From the end of November 2013 we will publish monitoring visit reports for those children's homes which have been judged as inadequate at two sequential full inspections. We will continue to revise our approach to publishing monitoring reports and to ensure that as much information as possible is published to enable placing authorities to use placements that are only in the best interests of children and young people.

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

382. If we find evidence on a monitoring visit that the registered person is making significant progress we consider whether cancellation of the registration is still appropriate. This is because the Tribunal may uphold an appeal where the person has made improvements between the issuing of the notice of decision and the appeal.

383. If, following a case review, the decision-maker thinks we should no longer defend the appeal, he or she recommends this step to a senior manager who makes this decision.

384. We must inform the Tribunal of the reason for such a decision, namely that we believe the registered person has made significant progress, and that the decision to cancel the registration is no longer appropriate. We send a letter to the registered person confirming our action and decision.

### **Monitoring visits following a cancellation taking effect**

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

- where the person has indicated that they intend to continue operating
- where a children's home, holiday scheme for disabled children or residential family centre previously subject to a notice restricting accommodation breached that restriction and therefore we have cause to suspect that they may be operating without registration
- where we receive information that suggests the person is providing services for children and young people or families which requires registration.

### **Emergency cancellation of registration**

386. See section '12. Taking emergency action'.

### **Twin-track cancellation**

387. A twin-track cancellation is where we serve a notice of proposal to cancel and obtain 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.

388. We may serve a notice of proposal to cancel at the same time as seeking cancellation by emergency order. We can do this where we believe that not only is there a serious risk to the life, health or well-being of a child or young person, but that the registered person is also no longer fit for registration.



389. 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 are met, we may convince the Tribunal that the registered provider is no longer fit for registration.
390. If a provider appeals against a notice of decision to cancel by notice and an emergency cancellation, the Tribunal will hear the appeal against the emergency cancellation under its expedited appeals procedure (as agreed in our memorandum of understanding with the Tribunal).<sup>86</sup>
391. There may be occasions where we serve a notice of proposal to cancel and then find on a subsequent monitoring visit that 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, and the criteria for emergency cancellation are met.
392. In such cases, if an emergency order is made the cancellation is effective immediately but is still subject to appeal. We will therefore continue to process the cancellation via a notice of proposal and notice of decision under the Care Standards Act 2000 until the relevant appeal period for the emergency cancellation has expired.
393. If a Tribunal hears and 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 date that the appeal was upheld.

### **Providers with multiple registrations and the effect of the cancellation of one of those registrations**

394. Where we successfully cancel the registration of a registered provider, there is no legal power that mandates us to cancel that provider's other registrations. This is because each registration is separate and Ofsted's cancellation powers should only be used in situations where there is no other alternative to protect children and young people, adult services users and families who are provided with services by the establishments and agencies in question.

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<sup>86</sup> *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/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca).

395. Cancellation of one registration must prompt further scrutiny of the remaining registrations to ascertain whether the same regulatory breaches exist in other registered establishments and/or agencies.
396. Cancellation under the Care Standards Act triggers disqualification from carrying on, managing or having a financial interest in a children's home under the Children Act 1989. The fact that cancelling a registration means engages disqualification under the Children Act 1989<sup>87</sup> for those registered in respect of children's homes is not an automatic reason for cancelling the provider in respect of another establishment or agency. It will however be relevant information on the overall fitness of the provider. A registered provider of a children's home can apply for written consent to allow them to continue providing each of their other registrations. For more information about written consent please see the *Social care registration handbook*.<sup>88</sup>
397. Whilst we wait for the provider to decide whether to apply for written consent for their other registrations we must decide whether there are any enforcement actions that we must take against the remaining registrations. We only take any other enforcement action where we have evidence that there are breaches of regulations that apply to that establishment, agency or holiday scheme for disabled children.
398. It must be noted that once a registered provider or manager is disqualified, if they continue to carry on, manage or have a financial interest in a children's home, they will be committing an offence.<sup>89</sup> Ofsted is able to prosecute for this offence under the Children Act 1989. If the prosecution is successful this will be a ground for cancellation, however there would be significant time lapses in such a situation. In such circumstances we must ensure that we detail and record any risks to children, young people and adult service users and consider whether any other enforcement action is required and if required taken, in order to ensure that their safety and welfare protected is protected whilst regulatory action is completed.
399. If written consent is requested by the provider and agreed by Ofsted, enforcement action based on the disqualification cannot be undertaken as the person will not be disqualified.

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<sup>87</sup> Children Act 1989, section 65; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

<sup>88</sup> Social Care Registration Handbook, <http://www.ofsted.gov.uk/resources/social-care-registration-handbook>

<sup>89</sup> Children Act 1989 Section 65(4) Children Act 1989; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents)

400. If no written consent is requested by the provider or applied for and refused by Ofsted, regardless of how well the provider is operating the establishment or agency, they are disqualified under the Children Act 1989 from carrying on, managing or having a financial interest in a children's home. Therefore, Ofsted will be able to use this as grounds in cancellation proceedings to establish that the provider is not fit to be a registered provider under the Care Standards Act. There is no stand-alone ground for cancellation which is based purely on disqualification under the Children Act 1989.
401. For providers of establishments and agencies other than children's homes, there is no applicability of disqualification under the Children Act 1989 to the carrying on, managing or having a financial interest of that establishment or agency; therefore those registered person(s) do not need to apply for a waiver.
402. For all establishments and agencies other than children's homes, Ofsted may wish to take into account the fact that the persons in question are disqualified with regard to their overall fitness.
403. Cancellation proceedings should not commence until we have agreed any application for written consent, unless there are other breaches of regulations that trigger cancellation of some, or all, of the remaining registrations.
404. It is strongly recommended that legal advice is sought when dealing with multiple registrations and the effect of cancellation and disqualification.

### **Process for notifying local authorities when a social care provision is cancelled**

405. We are required by section 30A of the Care Standards Act 2000 to notify every local authority in England and Wales where we issue a notice of decision to cancel the registration of a social care provider or manager.
406. We must also send supplementary notifications:
- where the registered person appeals against our notice of decision to cancel
  - to confirm the outcome of that appeal

- on the date a cancellation becomes effective (either 28 days after issuing the notice of decision or after the appeal is determined).

407. We must also send notifications for other types of enforcement action under this section. These are covered in the 'Issuing a notice restricting accommodation in a children's home or residential family centre' within this handbook.

408. We draft these notifications using a standard template. The notifications are sent double-enveloped and by recorded delivery to meet information assurance requirements.

## 12. Taking emergency action

### Introduction

409. We have powers to take urgent action under section 20 of the Care Standards Act 2000.<sup>90</sup> This allows us to:

- apply for the emergency cancellation of a provider or manager's registration – this is the highest enforcement power that we have
- apply for the emergency imposition, variation or removal of conditions of registration.

410. We may seek an emergency order from a magistrate if we believe that by allowing services to continue there is a serious risk to a child or young person or adult service user's life, health or well-being.

### Making the decision to take emergency action

411. Any decision to seek an emergency order must be made through a case review; see 'Case reviews' – paragraphs 76 to 88 in section '4. Decision-making'. If we decide to take emergency action, we approach our legal services team, who arrange for a private solicitor to represent us.

### Seeking an order

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

413. 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:

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<sup>90</sup> Care Standards Act 2000, section 20; [www.legislation.gov.uk/ukpga/2000/14/section/20](http://www.legislation.gov.uk/ukpga/2000/14/section/20).

- demonstrates that the risk of harm to the children, young people and adults who use the service is likely to happen<sup>91</sup> and that the consequences for them are serious, for example a service user may die or suffer abuse or significant harm
- 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.

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

415. 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 applications**

416. Via our solicitor, we usually make an application to a magistrate in the area where the registered person operates, so it is easier for them to attend.

417. We seek to make these applications inter parte (having given the registered person notice of the application and our reasons for making the application).<sup>92</sup> 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.

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<sup>91</sup> 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.

<sup>92</sup> Inter parte – with both parties present.

418. We only make an ex parte application<sup>93</sup> in exceptional circumstances where:

- we believe that an inter parte application jeopardises the immediate safety and welfare of children and young people by telling the registered person in advance about our application

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 in the RSA database.

419. Where we make an ex parte application, we must carefully record the reasons why we have done this in the RSA database.

## After the hearing

### Note of the hearing

420. 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.

421. The note is not a verbatim record of the hearing, but as full a summary as possible.<sup>94</sup> We decide who will take the note during the case review.

### The magistrate's order

422. 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.<sup>95</sup>

423. The provider may appeal to the First Tier Tribunal (Health, Education and Social Care Chamber) ('the Tribunal'). However, the order remains in place until the appeal is determined. The Tribunal operates an expedited process for appeals against a magistrate's orders.<sup>96</sup>

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<sup>93</sup> Ex parte – with one party absent.

<sup>94</sup> It is good practice to take a note at inter parte hearings.

<sup>95</sup> Care Standards Act 2000, section 20(1); [www.legislation.gov.uk/ukpga/2000/14/section/20](http://www.legislation.gov.uk/ukpga/2000/14/section/20).

<sup>96</sup> *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/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca).

424. 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 ....').

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

425. We serve the registered person with a copy of the order, a copy of the written statement which 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.

426. 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 of our action**

427. We must inform the appropriate authorities immediately after making an application for emergency action.<sup>97</sup> The appropriate authorities are:

- the local authority in whose area the establishment or agency is situated
- any statutory authority which we think it appropriate to notify.<sup>98</sup>

This should include any local authority that has a child, young person or family placed with the establishment or agency.

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<sup>97</sup> Care Standards Act 2000, section 20(3); [www.legislation.gov.uk/ukpga/2000/14/section/20](http://www.legislation.gov.uk/ukpga/2000/14/section/20).

<sup>98</sup> Care Standards Act 2000, section 20(6) and (7); [www.legislation.gov.uk/ukpga/2000/14/section/20](http://www.legislation.gov.uk/ukpga/2000/14/section/20).



## 13. Unregistered services

### Introduction

428. A person may not provide or manage a children's social care service in England that requires registration with Ofsted unless the setting is exempt from registration.<sup>99</sup> It is an offence to do this and we may prosecute.
429. Operating an unregistered social care establishment or agency 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 with appropriate seriousness.
430. This section provides guidance on how we manage instances of unregistered social care, including people who are managing children's homes without being registered.
431. We take action where we identify unregistered establishments, agencies or managers – see section '2. The legal basis of our work and our options for ensuring compliance: powers, principles and making decisions'.

### Exemptions to registration

432. There are some provisions for children and young people that do not require registration with Ofsted. A person is allowed to provide or manage such a provision without being registered. The exemptions are set out in the Care Standards Act 2000 and remit-specific regulations,<sup>100</sup> and listed in Annex C of this handbook.

## Responding to a report of unregistered services

### Initial response

433. When we receive a report that a person is providing unregistered services that require registration with us, we check the RSA database for any previous knowledge about the provision or individual. We look to see whether:
- the person or organisation has submitted an application for registration

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<sup>99</sup> Care Standards Act 2000, section 11; [www.legislation.gov.uk/ukpga/2000/14/section/11](http://www.legislation.gov.uk/ukpga/2000/14/section/11).

<sup>100</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

- the person was previously registered or is known to Ofsted through acting in another capacity, such as being a registered provider or manager of a different service
- we have previously investigated the person for providing or managing children's social care without being registered
- we have previously refused the person registration.

434. We may contact the local authority, local health authority or the Care Quality Commission to establish whether they have any information about the provision or individual. We refer information that indicates there are concerns about child protection to local authority children's services or the police. We then either:

- write to the person asking for a description of the service that they are providing or managing

or

- visit the premises – guidance on visiting unregistered premises is available in Annex B.

435. In determining which response is most appropriate, we consider the history of the registered person (if known) and the likely risks to children, young people and adult service users.

436. In the case of a possible unregistered children's home, holiday scheme for disabled children or residential family centre, we always visit the establishment, rather than write, to determine whether the service that they are providing or managing should be registered. This is because the risks to children and young people of living in an unregistered children's home, or to families being assessed by an unregistered residential family centre, are high.

437. The social care compliance team records on the RSA database the decision about whether to visit or write to the provider and the reasons for this.

### **Taking the investigation forward**

438. We assess the information that we receive following a visit or following receipt of the response to our letter. We may take the following action:

- decide, from information we have received about the service provided, that the person does not need to register with us and confirm this in writing

- refer the information to the local authority, where it suggests child protection concerns
- visit the premises within three days of receiving the response from the person – see section '8. 'Planning visits to check compliance'; we may do this where we require additional information or where concerns are raised
- convene a case review, where the information suggests that a person or an establishment or agency should be registered.

### **Making the decision about action for unregistered providers and/or managers**

439. In all cases where we discover services that require registration, a person must register with us if he or she wishes to continue providing and/or managing an establishment or agency.

440. If the information we receive suggests that a person should be registered, we convene a case review to determine what action to take next. 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 and young people
- 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.

441. We may decide to:

- invite the person to an interview under a Police and Criminal Evidence Act 1984 caution<sup>101</sup>
- prosecute the person for committing an offence following an interview under caution – see section '4. Decision-making'

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<sup>101</sup> Police and Criminal Evidence Act 1984 Codes of Practice;  
[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/).

- 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
- inform local authorities who have placed a child, young person or family in an unregistered establishment about the unregistered status of the establishment and the action that we are taking; the social care compliance team should 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
- conduct monitoring visits of the person/establishment or agency to ensure that they cease providing or managing the service.

442. Where we have previously informed a person that they must register with us and they have failed to do so, we must decide what enforcement action we should take, including 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.

443. We cannot allow an unregistered person to continue to operate provision that requires registration, as this would condone the committing of an offence. This means that we cannot allow a person to provide a service that requires registration while they are going through the registration process. Once we have written to the person informing them that they must register, they must cease operating or managing the establishment or agency at once. If they continue to provide or manage the establishment or agency, we may consider prosecuting them.

444. This is likely to result in children and young people needing to move from a children's home or families from a residential family centre. Although this will be disruptive to these children, young people and families, the safeguarding risk of them living in an unregistered home or being assessed at an unregistered residential family centre must be given priority.

## Unregistered managers

445. We have guidance for our inspectors on circumstances where a children's home or residential family centre is operating without a registered manager or where these two types of establishment have a manager in place who is not registered with Ofsted. The guidance is available in *Conducting inspections of children's homes*<sup>102</sup> and *Conducting inspections of residential family centres*.<sup>103</sup>

446. For all 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 the social care compliance team 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:

- 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.

447. In these cases, we will convene a case review to consider the matter. We may decide that it is appropriate to interview the person under a Police and Criminal Evidence Act caution.

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

448. If we are considering prosecution, we must invite a person to interview under the Police and Criminal Evidence Act 1984 – see section '4. Decision-making' and the Police and Criminal Evidence Act 1984.<sup>104</sup>

<sup>102</sup> *Conducting inspections of children's homes for inspections from 1 April 2012* (100194), Ofsted, updated December 2012; [www.ofsted.gov.uk/resources/conducting-inspections-of-childrens-homes-for-inspections-1-april-2012](http://www.ofsted.gov.uk/resources/conducting-inspections-of-childrens-homes-for-inspections-1-april-2012).

<sup>103</sup> *Conducting inspections of residential family centres for inspections from 1 April 2013* (130055), Ofsted, [www.ofsted.gov.uk/resources/conducting-inspections-of-residential-family-centres](http://www.ofsted.gov.uk/resources/conducting-inspections-of-residential-family-centres).

<sup>104</sup> Police and Criminal Evidence Act 1984, section 15: gathering evidence; [www.legislation.gov.uk/ukpga/1984/60/section/15](http://www.legislation.gov.uk/ukpga/1984/60/section/15).

449. At the conclusion of the interview, we tell the person whether we believe the service 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.
450. We convene a case review to determine what action to take next, including whether or not to prosecute.

### **Applying for registration**

451. Where a decision is taken that enforcement action is not to be pursued in the first instance when we find an unregistered establishment or agency we must allow no more than 28 days for the person to make an application for registration. Any letter to the provider confirming our decision must confirm that they have committed an offence for which we are not taking action at the current time, clearly detail the timeframe by which they must apply for registration (28 days) and the potential consequences of not doing so. If no application is received within that timescale we must decide on what further action we will take. We should always make a provider or manager aware that he or she should cease operating or managing until registration is granted.
452. An application to register does not exempt someone from the offence they have committed or continue to commit.

### **Conducting monitoring visits**

453. We should consider, as part of a case review, whether we should conduct monitoring visits to ensure that the person or organisation ceases to provide unregistered services. The case review should determine the frequency of these visits.
454. If on a monitoring visit we discover that a person has continued to provide or manage unregistered services, we must convene a case review to determine what action to take. This may include issuing a warning letter, a simple caution or prosecuting for an offence. We must ensure that the details of the decision that we make, and the reasons for this decision, are recorded on the RSA.

## 14. Simple cautions

### Introduction

455. We may offer, and issue, a simple caution where we have sufficient evidence to secure a prosecution, but decide not to because it is not in the public interest to pursue such a prosecution. In line with Ministry of Justice guidance<sup>105</sup> we only offer a simple caution where the offence is of a minor level and usually where this is first offence only. Before we issue a simple caution, the person must admit the offence and be willing to accept the caution.
456. It is important to recognise that simple cautions are different from a Police and Criminal Evidence Act 1984 caution,<sup>106</sup> which we administer where we believe a person has committed an offence under the Care Standards Act 2000, prior to questioning the person about the offence(s).<sup>107</sup>

### Simple caution

457. There is no statutory basis for the use of simple cautions to adults. The Ministry of Justice issued guidance for the police to follow when cautioning adult offenders.<sup>108</sup> This section is based on that Ministry of Justice guidance.
458. 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 caution.

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<sup>105</sup> Ministry of Justice Simple cautions for Adult Offenders  
[http://www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=\\_default&query=simple+cautions](http://www.justice.gov.uk/search?collection=moj-matrix-dev-web&form=simple&profile=_default&query=simple+cautions)

<sup>106</sup> Police and Criminal Evidence Act 1984 Codes of Practice:  
[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/).

<sup>107</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

<sup>108</sup> *Cautioning of adult offenders*, Home Office circular 30/2005; [www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/](http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/).

459. 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 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.
460. We interview the person under a Police and Criminal Evidence Act caution to gather more evidence, which may help to determine whether a prosecution is viable. We must make a decision about whether to offer a simple caution or to pursue a prosecution should the person refuse the simple caution at a case review. We record the decision to offer a simple caution, with the reasons for pursuing that course of action, in case comments on the RSA database. We must also record any alternative courses of action that the case review considered, and why each of them was not appropriate.

### **Offering a simple caution**

461. 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.
462. 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.
463. If the person does not agree to accept the simple caution, either by informing us at this stage or at any stage prior to signing to accept it, we proceed to prosecution.
464. Further guidance on administering a simple caution is available at Annex D.

### **Recording and storage of a simple caution**

465. We record the simple caution on the RSA database, noting the day, date, venue and Regulatory Inspection Manager or above issuing it. The manager issuing the simple caution returns a signed copy to the social care compliance team, who retain it in accordance with Ofsted's file retention schedule.



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

466. 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. This is in accordance with previous Association of Chief Police Officers' (ACPO) guidance, which recommends that when a simple caution is more than five years old it should be disregarded for the purposes of deciding whether or not to prosecute. However, there is an exception to the five-year rule where the person has a conviction on his or her record and/or further simple cautions have been given. In these cases, records can be 'kept for longer periods of time'.
467. If prosecuting, we cannot offer evidence that a person has previously accepted a simple caution. 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 where that person accepted a simple caution.
468. We may use the offence and simple caution as part of any evidence to the First Tier Tribunal (Health, Education and Social Care Chamber) (the Tribunal) if a person appeals against any future action that we take in respect of his or her registration.
469. The Home Office guidance on simple cautions states that if a person has previously received a caution, we should not normally consider a further simple caution. However, it also states that 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.

## 15. Warning letters

470. We may decide to issue a warning letter where the person accepts that they committed an offence, the issue is the first offence and does not impact on the safety and welfare of children and there is no reason to continue pursuing legal action at the time. A warning letter is a non-statutory enforcement option.

471. A warning letter states:

- 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 if we need to take any other action in relation to their registration in the future.

472. 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. Any issue of a warning letter must be recorded on RSA registration comments.

## 16. Prosecutions

### Introduction

473. Prosecution is one of a number of enforcement actions available to us through our regulatory functions to ensure that providers and managers comply with legal requirements. A prosecution provides a hard message that a situation is unacceptable, while not depriving a child or young person or adult of their home or a service that they receive.
474. Prosecution may be an appropriate course of action in a range of circumstances. This section sets out how and when we may bring a prosecution, including making the decision to prosecute and gathering and evaluating the evidence. It contains details about the offences for which Ofsted is the prosecuting authority.

### Our legal powers to prosecute

475. Our powers to prosecute a person are set out in the Children Act 1989,<sup>109</sup> Care Standards Act 2000,<sup>110</sup> the Adoption and Children Act 2002<sup>111</sup> and associated regulations. You can find a list of offences for which we may prosecute in Annex E.
476. A small number of offences for social care provision apply only where the person has committed the offence 'without reasonable excuse'. Further information on what constitutes 'without reasonable excuse' is available in Annex F.

### Offences: single and two-stage

477. Some offences are single-stage offences. This means that the initial action or inaction is an offence, for example to provide or manage an establishment or agency without registration, or if a registered person fails to comply with the conditions of registration.

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<sup>109</sup> Children Act 1989; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

<sup>110</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

<sup>111</sup> Adoption and Children Act 2002; [www.legislation.gov.uk/ukpga/2002/38/contents](http://www.legislation.gov.uk/ukpga/2002/38/contents).

478. Other offences are two-stage offences. This means that the initial action or inaction is not an offence. An offence is only committed with action or inaction at the second stage. For example, if a provider fails to comply with the remit-specific regulations, we may issue a compliance notice (the first stage). If the registered person fails to comply with the notice, he or she commits an offence (the second stage).
479. In some cases, the remit-specific regulations make a breach of regulations an offence. If this is the case we must issue a compliance notice to the registered person first, stating the regulation that they have breached and what action they must take by a certain date to remedy the breach. We should do this for:
- registered person(s): by issuing a compliance notice under section 22A of the Care Standards Act 2000
  - people who were previously registered (usually for secure storage of records): by issuing a notice under the remit-specific regulations.
480. Where a registered person fails to complete the actions in the compliance notice by the dates given, this is an offence for which we can prosecute.

## Who we can prosecute

481. We can prosecute any person who commits an offence, where we are the prosecuting authority. This includes prosecution of:
- an individual
  - a corporate body
  - an unincorporated association.
482. 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).<sup>112</sup>
483. If the registered person is a body corporate and we decide to prosecute for an offence, we will prosecute the organisation, and not an individual person who is a member or an officer of the organisation.

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<sup>112</sup> Care Standards Act 2000, section 31(9); [www.legislation.gov.uk/ukpga/2000/14/section/31](http://www.legislation.gov.uk/ukpga/2000/14/section/31).

484. 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.<sup>113</sup>

## Timescales

485. We must bring a prosecution within six months of the date on which evidence, sufficient to warrant the proceedings, comes to our knowledge.<sup>114</sup> In such cases, we involve solicitors as early as possible.

486. 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.<sup>115</sup>

487. In all cases, the proceedings start when we lodge the relevant documents with a court.

## Identifying an offence and cautioning

488. We may find evidence of an offence during a visit to an establishment or agency or when considering an application for registration. Where we detect a breach, we should advise the person that we have the power to prosecute for some offences in this situation. Where we visit an unregistered service we can only prosecute for being unregistered.

489. If the person is unregistered we can only prosecute for being unregistered and not for any other regulatory breach. We take a proportionate approach with consideration to:

- the frequency of the breach (is this the first time it has occurred, or is there evidence that the breach has occurred on more than one occasion?)
- the impact of the breach, including the risk of harm to children and young people and adult service users

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<sup>113</sup> Care Standards Act 2000, section 30; [www.legislation.gov.uk/ukpga/2000/14/section/30](http://www.legislation.gov.uk/ukpga/2000/14/section/30).

<sup>114</sup> Care Standards Act 2000, section 29(2); [www.legislation.gov.uk/ukpga/2000/14/section/29](http://www.legislation.gov.uk/ukpga/2000/14/section/29).

<sup>115</sup> Care Standards Act 2000, section 29(2); [www.legislation.gov.uk/ukpga/2000/14/section/29](http://www.legislation.gov.uk/ukpga/2000/14/section/29).

- whether there was a deliberate intention to avoid compliance
- the compliance history of the registered person and the establishment or agency
- any other concerns about the person (recent notifications, complaints, inspection judgements and other concerns about the quality of the provision)
- any excuse the person has (only for offences that have the 'reasonable excuse' clause).

490. The inspector may seek guidance from the social care compliance team or their line manager in assessing the information.

491. If the information suggests a pattern whereby a registered person is failing to consistently meet the regulations and requirements for registration, and/or the offence is of a serious nature, we must consider taking enforcement action against them. In these circumstances, the inspector should caution the person under the Police and Criminal Evidence Act 1984<sup>116</sup> and the associated revised Codes of Practice.<sup>117</sup> Further information on how to do this is below.

492. Where the information suggests that the breach 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 inspection guidance on failure to meet conditions of registration
- if the breach is identified during an investigation visit, liaise with the social care compliance team and ask them to issue a letter to the registered person(s) warning them that we may take statutory action for any future breach.

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<sup>116</sup> The Police and Criminal Evidence Act 1984, section 67(9) 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'.

<sup>117</sup> Police and Criminal Evidence Act 1984 Codes of Practice;  
[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/).

## **Making the decision to prosecute**

493. Only a senior manager can make the decision to prosecute an applicant, registered person or other person for an offence. See section '4. Decision-making'.
494. Where we believe that prosecution may be a proportionate response, we arrange a case review to consider the evidence. The case review involves a Regulatory Inspection Manager and any other colleagues able to offer relevant knowledge about the establishment or agency or information about the concern. In addition to its primary purpose, see the section 'Case reviews' in 'Decision-making'. The case review:
- considers whether it is in the public interest to pursue a prosecution
  - considers whether to recommend that we pursue a prosecution<sup>118</sup>
  - collates sufficient documentation to support a recommendation to prosecute.
495. We record the decision to prosecute, and the reasons for pursuing that course of action, in 'case comments' on the RSA database. We also record the alternative courses of action considered and why they were not appropriate.
496. We seek legal advice about the quality and quantity of our evidence before instructing a lawyer to proceed with a prosecution.
497. In some cases, we may consider cancelling a registered person's registration at the same time as bringing a prosecution, for example where we cancel the registration to ensure we safeguard and protect the welfare of children and young people and we believe it is in the public interest to pursue a prosecution.

## **Evidence required for a prosecution**

498. To ensure a successful prosecution our evidence must show, beyond reasonable doubt, that the person or organisation that we are prosecuting committed the offence.

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<sup>118</sup> We test the quality and quantity of evidence with lawyers at the decision-making stage, although we are responsible for making the final decision.

499. In all cases, before taking steps to prosecute, we should interview the person under a Police and Criminal Evidence Act caution.<sup>119</sup> We should not make a final decision to prosecute until we have gathered all the evidence, including information obtained at that interview.
500. 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 in a position to demonstrate to the courts the action we have taken to try to carry out the interview.
501. In a few cases, offences for which we may prosecute include the words 'without reasonable excuse'. 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 a 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'. However, even with offences that contain the 'without reasonable excuse' clause, it is unlikely that the courts will accept ignorance of the law as a reasonable excuse. Further information on this is available in Annex F.

## **Giving a Police and Criminal Evidence Act caution**

502. Social care regulatory inspectors have the power to caution a person. We must advise the person that we believe he or she committed an offence and caution them in line with the Police and Criminal Evidence Act codes of practice before asking any further questions.<sup>120</sup> We must caution any person as soon as we become aware that the person has committed the offence.
503. 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.'
504. We caution for two reasons. First, the caution advises the person about his or her rights, if asked to explain his or her actions or omissions. Second, evidence we gather before cautioning may not be admissible in court, as part of a prosecution case.

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<sup>119</sup> Police and Criminal Evidence Act 1984 Codes of Practice;  
[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/).

<sup>120</sup> 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](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c-2012).



505. After cautioning the person, the inspector must:

- record any questions the person asks and the responses given in the pocket notebook<sup>121</sup>
- carry out the questioning away from others, including any potential witnesses to the offence, for example in a private office at the setting
- record all observations in the pocket notebook.

506. We record all statements on the witness statement form. A court will require the original statement (rather than a copy of it) so we must keep this.<sup>122</sup>

507. Inspectors must preserve, and securely store, any evidence of the offence 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.

508. Inspectors must collect, store and record all other evidence in the investigation toolkit on the RSA database. Inspectors must keep original documents rather than photocopies of documents.

509. If we uncover evidence of a separate offence during an interview under a Police and Criminal Evidence Act caution, we must caution the registered person again before asking any questions about that separate offence. 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**

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

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<sup>121</sup> The Ofsted pocket notebook is an official report book we issue to our inspectors, which they use to record information after issuing a caution. This includes evidence of a further offence and observations made during the visit. Inspectors may need to produce this evidence at a court or tribunal. In all cases, inspectors must provide the original notebook.

<sup>122</sup> A witness statement form is a standard template we use to record evidence from a person we have spoken to, which that person signs to confirm that the contents of the statement are true. In general, the statement should only contain information on what the witness saw and not what others have said to him or her. It is important to record anything that may open a new line of investigation or help corroborate other information. We must provide original witness statements in any court or tribunal hearing.

511. We must record on tape any interviews we conduct under a Police and Criminal Evidence Act caution. We must tell the person subject to the interview how we will store the records of that interview.
512. Social care compliance team colleagues and inspectors usually carry out interviews conducted under a Police and Criminal Evidence Act caution together. A colleague who has received the relevant professional training must be present throughout the interview.
513. We must follow Code E of the Police and Criminal Evidence Act revised codes of practice when carrying out a tape-recorded interview conducted under a Police and Criminal Evidence Act caution.<sup>123</sup>

### **Proceeding with a prosecution**

514. 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.
515. 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.

### **Responding to media enquiries in prosecution cases**

516. 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 before they are released to the media.

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<sup>123</sup> Police and Criminal Evidence Act 1984 revised Codes of Practice, Code E;  
[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/).

## **17. Issuing a notice restricting accommodation**

### **Introduction**

517. This section provides guidance on issuing a notice to restrict accommodation in a children's home, holiday scheme for disabled children or residential family centre. We cannot issue a notice to restrict accommodation in any other children's social care provision.

### **Our powers to issue a notice restricting accommodation**

518. The Children and Young Persons Act 2008 inserted section 22B into the Care Standards Act 2000. This gives us the power to serve a notice on a person who is registered in respect of a children's home or residential family centre to restrict the accommodation of children in the premises. The power to restrict accommodation to a holiday scheme for disabled children was introduced by the Care Standards Act 2000 (Extension of the Application of Part 2 to Holiday Schemes for Disabled Children) (England) Regulations 2013, which modifies section 22B of the Care Standards Act 2000 for the purposes of such schemes. Section 22B states:

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

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

519. Such a notice effectively stops a children's home or residential family centre from accepting any new placements, whilst allowing those who were residing at the home or centre at the time the notice was served to remain.

### **Considering when to issue a notice restricting accommodation**

520. Section 22B of the Care Standards Act does not set the 'test' or threshold to be met in order to restrict accommodation. This allows us to take into account individual circumstances and to set our own policy on the use of this power.

521. We only serve a notice restricting accommodation where we reasonably believe that there is a risk of harm to a child or young person if we do not restrict accommodation.<sup>124</sup>
522. The purpose of restricting accommodation is to allow time for:
- an investigation into the risk to be carried out
- or
- steps to be taken to reduce or eliminate the risk of harm to children or families.
523. There may be limited circumstances in which we restrict accommodation for other reasons that do not fit these criteria.<sup>125</sup>
524. 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 living in the home or family centre, we must consider whether it is appropriate to issue a notice restricting accommodation and whether there is a reasonable belief of risk of harm.

## Decision-making process

525. The social care compliance team must convene a case review to determine whether to restrict accommodation, in line with our decision-making process – see section '4. Decision-making').
526. The case review must consider the following:
- the risk of harm to children and young people or families
  - any action that the registered person has taken to reduce the risk of harm
  - any information provided by other organisations, such as the police and local authority children's services

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<sup>124</sup> The term 'harm' is defined in the Children Act 1989, section 31; [www.legislation.gov.uk/ukpga/1989/41/section/31](http://www.legislation.gov.uk/ukpga/1989/41/section/31) and section 105; [www.legislation.gov.uk/ukpga/1989/41/section/105](http://www.legislation.gov.uk/ukpga/1989/41/section/105) – as amended by the Adoption and Children Act 2002, section 120; [www.legislation.gov.uk/ukpga/2002/38/section/120](http://www.legislation.gov.uk/ukpga/2002/38/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'.

<sup>125</sup> 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.

- a registered person's record of compliance with the regulations and national minimum standards<sup>126</sup>
- whether it is appropriate to take any other enforcement action at the same time as issuing a notice restricting accommodation (see section below on twin-track legal action).

527. The case review decides:

- who will make initial contact with the registered person to inform them that Ofsted is going to restrict accommodation and how (usually by telephone)
- who should deliver the notice
- when to deliver the notice
- how to deliver the notice (to serve the notice in person or by recorded delivery)
- arrangements for monitoring a person's compliance with the restriction of accommodation (monitoring visits).

## Drafting the notice

528. We must create a notice restricting accommodation for both registered person(s). The Act specifies the information that we must include in the notice restricting accommodation. Section 22B(3) states:

'A notice under subsection (1) must:

- (a) explain the requirement imposed by the notice
- (b) specify the establishment in relation to which that requirement is imposed
- (c) give the registration authority's reasons for serving the notice
- (d) explain the right of appeal conferred by section 21.'

529. The law does not require us to impose a period after which the notice shall cease to have effect. However, to ensure that we do not allow the notice to

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<sup>126</sup> Section 28(6) of the Children and Young Persons Act 2008 amended section 23(4) of the Care Standards Act 2000 to allow us to take account of national minimum standards when considering whether to serve a notice restricting accommodation.

continue without sufficient monitoring and review, we should impose a maximum period at any one time of no more than six weeks.<sup>127</sup>

530. We must provide full information in the notice that makes clear to the person the reasons for restricting the accommodation, why we reasonably believe there is a risk of harm to children and young people or families and the potential impact if we do not take such a step.
531. 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, for example the police. In these cases, we give as much information as possible, ensuring that any information we withhold is both necessary and proportionate. The social care compliance team must record on the RSA the reasons for withholding any information.
532. The social care compliance team may ask our legal advisors to review the notice before it is served.
533. The inspector generates a notice from the RSA 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 professional within a further two days and signed off by the decision-maker who chaired the case review within one day.

## **Serving the notice**

534. Prior to serving the notice, the social care compliance team 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 and to notify placing authorities.
535. A notice does not take effect until we have served it on the registered person in respect of the children's home or residential family centre.
536. We create a notice for the registered manager as well as the registered provider, because the law requires us to serve the notice on all individuals registered in respect of an establishment.<sup>128</sup>
537. We serve the notice on the responsible individual for an organisation or on a partner for a partnership. Once we have served one partner or the responsible individual of an organisation, the social care compliance team arranges to

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<sup>127</sup> In limited circumstances we may decide to set an expiry date of less than six weeks.

<sup>128</sup> Care Standards Act 2000, section 22B(6); [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

serve the notice on any other partners who make up the registered provider as well as the registered manager of an organisation or partnership.

## Recording the decision

538. The social care compliance team records the decision to issue a notice restricting accommodation on the RSA database. The information must include a description of the reasons for restricting accommodation and any alternative or additional action considered.

## Notifying local authorities of the restriction

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

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

The detailed guidance on notifications can be found on Ofsted's intranet.

## Reviewing the decision and progress

540. We only initially restrict accommodation for a maximum period of six weeks beginning on the date we serve the notice. If necessary, we can restrict accommodation for a further period of up to six weeks.

541. Only in exceptional circumstances should we restrict accommodation beyond two six-week periods (see below). However, if we decide to restrict accommodation beyond the first two six-week periods, 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.

542. A registered person does not have a right to make representations against the notice or to ask us to lift the notice. A registered person subject to a notice restricting accommodation has a right of appeal against the notice to the First Tier Tribunal.<sup>129</sup> However, a registered person can provide us with any

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<sup>129</sup> Care Standards Act 2000 Section 21, [www.legislation.gov.uk/uksi/2010/2130/contents/made](http://www.legislation.gov.uk/uksi/2010/2130/contents/made).

information that they believe could affect our decision to restrict accommodation at any time. The social care compliance team considers this information in a case review to determine whether the restriction of accommodation continues to be an appropriate step.

543. The case review considers:

- if there continues to be a risk of harm to children
- 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.

544. A registered person has a right to appeal against the notice restricting accommodation (see the section on appeals below).

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

545. 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 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.

546. The decision to extend the restriction beyond 12 weeks must be made in accordance with our decision-making table (see section '4. Decision-making').

547. We must continue to review whether the reasons for the restriction continue to apply, and review the case at least once in each period of six weeks. The social care compliance team records on the RSA database:

- 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.

548. We draft the new notice to restrict accommodation, using the standard template. The notice must clearly set out:

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

### **Twin-track legal action**

549. Ofsted has the power to issue a notice restricting accommodation at the same time as taking other action such as varying, imposing or removing conditions of registration, issuing a compliance notice or issuing a notice of proposal to cancel registration. For example, if we issue a notice to reduce a provider's registered numbers, 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.

550. A notice restricting accommodation takes immediate effect at the point of service.

551. If the provider subsequently appeals against the notice restricting accommodation and a notice of decision to vary conditions, the First Tier Tribunal (Health, Education and Social Care Chamber) ('The Tribunal') may hear both appeals at the same time.<sup>130</sup>

### **Lifting the notice**

552. 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

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<sup>130</sup> 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.

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

553. There is no legal requirement for a notice to have an expiry date. However, it is not appropriate for the notice to cease to have effect (to expire) without a review of the reasons for the notice and the compliance case. The social care compliance team must review the notice at regular intervals and, where necessary, lift the notice where the risk of harm is reduced to an acceptable level.

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

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

## Appeals

556. See also section '20. Appeals'.

557. A registered person has the right of appeal to the Tribunal against our decision to issue a notice restricting accommodation. A registered person must appeal to the Tribunal within 28 days after we serve the notice. The Tribunal applies an expedited process to these appeals.<sup>131</sup>

558. The decision-maker responsible for the decision to issue a notice restricting accommodation must make a statement. This statement must clearly identify the reasons for making the decision, including why we reasonably believe there is a risk of harm to children and young people and the impact on children and young people if we had not taken the step.

559. The social care compliance team must comply with the duty of full and frank disclosure when responding to an appeal. We have a duty to disclose all evidence to the registered person and to the Tribunal about a case, including information that does not support Ofsted's action.

560. We give high priority to completing statements to use as evidence at a Tribunal hearing.

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<sup>131</sup> 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/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca).

## **Compliance with a notice**

561. We must monitor a provider's compliance by carrying out an unannounced visit to the premises at least once in each six-week period but we should do so more regularly if we have reason to believe that a provider is not complying with the notice.
562. It is not an offence for a registered person to fail to comply with a notice restricting accommodation. However, where a registered person does not comply, we consider whether this impacts on their fitness to provide children's social care provision and whether other enforcement action is appropriate, such as cancellation. We must do this in a case review.

## 18. Disqualification and written consent process

### Introduction

563. The law prevents certain people from working with children and young people who live or are cared for at children's homes, or from privately fostering a child. This is to help safeguard vulnerable children and young people.
564. People who are prevented from working with children and young people are known as 'disqualified persons'. Section 65 of the Children Act 1989<sup>132</sup> states that a person who is disqualified from fostering a child privately<sup>133</sup> is also disqualified from carrying on, managing or having a financial interest in a children's home. Also, a disqualified person may not be employed to work at a children's home.<sup>134</sup>
565. It is important to note that the law on disqualification only extends to children's homes and those who wish to foster a child privately; 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 a residential family centre), 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.

### What makes a person disqualified?

566. The Disqualification from Caring for Children (England) Regulations 2002<sup>135</sup> set 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

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<sup>132</sup> The Children Act 1989, section 65; [www.legislation.gov.uk/ukpga/1989/41/section/65](http://www.legislation.gov.uk/ukpga/1989/41/section/65).

<sup>133</sup> The Children Act 1989, section 68; [www.legislation.gov.uk/ukpga/1989/41/section/68](http://www.legislation.gov.uk/ukpga/1989/41/section/68).

<sup>134</sup> The Children Act 1989, section 68(2); [www.legislation.gov.uk/ukpga/1989/41/section/68](http://www.legislation.gov.uk/ukpga/1989/41/section/68).

<sup>135</sup> The Disqualification from Caring for Children (England) Regulations 2002; [www.legislation.gov.uk/uksi/2002/635/made](http://www.legislation.gov.uk/uksi/2002/635/made).

- 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
- have had their application to register to provide or manage a children's home refused
- have been convicted of certain offences
- are on the barred list of the Disclosure and Barring Service<sup>136</sup>
- live with someone who is subject to one or more of the above.

567. The full list of offences and convictions are set out in Annex G. A person who is disqualified must not:

- carry on a children's home
- manage a children's home
- have a financial interest in a children's home
- work at a children's home
- foster a child privately.

## **Prosecution for breaches of the disqualification legislation**

568. It is an offence for a disqualified person to carry on, manage or have a financial interest in a children's home. It is also an offence for a registered provider to employ a disqualified person, unless they did not know, and had no reasonable grounds for believing, that the person was disqualified.

569. We may prosecute a registered person for a breach of these sections of the Children Act 1989.<sup>137</sup>

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<sup>136</sup> This incorporates those who were previously on the Protection of Children Act (POCA) list, the Protection of Vulnerable Adults Act (POVA) list and List 99.

<sup>137</sup> The Children Act 1989, section 65(4) and (5); [www.legislation.gov.uk/ukpga/1989/41/section/65](http://www.legislation.gov.uk/ukpga/1989/41/section/65).

## Granting written consent

570. In some circumstances a disqualified person may apply for Ofsted to grant written consent to carry on, manage or have a 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.
571. The purpose of the written consent process is for us to consider whether the facts that gave rise to the disqualification mean 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.
572. The table in Annex H sets out who must apply to Ofsted for written consent and when this application should be made
573. 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.

## Disqualification and the Disclosure and Barring Service

### Duty to disclose information about offences and orders

574. All registered persons and applicants for registration must tell us about any information that disqualifies them, including disqualification by virtue of living with a disqualified person. This is a requirement for applicants under The Care Standards Act 2000 (Registration) (England) Regulations 2010.<sup>138</sup>
575. Registered persons and responsible individuals must notify us without delay of any offence that they have been convicted of.<sup>139</sup> 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.

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<sup>138</sup> Care Standards Act 2000 (Registration) (England) Regulations 2010; [www.legislation.gov.uk/ukxi/2010/2130/contents/made](http://www.legislation.gov.uk/ukxi/2010/2130/contents/made).

<sup>139</sup> 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.

## Offences committed overseas

576. 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<sup>140</sup> only extends to offences committed in the British Isles. However, we consider any conviction for an offence committed overseas in our overall decision on a person's fitness.
577. In some circumstances, we may need to make a referral to the Disclosure and Barring Service where we are notified about an overseas conviction. This is because some overseas convictions result in a person being automatically barred from working with children and vulnerable adults in the British Isles. 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.<sup>141</sup>

## Disqualification and applicants to register

578. 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 (including people making up the registered person and anyone having a financial interest in the children's home).
579. We may decide to grant the written consent but subsequently refuse the person's registration. This is because our decision about the fitness of an applicant takes into account a broader range of factors than the disqualification itself, including information we receive from checks as well as the person's experience and their understanding of the registration requirements.

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<sup>140</sup> Disqualification from Caring for Children (England) Regulations 2002; [www.legislation.gov.uk/uksi/2002/635/made](http://www.legislation.gov.uk/uksi/2002/635/made).

<sup>141</sup> The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009; [www.legislation.gov.uk/uksi/2009/37/contents/made](http://www.legislation.gov.uk/uksi/2009/37/contents/made).

580. If we are unaware that a person is disqualified when we commence the registration process but, before making the registration decision, we receive information that they are disqualified, we must inform them and provide information on how to apply for written consent. We continue to record any information that we receive from checks that we have already initiated in relation to the application. However, we do not carry out any further checks until the person has applied, and we have considered their application, for written consent.
581. Ofsted has no power to consider a request for written consent where a person is disqualified because they, or someone they live with, 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.

### **Disqualification and registered persons**

582. A person may become disqualified after they have become registered. This may occur, for example, where a provider, manager or member of staff is convicted of a relevant offence.
583. Where we receive information to suggest that a registered person or a staff member at a children's home is disqualified, we must inform the registered provider immediately. We must 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.
584. Where we receive information that a disqualified person is carrying on, managing or working in a children's home, the social care compliance team must convene a case review to consider whether there is a risk of harm to children and young people and decide on the most appropriate steps to take (for example, restricting accommodation). We consider what steps the provider has taken, and whether they are appropriate, to ensure that children and young people are not at risk of harm.
585. We do not automatically have to cancel a person's registration in relation to children's social care on the grounds that they are disqualified. Rather, the law provides us with the discretion to determine if this is a suitable course of action.<sup>142</sup> In considering this, we should also consider:

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<sup>142</sup> Care Standards Act 2000, section 14; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).



- the risk that the disqualified person poses to the welfare of children and young people
- any other concerns related to the person's fitness.

## Process for considering written consent

586. The person requesting written consent must complete our form which is attached to a letter available on RSA 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.

587. If, after receiving the application for written consent, we are of the opinion that the person is disqualified, the social care compliance team convenes a panel. The panel reviews all available information about the disqualification and make a decision on whether or not to grant written consent.

588. In making their decision, the panel must consider:

- the risk to children and young people
- the nature of the severity of any offences or orders – the panel may find the following Crown Prosecution Service information helpful:
  - the sentencing manual<sup>143</sup>
  - legal guidance<sup>144</sup>
- the age of any offences or orders
- repetition of any offences or orders or any particular pattern of offending

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<sup>143</sup> *Sentencing manual*, Crown Prosecution Service, revised 2013; [www.cps.gov.uk/legal/s\\_to\\_u/sentencing\\_manual/](http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/).

<sup>144</sup> *Legal guidance*, Crown Prosecution Service; [www.cps.gov.uk/legal/](http://www.cps.gov.uk/legal/).

- the notes of any interviews with the disqualified person, applicant for registration or registered person, including their explanation of and attitude to the disqualifying event
- any other information available from other authorities, such as the police or local authority children's services department, in relation to the offences
- any mitigating circumstances given.

589. Following the panel, the social care compliance team notifies the person in writing of the decision as follows:

- the person is not disqualified

or

- the application for written consent is granted

or

- the application for written consent is refused

or

- we are unable to consider the request for written consent (see above).

590. 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.

591. The social care compliance team must:

- record the decision and the reasons for that decision on the RSA
- sign and ensure that the applicant receives an outcome letter explaining the reasons for the outcome (the social care compliance team should ask Ofsted's legal advisors to review the letter if necessary)
- take forward any necessary action resulting from the decision of the panel.

### **Scope of written consent**

592. We may grant consent to cover all children's homes where a person is applying for consent to:

- operate a children's home (the registered provider/applicant)
- manage a children's home
- have a financial interest in a children's home.

593. 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.

594. 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.

595. 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.

596. 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 received new information to suggest that they may now pose a safeguarding risk to children. Therefore, in these cases we should presume to give written consent unless we are aware of new concerns.

### **Phrasing of written consent decisions**

597. Following the panel, the social care compliance team sends a letter based on a template indicating the outcome of the panel and our decision. We send this letter to the person indicated in the table in Annex H.

### **Appeals against refusal to give written consent**

598. A person may appeal against our decision to refuse to give written consent to the First Tier Tribunal (Health, Education and Social Care Chamber).<sup>145</sup> Any appeal must be lodged within three months of the notice of our decision.<sup>146</sup>

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<sup>145</sup> The Children Act 1989, section 65(3)(b) and 65A;  
[www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

<sup>146</sup> The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, schedule to rule 20(1)(d); [www.legislation.gov.uk/uksi/2008/2699/contents/made](http://www.legislation.gov.uk/uksi/2008/2699/contents/made).

## 19. Representations

### Introduction

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

### Notices of proposal

600. We must tell applicants and registered persons about certain steps that we propose to take with regard to their registration and why. We do this through a written notice called a notice of proposal.

601. Registered persons and applicants for registration can make written representations against a proposal to:<sup>147</sup>

- grant an application for registration with conditions that have not previously been agreed in writing with the applicant
- impose a change to the conditions that apply to a registration, which may include imposing, varying or removing conditions
- cancel a registration
- refuse an application to register as a provider or manager
- refuse an application to vary or remove conditions of registration
- refuse to give our written consent to allow a disqualified person to operate, manage or have a financial interest in a children's home, or to employ someone who is disqualified to work at a children's home.

602. 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.

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<sup>147</sup> Care Standards Act 2000, section 18; [www.legislation.gov.uk/ukpga/2000/14/section/18](http://www.legislation.gov.uk/ukpga/2000/14/section/18).

## Timescale for making representations

603. Children's social care providers must make their representations to us within 28 days<sup>148</sup> of the date that the notice of proposal is served or is deemed to be served.<sup>149</sup> Representations must be made in writing and sent to:

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

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

604. If a person contacts us by telephone to inform us that they intend to make a representation, we ask them to provide their representation in writing. We inform them that we cannot consider their representation unless we receive it in writing within the 28-day timescale. The social care compliance team make a record of the call on the RSA.

### Representations received late

605. 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 representation and explain to the registered person or applicant that the time period for making representations has passed and we cannot consider it.

606. If we have not yet issued the notice of decision, it is at our discretion as to whether or not we consider the representation. We consider 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.

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<sup>148</sup> Care Standards Act 2000, section 18(1); [www.legislation.gov.uk/ukpga/2000/14/section/18](http://www.legislation.gov.uk/ukpga/2000/14/section/18).

<sup>149</sup> 'Deemed to be served' means the date at which the notice would be delivered in the ordinary course of post having been properly addressed, pre-paid and posted (section 7 of the Interpretation Act 1978).

## Content of representations

607. A registered person or applicant should include any relevant information in their representation that helps us decide in their favour. 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. The registered person or applicant should also say in the written representation if they wish to attend the representations panel in person.

## Receiving the representation

608. On receipt of a written representation from a registered person or applicant for registration, the social care compliance team establishes a representations panel. The social care compliance team also write to the person confirming that we have received their written representation.

## Purpose of the representations panel

609. The purpose of the panel is to allow us to hear and consider any information contained in the written representation prior to making a decision.

610. A registered person or applicant may attend the representations panel in person and bring a representative if they wish; this may include a solicitor. If the registered person or applicant wishes to attend in person, they must indicate this in their written representation.

## Convening a panel

611. On receipt of a notification in writing, the social care compliance team convenes a panel in order to consider the representation. 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:

- time and date of the panel meeting
- details about the format the meeting will take
- information about who will take part in the panel
- a copy of our leaflet *How to make representations and appeals*.<sup>150</sup>

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<sup>150</sup> *How to make representations and appeals* (110041), Ofsted, 2013; [www.ofsted.gov.uk/resources/110041](http://www.ofsted.gov.uk/resources/110041).

612. 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.

613. The Care Standards Act 2000 does not prescribe the format of the panel or the procedure it must follow; this is at our discretion.<sup>151</sup> 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.

614. The panel consists of:

- the original decision-maker
- a Regulatory Inspection Manager or above who has had no involvement in the case to date
- a colleague from the social care compliance team.

Minutes are taken of the meeting.

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

615. As noted above, the registered person or applicant may ask to attend the panel. Although we are only required to provide an opportunity for the registered person or applicant to make a representation, holding the meeting on a date we know to be impractical (for example, if the person making the representation is on holiday) may leave us open to criticism for not providing a proper opportunity for representations to take place. We must be reasonable when setting the date of the panel meeting, taking all things into consideration. However, we should not unduly delay making our decision if a person does not attend the representation hearing when they indicated that they wished to attend.

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<sup>151</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).

616. It is not necessary to hold the panel at an Ofsted office. For some people making representations, the distance to an Ofsted office may be a barrier to attending the panel in person. We may decide it is appropriate to hold the panel meeting in the locality of the person making the representation. We should adopt at least the same 'rule of thumb' as the Tribunal, which is that the Tribunal sits locally to the case where the travel time to its premises for the appellant is greater than an hour and a half.
617. It is not our practice to hold panel meetings in a registered establishment or agency unless there are specific reasons for doing so. In such circumstances, a Regulatory Inspection Manager or above must agree to this.
618. In some circumstances, the social care compliance team may decide to offer the registered person or applicant the option to convene the panel by way of a telephone conference. Where the registered person or applicant does not wish to attend the representations panel in person, we may conduct the panel over the telephone or by webcam.
619. If the registered person or applicant brings a representative with them, the role of the representative is to advise the person making the representation to ask questions on his or her behalf, or to present reasons to the panel why we should not take the step.
620. A panel is not a forum to cross-examine evidence. The panel only asks questions of the person making the representation if they do not understand all of the information provided; the panel does not challenge the information given. Similarly, the person making the representation, or their representative, is not permitted to challenge the panel.
621. Where representatives are solicitors, they can advise their client on legal points that may affect the decision but we do not enter into legal debate with them. If necessary, the chair of the panel can advise solicitors that they should include legal arguments in their written representations, and we may seek legal advice after the panel meeting and before making any decision.
622. Guidance for the chair of the panel:
- Introduce yourself and the other panel members.
  - Tell the person making the representation which panel members have previously been involved in the decision-making processes and which are new to the case.
  - Ask the person making the representation 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 representation.
- Explain that the panel is not a court and 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 representation and ask him or her to confirm that this is the notice about which he or she is making representations. You may need 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 agree with their representation, once we have issued the notice of decision.
- Explain that after they have made their representation 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 representation 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

623. The independent Regulatory Inspection Manager is the decision-maker. If other members of the panel do not agree with the manager's decision, the chair must record their dissenting view. We can disclose this dissenting view to any future Tribunal hearing or other hearing, in line with common practice in legal decision-making.
624. The panel considers and discusses all information before deciding on the outcome of the representation. The panel can only make decisions based on the notice of proposal issued, and the information provided in the representations against that notice. The panel either:
- upholds the representation
  - partially upholds the representation
- or
- does not uphold the representation.
625. The panel does not have the 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 but not agree these. If this occurs, the social care compliance team, as quickly as possible after the panel, convenes a case review in order to decide on the appropriate action.

The following examples illustrate this point:

- Example 1 – if we issue a notice of proposal to cancel a registration, the panel can only:
  - uphold the representation and allow the registration to continue
  - or
  - disallow the representation and agree to the cancellation.

If the panel believes that the correct course of action is to allow the registration to continue but with the imposition of new conditions, then the representation is allowed. 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 and the provider has a further right to make representations to that notice.

- Example 2 – If a representation is against the imposition of a condition, but the panel believes that a different condition is more appropriate, the panel upholds the representation. We must then hold a case review as soon as possible to decide on issuing a new notice of proposal as above.

Where the panel believes we should issue a new notice of proposal, the social care compliance team should arrange to issue the notice, following a case review. If the person subsequently makes representations to this notice, then we must give careful thought to whether the same panel or a different one should hear the representation. The reasons for the decision must be recorded on the RSA.

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

626. Where a registered person or applicant has attended the representations panel in person, the chair of the panel makes it clear during the meeting about how we inform them of the decision. We may initially inform them of the panel's decision in person or by telephone, but we always confirm this in writing.
627. In all cases, we write to the registered person or applicant within 10 working days of considering the representation. We send a letter stating that we:
- uphold the representation: we confirm the outcome of the representation and an explanation of how the panel reached its decision
- or
- partially uphold the representation: we explain how the panel reached its decision and send a new notice of proposal
- or
- do not uphold the representation: 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. We also include information about the right to appeal against our decision to the Tribunal and how to contact the Tribunal.

## **Retaining notes from the panel meeting**

628. Staff must retain any notes made by members of the panel in accordance with the social care compliance team file retention schedule. Where a decision has been made to retain the files and the provision 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.

## 20. Appeals

### Introduction

629. In some cases, registered persons or applicants for registration may appeal to the First Tier Tribunal (Health, Education and Social Care Chamber) (the 'Tribunal') against the decisions we make.<sup>152</sup>

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

- refuse registration
- cancel registration
- impose, vary or remove conditions of registration
- refuse a request to vary or remove conditions of registration
- refuse to give written consent for a disqualified person<sup>153</sup>
- restrict accommodation (for children's homes and residential family centres only).

631. 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.<sup>154</sup>

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<sup>152</sup> Care Standards Act 2000, section 21; [www.legislation.gov.uk/ukpga/2000/14/section/21](http://www.legislation.gov.uk/ukpga/2000/14/section/21).

<sup>153</sup> A decision made under the Children Act 1989, section 65; [www.legislation.gov.uk/ukpga/1989/41/section/65](http://www.legislation.gov.uk/ukpga/1989/41/section/65). Appeals are made under the Children Act 1989, section 65A; [www.legislation.gov.uk/ukpga/1989/41/section/65A](http://www.legislation.gov.uk/ukpga/1989/41/section/65A).

<sup>154</sup> We may apply to a magistrate for an emergency order under the Care Standards Act 2000, section 20; [www.legislation.gov.uk/ukpga/1989/41/section/65A](http://www.legislation.gov.uk/ukpga/1989/41/section/65A).

## Timescales for people to appeal against our decision

Type of appeal	Type of provider/applicant	Timeframe for appeals
<b>Refuse registration</b>		
Decision to refuse registration	Provider applicant Manager applicant	28 days after service of the notice of decision
<b>Cancel registration</b>		
Decision to cancel registration	Social care providers Social care managers	28 days after service of the notice of decision
An order made by a magistrate to cancel registration	Social care providers Social care managers	28 days after order is made by magistrate*
<b>Granting registrations with conditions which have not been agreed</b>		
Decision to impose a condition which has not been agreed with the provider	Social care managers	28 days after service of the notice of decision
<b>Impose, remove or vary conditions of registration</b>		
Decision to impose vary or remove conditions of registration	Social care providers Social care managers	28 days after service of the notice of decision
Decision to refuse a request to vary or remove conditions of registration	Social care providers Social care managers	28 days after service of the notice of decision
An order by a magistrate to vary, impose or remove a condition of registration	Social care providers Social care managers	28 days after order is made by magistrate*
<b>Restrict accommodation</b>		
Our decision to issue a notice restricting accommodation	Children's home provider Residential family centre provider	28 days after service of the notice*
<b>Disqualification</b>		
A decision to refuse to give written consent for a disqualification	A person who is disqualified from carrying on, managing, having a financial interest in, or being employed in a children's home, or fostering a child privately	Three months after service of decision

\* An expedited appeals process applies to these appeals.

632. The Tribunal counts time limits for an appeal from the first working day after we serve the notice.<sup>155</sup> This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.
633. In some cases, we may apply to the Tribunal to expedite an appeal.<sup>156</sup> In these cases, the Principal Judge may contact the provider before making a decision to expedite. The Tribunal notifies us of their decision and the date they hear the appeal.

## Appeals to the Tribunal

634. 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  
Staindrop Road  
Darlington  
DL3 9BG

Telephone: 01325 392712

Fax: 01325 391045

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

635. 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. We must respond to the Tribunal within the timescales set out below.
636. On receiving notice of an appeal, the regional director decides whether to defend that appeal, taking into account the recommendations of the social care compliance team colleagues and any legal advisors involved in the matter.

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<sup>155</sup> The First Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008, rule 1, 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'.

<sup>156</sup> Under Rule 5(3)(a) the Tribunal may extend or shorten the time for complying with any rule unless such an extension would conflict with a provision of another enactment.

## Initial response to the Tribunal in the event of an appeal

637. We must prepare the necessary documents and a covering letter of instruction and forward it initially to the legal team in Ofsted who decide the most appropriate next step – see section '21, Legal advice'.<sup>157</sup> The legal team completes the form provided by the Tribunal and returns it to the Secretary of the Tribunal.

638. 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.

639. 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 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 make an order for us to cover the appellant's costs.

## Strike outs

640. 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 our powers, for example where a person is included on the Disclosure and Barring Service's barred list and we have no power to consider giving them written consent for their disqualification.

641. 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.

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<sup>157</sup> Ofsted legal advice; [www.ofsted.gov.uk/resources/120269](http://www.ofsted.gov.uk/resources/120269).



642. The grounds for applying for a strike out are set in rule 8(1) to (5) of the First Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008.<sup>158</sup> 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
 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.

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<sup>158</sup> First Tier Tribunal (Health, Education and Social Care Chamber) Rules 2008; [www.legislation.gov.uk/ukxi/2008/2699/contents/made#pt2-l1g8](http://www.legislation.gov.uk/ukxi/2008/2699/contents/made#pt2-l1g8).

643. 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 the Care Standards Act 2000, section 37 and the Interpretation Act 1978, section 7.<sup>159</sup>

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

644. Where the social care compliance team believe that there are grounds to apply to strike out an appeal, they arrange to submit a legal advice request to the legal services team for consideration.

645. Our in-house legal team in conjunction with the panel solicitors' litigation team deal with any legal advice request approved to strike out an appeal and contact, advise and assist the social care compliance team in making the application.

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

646. 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 directions<sup>160</sup>
- 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.

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<sup>159</sup> Counsel advice is that a notice is not deemed to have effect where there is evidence to prove that the registered person or applicant did not receive that notice, even where that notice is served correctly under the provisions of the Care Standards Act 2000 [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents); and the Interpretations Act 1978, section 7 [www.legislation.gov.uk/ukpga/1978/30](http://www.legislation.gov.uk/ukpga/1978/30). We must send all documentation in accordance with the information assurance requirements.

<sup>160</sup> 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.

647. The social care compliance team, in consultation with our in-house legal team, 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 or residential family centre
  - a magistrate’s order for emergency cancellation or variation of conditions of registration<sup>161</sup>
- **20 working days of receipt** – in relation to all other appeals.

648. 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.

## Preparation for the Tribunal hearing

649. The social care compliance team nominates a social care compliance professional to take responsibility for co-ordinating and managing our response, including managing advice from solicitors.

650. 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, then timescales are agreed or imposed.

651. 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.

652. The nominated social care compliance professional 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

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<sup>161</sup> *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/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca).

- 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.

653. The social care compliance professional will complete the bundle (a 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.

## **Expedited appeals process**

654. Ofsted has agreed an expedited appeals process for appeals against restriction of accommodation or orders of a magistrate following emergency action (cancellation or variation of conditions of registration).<sup>162</sup> The social care compliance team must comply with the timescales for expedited appeals as set out in the memorandum of understanding.<sup>163</sup>

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<sup>162</sup> *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/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca](http://www.ofsted.gov.uk/resources/memorandum-of-understanding-between-ofsted-and-first-tier-tribunal-of-health-education-and-social-ca).

<sup>163</sup> *Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber* (reference no: 100242), Ofsted, 2011;

## The hearing

### Burden of proof

655. In the case of 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, for example 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.<sup>164</sup>
656. In the case of 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.<sup>165</sup>

### Being available for the hearing

657. The social care compliance team 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.
658. The provisional timescale for presentation of evidence can change, depending on any cross-examination by the appellant or questioning by Tribunal members. The social care compliance team 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

659. 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 course of action in *C v Ofsted* and referred to it in subsequent hearings.<sup>166</sup> For example,

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<sup>164</sup> *C v Ofsted* [2002] 0087.EY, paragraph 8, [www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320](http://www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320).

<sup>165</sup> 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](http://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](http://www.carestandardtribunal.gov.uk/Judgments/j470/Duncan%20Decision%20291007.doc).

<sup>166</sup> *C v Ofsted* [2002] 0087EY paragraphs 25 and 64; [www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320](http://www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320).

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 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).

660. 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.

661. We may call all 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.<sup>167</sup>

## After the hearing

### The outcome

662. 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. Both parties receive a copy of the recorded decision signed and dated by the Chair. The decision takes effect on the date on which the Tribunal makes it.<sup>168</sup>

663. 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 context of any varied or new conditions must also follow on from the existing text of the certificate (for example, follow on from 'The children's home must ...'). The social care compliance team is responsible for raising any such concerns with the Tribunal. The social care compliance

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<sup>167</sup> C v Ofsted [2002] 0087.EY, paragraph 63;  
[www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320](http://www.carestandardtribunal.gov.uk/Public/View.aspx?ID=320).

<sup>168</sup> In some cases the Tribunal may suspend the effectiveness of its own decision, pending a determination or appeal to the Upper Tribunal – rule 5(3)(l) of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008;  
[www.legislation.gov.uk/uksi/2008/2699/contents/made](http://www.legislation.gov.uk/uksi/2008/2699/contents/made).

team must contact the relevant legal advisor if the matter cannot be resolved at that time.

664. The social care compliance team must record the decision in the RSA. 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.

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

665. Where an appeal is against a notice of decision to cancel registration, or against a notice restricting accommodation, 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 for colleagues on this.

### **A review of the Tribunal decision**

666. In certain circumstances we, or the appellant, may apply to the Principal Judge of the Tribunal for a review of the Tribunal's decision.<sup>169</sup> The grounds for making an application for a review are that:

- the Tribunal decision was wrongly made, as a result of an error on the part of the Tribunal staff
- there is an error of law.

667. We should make an application to the Principal Judge no later than 28 working days after receiving the decision. A senior manager must authorise an application to ask for a review and must seek legal advice before making such an application.

668. A review of the Tribunal's decision is different from an appeal against the decision to the Upper Tribunal.

### **Appeals to the Upper Tribunal**

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

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<sup>169</sup> The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, rule 49; [www.legislation.gov.uk/ukxi/2008/2699/contents/made](http://www.legislation.gov.uk/ukxi/2008/2699/contents/made).

670. The instructed solicitor or barrister will discuss with us if there are grounds for appeal. If we wish to appeal against a decision of the Tribunal, we must first ask the Tribunal for permission. If they give permission to appeal, the Upper Tribunal will hear the appeal. If the Tribunal does not give permission, then we can appeal directly to the Upper Tribunal.
671. We must make any appeal to the Upper Tribunal within one month of the date on which the Tribunal makes a decision to grant or refuse permission to appeal.<sup>170</sup>

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<sup>170</sup> The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 21(3)(b); [www.legislation.gov.uk/uksi/2008/2698/contents/made](http://www.legislation.gov.uk/uksi/2008/2698/contents/made).



## 21. Legal advice

### Introduction

672. This section sets out when the social care compliance team seeks legal advice, who from, who is responsible for paying for the advice and when they must consult with the policy team.

### When the social care compliance team obtain legal advice

673. The social care compliance team seeks legal advice to:

- prepare and facilitate emergency action
- respond to a notice of an appeal to the First Tier Tribunal (Health, Education and Social Care Chamber)
- consider sufficiency of evidence and soundness of a case in a possible prosecution, and assist in carrying out a prosecution.

674. The social care compliance team may also seek legal advice to:

- consider the appropriateness of enforcement 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 an objection or representation
- refer information to and respond to requests from the Disclosure and Barring Service.

### Who provides the legal advice

675. The social care compliance team obtain legal advice/support from:

- Ofsted's legal services team on complex cases (except when we are considering prosecution or making an emergency application), the interpretation of legislation (following consultation with the policy team) and when necessary following an objection or representation – Ofsted's legal services team has its own intranet page
- private firms in litigation cases before the Tribunal

- private firms when we are taking action to prosecute or when we are making an emergency application before a magistrate's court, and to check complex legal notices.

676. The social care compliance team may consult with the policy team on interpretation of legislation before requesting legal advice.

677. The social care policy team seek advice on legislation to help inform the development of policy and guidance. They may also seek advice in relation to an individual case that may impact on existing policy. The social care team will share with the social care compliance team any change in policy or procedures as a result of such advice.

### **Paying for legal advice**

678. Ofsted's legal services team is responsible for arranging payment of all legal bills.

## **22. Writing press and serious incident briefings - guidance for authors**

### **Introduction**

679. We write press and serious incident briefings when a serious incident has happened in a setting or service 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.
680. 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/regulation history. The SIB records what has happened, what we have done and what needs to be done as a result.
681. 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 in regulated childcare and children's social care settings.
682. 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 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 and serious incident briefings**

683. 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.
684. 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 press office.

685. For standard media enquiries not involving a specific setting, we deal with these through the remit 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.
686. We only write a full serious incident briefing when:
- a child dies, sustains a serious injury, or suffers alleged abuse and the incident is linked to a registered provision
  - a serious incident occurs at a provision or involving or linked to a provider 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.
687. 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.
688. 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 obviously require the SIB to be produced as a matter of urgency.

## **How to write the briefings**

689. 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**

690. 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?

691. We send the press briefings to the relevant National Director for that remit and the Press team. The National Director and/or press team decide whether the incident is of such profile that they need to inform HMCI and/or the Chief Operating Officer. The National Director will determine what further action, if any, is required in cases, for example, where there is potential reputational risk for Ofsted.
692. We copy the briefings for information to the:
- social care policy team
  - Regional senior HMI social care
  - Relevant social care team manager and
  - case decision maker.
693. We send the serious incident briefings to the relevant National Director for that remit and to the inspection management support team in Nottingham who are responsible for ensuring that serious incident briefings and serious child care incident notifications are analysed together. The National Director will decide whether the incident is of such profile that they must inform HMCI and/or the Chief Operating Officer or any other body.
694. We copy the briefings to the:
- relevant Regional Director
  - Chair of the Ofsted Safeguarding Group
  - press team
  - social care policy team.
695. As set out above, for both press and serious incident briefings, the relevant National Director decides whether to alert other Directors, the Chief Operating Officer, Her Majesty's Chief Inspector, and/or the Chair of the Ofsted Board, taking into account the level and type of media interest, and the potential for risks to Ofsted's reputation from our action or inaction in relation to the incident.

## Filing the briefings

696. Each remit will allocate a named person/s who will load the final version of the briefing onto the SIB Sharepoint site. This will ensure that the SIBs are correctly titled and therefore are filed in numerical order by URN. We use a standard file name for filing the briefings. This is as follows:

- For social care briefings, we file them as:
  - (for children’s homes) URN.SC/CHSIB/Name of setting. date  
For example: 123456.SCSIB.HappyChildren’sHome.010113
  - (for independent fostering agencies) URN.SC/IFASIB/Name of fostering agency. surname of foster carer. Date. For example: 123456.IFASIB.HappyFosteringAgency.Somerset.Smith.010113

## Tracking progress of cases

697. An index of cases about which SIBs are produced will be kept and filed on the SIB Sharepoint site. This index will provide management and press office with the up to date situation in relation to each case. The index will be formulated as follows:

Region	Date of SIB and dates of any updates to SIB	Link to SIB	Name of Senior Officer/Decision Maker	Summary of issue	Is issue resolved? (Y/N)	Date issue resolved

698. This index will provide details of whether or not the issue is resolved, whether the SIB chronology has been updated, and when. The author or senior officer/decision-maker will add any updates to information to the chronology section of the SIB itself, highlighting the update in yellow fill and including the date of the update.

## 23. Annexes

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

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
1	Death of a child	√ a resident accommodated	√	√	√	√	√
2	Serious accident, illness, injury to a child and the action taken in respect of this	√	√	√	√	√	
3	Death, serious accident, illness, injury to someone on the premises	√ a resident					

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
4	Referral to the Disclosure and Barring Service of an individual working for the service or setting (previously a Protection of Children Act (POCA) referral)	✓	✓	✓	✓	✓	✓
5	Outbreak of any infectious disease – and advised to notify by a registered medical practitioner	✓	✓	✓	✓		✓



Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
6	Involvement, or suspected involvement, of child in prostitution	√ including a parent under 18 years	√	√	√		
7	Serious incident necessitating calling the police	√	√ to the home	√ to the home	√ to the foster parent's home		√  to any address that the scheme is operational at
8	Allegation that a child has committed a serious offence			√*			√*
9	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

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
10	Instigation and outcome of any child protection enquiry	✓ including a parent under 18 years	✓	✓	✓	✓	✓
11	A child/young person goes missing			✓ <sup>171</sup>			
12	Perimeter breaches – including dangerous contraband			✓*			

<sup>171</sup> By virtue of the Children's Homes: National Minimum Standards, standard 23.8.

\* 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; [www.legislation.gov.uk/ukxi/1991/1505/contents/made](http://www.legislation.gov.uk/ukxi/1991/1505/contents/made).

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
13	Fire or serious disorder			√*			
14	Serious child-on-child assault			√*			
15	Serious incident – or sustained episode – of self-harm or attempted suicide			√*			
16	A change in information relating to criminal convictions and cautions relating to a registered person or responsible individual	√	√	√	√	√	√

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
17	Appointment of receiver, manager, liquidator or provisional liquidator, or a trustee in bankruptcy	√	√	√	√	√	
18	Absence of the registered person, registered manager, agency manager or branch manager for 28 days or more	√	√	√	√	√	

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
19	Change to registered person – provider – registered manager or responsible individual	✓	✓	✓	✓	✓	✓
20	Change to the name, address or registered number of the company or charity		✓	✓		✓	✓
21	Change of name or address of: committee, partnership, unincorporated body or agency	✓	✓	✓	✓	✓	
23	Change in the facilities	✓	✓				

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
24	A person other than the registered provider or registered manager is carrying on or managing the establishment or agency	√	√	√	√	√	√
25	Change of manager					√	
26	Change of member of partnership, committee or corporate or unincorporated body	√	√			√	√
27	Agency ceasing to act or exist					√	

Provision type		Residential family centres	Children's homes	Secure children's homes	Independent fostering services	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
<b>Type of information</b>							
28	Change of person managing the agency					✓	
29	Death of the registered person, responsible individual, manager or branch manager	✓	✓		✓	✓	✓
30	Review of the statement of purpose and children's guide – within 28 days		✓		✓	✓	✓
31	Appointment of manager and the date this took effect	✓	✓	✓	✓		✓

## **Annex B. Prompt sheet for inspectors – visits to potentially unregistered establishments and agencies and/or managers**

- The visit should be unannounced.
- Once at the premises, establish the identity of the person providing and/or managing the establishment or agency.
- 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 service provided.
- The provider and/or manager must be issued with a caution (under the Police and Criminal Evidence Act 1984) immediately if there is evidence that leads to a belief that they have committed an offence.
- 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 person carrying on or managing the provision
  - the description of the provision
  - 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 service
  - all statements or exhibits from children and young people, staff, commissioners and publishers
  - the inspector's observations
  - any evidence obtained during an interview under caution.



## Annex C. Exemptions to registration

The Care Standards Act 2000 requires the following types of establishment or agency to register with us:

- children's homes
- holiday schemes for disabled children
- residential family centres
- independent fostering agencies
- voluntary adoption agencies
- adoption support agencies.

### Children's homes

An establishment is a children's home if it provides care and accommodation wholly or mainly for children (the Care Standards Act 2000 section 1(2))<sup>172</sup>

#### *Exemptions*

A setting is not a children's home if:

- it is a health service hospital
- it is an independent hospital or independent clinic
- it is a residential family centre
- it is a holiday scheme for disabled children
- it is a school providing accommodation for fewer than 295 days a year
- it is of any other description made exempt by regulations (the Care Standards Act 2000 section 1(4)(5) and (6)).<sup>173</sup>

### Residential family centres

An establishment is a residential family centre (unless made exempt by regulations) at which:

- accommodation is provided for children and their parents

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<sup>172</sup> Care Standards Act 2000, section 4(4); [www.legislation.gov.uk/ukpga/2000/14/section/4](http://www.legislation.gov.uk/ukpga/2000/14/section/4).

<sup>173</sup> Care Standards Act 2000, section 1(4)–(6); [www.legislation.gov.uk/ukpga/2000/14/section/1](http://www.legislation.gov.uk/ukpga/2000/14/section/1).

- the parents' capacity to respond to the children's needs and to safeguard their welfare are monitored or assessed
- the parents are given such advice, guidance or counselling as is considered necessary (the Care Standards Act 2000 section 4(2)).<sup>174</sup>

### **Fostering agencies**

An establishment is a fostering agency (unless made exempt by regulations) if it:

- consists of or includes discharging functions of local authorities in connection with the placing of children with foster parents
- is a voluntary organisation that places children with foster parents under section 59(1) of the Children Act 1989.<sup>175</sup>

### **Voluntary adoption agency**

A voluntary adoption agency is a body other than a public body or local authority that does not carry out activities for profit, and whose functions consist of or include arranging for the adoption of children (Adoption and Children Act 2002, section 2(5)).<sup>176</sup>

### **Adoption support agencies**

The Adoption and Children Act 2002 section 2(6)<sup>177</sup> defines adoption support services as:

- counselling, advice and information
- any other services prescribed by regulations in relation to adoption.

In addition, regulation 3 of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005<sup>178</sup> states that the following services are also prescribed as adoption support services:

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<sup>174</sup> Care Standards Act 2000, section 4(2); [www.legislation.gov.uk/ukpga/2000/14/section/4](http://www.legislation.gov.uk/ukpga/2000/14/section/4).

<sup>175</sup> Children Act 1989, section 59(1); [www.legislation.gov.uk/ukpga/1989/41/section/59](http://www.legislation.gov.uk/ukpga/1989/41/section/59).

<sup>176</sup> Adoption and Children Act 2002, section 2(5); [www.legislation.gov.uk/ukpga/2002/38/section/2](http://www.legislation.gov.uk/ukpga/2002/38/section/2).

<sup>177</sup> Adoption and Children Act 2002, section 2(6); [www.legislation.gov.uk/ukpga/2002/38/section/2](http://www.legislation.gov.uk/ukpga/2002/38/section/2).

<sup>178</sup> The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005, regulation 3: Prescribed services; [www.legislation.gov.uk/uksi/2005/2720/regulation/3/made](http://www.legislation.gov.uk/uksi/2005/2720/regulation/3/made).

- any services prescribed in the Adoption Support Services Regulations 2005, regulation 3(1)(b) to (f)<sup>179</sup> that are provided in the case of an adoption of a child by his natural parent or the partner of his natural parent assistance to adoption agencies in preparing and training adoptive parents
- assistance to adopted persons who have attained the age of 18, or relatives of such persons, to facilitate contact between such adopted persons and their relatives (in this case 'relative' in relation to an adopted person means any person who, but for his adoption, would be related to him by blood, including half-blood, marriage or civil partnership).

The Adoption Support Services Regulations 2005, regulation 3(1)<sup>180</sup> states that, for the purposes of the Adoption and Children Act 2002, section 2(6)(b),<sup>181</sup> the following services are prescribed as adoption support services (in addition to counselling, advice and information):<sup>182</sup>

- services to enable groups of adoptive children, adoptive parents and natural parents or former guardians of an adoptive child to discuss matters relating to adoption
- assistance, including mediation services, in relation to arrangements for contact between an adoptive child and a natural parent, natural sibling, former guardian or a related person of the adoptive child
- services in relation to the therapeutic needs of an adoptive child

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<sup>179</sup> The Adoption Support Services Regulations 2005, regulation 3(1)(b) to (f); [www.legislation.gov.uk/uksi/2005/691/regulation/3/made](http://www.legislation.gov.uk/uksi/2005/691/regulation/3/made).

<sup>180</sup> The Adoption Support Services Regulations 2005, regulation 3(1); [www.legislation.gov.uk/uksi/2005/691/regulation/3/made](http://www.legislation.gov.uk/uksi/2005/691/regulation/3/made).

<sup>181</sup> Adoption and Children Act 2002, section 2(6)(b); [www.legislation.gov.uk/ukpga/2002/38/section/2](http://www.legislation.gov.uk/ukpga/2002/38/section/2).

<sup>182</sup> The services prescribed under the Adoption Support Services Regulations 2005, regulation 3(1) ([www.legislation.gov.uk/uksi/2005/691/regulation/3/made](http://www.legislation.gov.uk/uksi/2005/691/regulation/3/made)) may include giving assistance in cash but do not include any services that might be provided in the case of an adoption of a child by his natural parent or the partner of his natural parent. Adoption Support Services Regulations 2005, regulation 3(2) and (3).

- assistance for the purpose of ensuring the continuance of the relationship between an adoptive child and his adoptive parent, including: training for adoptive parents for the purpose of meeting any special needs of the child; and subject to respite care<sup>183</sup>
- assistance where disruption of an adoptive placement, or of an adoption arrangement following the making of an adoption order, has occurred or is in danger of occurring, including:
  - making arrangements for the provision of mediation services
  - organising and running meetings to discuss disruptions in such placements or arrangements.

## Exemptions

The following are exempt from registering as an adoption support agency if they:

- are a barrister or a solicitor of the supreme court – if they are providing adoption support services in the course of practice
- are only providing services to enable groups of adoptive children, adoptive parents and natural parents or former guardians of an adoptive child to discuss matters relating to adoption
- provide respite care in relation to adoption and are a:
  - care home
  - children’s home
  - domiciliary care agency
- (the Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 regulation 4<sup>184</sup>

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<sup>183</sup> In this case, respite care that consists of the provision of accommodation must be accommodation provided by or on behalf of a local authority under the Children Act 1989, section 23 ([www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents)) (accommodation of looked after children) or by a voluntary organisation under section 59 of that Act.

<sup>184</sup> The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 regulation 4; [www.legislation.gov.uk/uksi/2005/2720/regulation/4/made](http://www.legislation.gov.uk/uksi/2005/2720/regulation/4/made).

- if carried on by an individual who only provides adoption support services under a contract for services with either a voluntary adoption agency or a local authority adoption service. (The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 regulation 4 as amended by the Adoption Support Agencies (England) (Amendment) Regulations 2010)<sup>185</sup>

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<sup>185</sup> The Adoption Support Agencies (England) (Amendment) Regulations 2010;  
[www.legislation.gov.uk/uksi/2010/465/contents/made](http://www.legislation.gov.uk/uksi/2010/465/contents/made).

## **Annex D. 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 provision.
- Make sure you record the meeting on a tape recorder, or you are accompanied by another officer who will 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.
- 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.
- Ask the person 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.
- 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.

- Give one signed copy to the person cautioned and retain the other one to send to the social care compliance team for storage, in line with the document retention schedule.<sup>186</sup>

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<sup>186</sup> We must send all documentation in accordance with the information assurance requirements.

## Annex E. Offences

The following are acts and regulations, and offences under those acts and regulations, defined in law for which Her Majesty's Chief Inspector is the prosecuting authority. The offences which contain the 'without reasonable excuse' clause are in bold.

### Care Standards Act 2000<sup>187</sup>

- Any person who carries on or manages an establishment or an agency of any description without being registered in respect of it (offence under section 11(1)).
- Failure to comply with a compliance notice (offence under section 22A(4)).
- Failure **without reasonable excuse** to comply with conditions of registration (offence under section 24).
- Naming, describing or in any way holding out an unregistered premises, undertaking or organisation to be an establishment or agency with intent to deceive (offence under section 26(1)).
- Holding out an establishment or agency as being able to provide a service or do something that would be in breach of a condition of registration, with intent to deceive (offence under section 26(3)).
- Knowingly making a statement which is false or misleading in a material respect in an application for registration or for a variation of a condition (offence under section 27).
- Failure to display a registration certificate (offence under section 28).
- Obstruction of a person exercising any power under sections 31 and 32 of the Care Standards Act 2000 (offence under section 31).
- Failure, **without reasonable excuse**, to comply with any requirement under sections 31 or 32 (offence under section 31).

### The Children Act 1989

- Carrying on, being otherwise concerned in the management of, or having any financial interest in a children's home whilst disqualified (section 65 (1) of the Children Act 1989).

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<sup>187</sup> Care Standards Act 2000; [www.legislation.gov.uk/ukpga/2000/14/contents](http://www.legislation.gov.uk/ukpga/2000/14/contents).



- Employing a disqualified person in a children's home (section 65(2) of the Children Act 1989).

### **The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005<sup>188</sup>**

- 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).

### **The Adoption and Children Act 2002, section 59<sup>189</sup>**

- Disclosure of any information in contravention of section 57 (restrictions on disclosure of protection etc. information) of the Adoption and Children Act 2002 (section 59).

### **The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005<sup>190</sup>**

- Disclosing information in contravention of regulation 7 **without reasonable excuse** (regulation 17).

### **The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005<sup>191</sup>**

- Disclosing information in contravention of section 57 of the Adoption and Children Act 2002 (regulation 21).

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<sup>188</sup> The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005; [www.legislation.gov.uk/uksi/2005/2720/contents/made](http://www.legislation.gov.uk/uksi/2005/2720/contents/made).

<sup>189</sup> Adoption and Children Act 2002, section 59; [www.legislation.gov.uk/ukpga/2002/38/section/59](http://www.legislation.gov.uk/ukpga/2002/38/section/59).

<sup>190</sup> The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005; [www.legislation.gov.uk/uksi/2005/890/contents/made](http://www.legislation.gov.uk/uksi/2005/890/contents/made).

<sup>191</sup> The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005; [www.legislation.gov.uk/uksi/2005/888/contents/made](http://www.legislation.gov.uk/uksi/2005/888/contents/made).

## **Annex F. What is a 'reasonable excuse'?**

There is no definition of reasonable excuse. What is reasonable will vary from person to person and depend on the particular circumstances of a case.

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. For example, 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 also constitute a reasonable excuse.

If a person claims they have a reasonable excuse then 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.

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.

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 – see section '21. Legal advice' – in deciding if the excuse given is reasonable.

## Annex G. List of offences and convictions

The following sets out the grounds that make a person disqualified. For the offences listed below, a person is **only** disqualified if they have been convicted of the offence.<sup>192</sup>

### 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 you are uncertain as to whether an act amounts to a conviction, you should contact the social care compliance team or legal services for further advice.

### Disqualified persons

Please read the following in conjunction with the:

- Children Act 1989, sections 65 and 68<sup>193</sup>
- The Disqualification from Caring for Children (England) Regulations 2002.<sup>194</sup>

<sup>192</sup> Children Act 1989, section 68(2A); [www.legislation.gov.uk/ukpga/1989/41/section/68](http://www.legislation.gov.uk/ukpga/1989/41/section/68).

<sup>193</sup> Children Act 1989, sections 65 and 68; [www.legislation.gov.uk/ukpga/1989/41/contents](http://www.legislation.gov.uk/ukpga/1989/41/contents).

The disqualifying offences include (although not an exhaustive list):

- those listed in the above legislation
- an offence against a child listed in the Criminal Justice and Court Service Act 2000, schedule 4, paragraphs 1 and 2<sup>195</sup>
- an offence related to an offence under the Criminal Justice and Court Service Act 2000
- any other offence involving bodily injury to or death of a child.<sup>196</sup>

A person who is disqualified from registration is therefore disqualified from being employed in connection with a children's home if:

- he or she is included on the lists of people deemed unsuitable to work with children (see Table 1 below)
- he or she has been subject to any order relating to the care of children (see Table 2 below)
- a specified regulatory body has cancelled a registration, refused registration or refused approval for that person to care for, foster or look after children (see Table 3 below) or has taken specified regulatory action<sup>197</sup>
- he or she has been convicted of an offence listed in Table 4 (this includes convictions for aiding, abetting, counselling, procuring or inciting the commission of an offence against a child and conspiring or attempting to

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<sup>194</sup> The Disqualification from Caring for Children (England) Regulations 2002; [www.legislation.gov.uk/uksi/2002/635/contents/made](http://www.legislation.gov.uk/uksi/2002/635/contents/made).

<sup>195</sup> Criminal Justice and Court Service Act 2000, schedule 4, paragraphs 1 and 2; [www.legislation.gov.uk/ukpga/2000/43/contents](http://www.legislation.gov.uk/ukpga/2000/43/contents).

<sup>196</sup> 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 Ofsted's legal advisers who will be able to advise you.

<sup>197</sup> A person is not disqualified if he or she has had their registration cancelled as a childminder or childcare provider in England due to non-payment of the fee charged annually, if the cancellation is after 1 September 2008 (6 April 2007 for those registered only on the voluntary part of the Childcare Register).

commit such an offence or conviction of any offence other than offences in Table 4, which involved bodily injury to, or death of, a child)

- he or she has been convicted of any of the offences in Table 5 against a child or any other offence involving bodily injury to a child.

The offences listed in the tables below are not a comprehensive list. If you are at all unsure whether the offence disqualifies a person, and it is not included in the list below, you should seek advice either from the social care compliance team or from our legal advisors.

## **Annex H - Templates for serious incident briefings**

1. Serious incident press briefing
2. Serious incident full briefing

### **1. Serious incident – press briefing**

**To:** (insert name of National Director)

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

**cc for information:**

**URN:**

**Name and address of setting:**

**Name of provider:**

**Any linked settings:**

### **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
- initials, age, gender and ethnicity (if known) of the child/children involved in the incident

- potential safeguarding issues for other children, such as those attending or living in the setting, or living in a childminder's household
- impact on any linked settings or individuals and whether there have been any similar concerns in those settings
- impact on parents and carers in the event of enforcement 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
- 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 knows what action Ofsted is taking.

### **Contact for further information**

Insert name of the case manager/decision maker.

## **2. Serious incident – full briefing**

**To:** (insert name of National Director)

**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 provider:**

**Any linked settings:**

### **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 date it occurred
- details of when and how Ofsted was notified
- initials, age, gender and ethnicity (if known) of the child/children involved in the incident
- potential safeguarding issues for other children, such as those attending or living in the setting, or living in a childminder's household



- impact on any linked settings or individuals and whether there have been any similar concerns in those settings
- impact on parents and carers in the event of enforcement action.

## Chronology

Include: all registration, inspections, notifications, complaints and CIE 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
- what action Ofsted plans to take next
- why Ofsted has taken/not taken action
- liaison with other agencies - if so which
- whether the provider 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 I. Information about disqualified people

**Table 1: lists holding names of people deemed unsuitable to work with children for whom we have no power to waive disqualification or give written consent**

List	Legislation	CH
The list held by the Disclosure and Barring Service of those people barred from working with children	The Safeguarding and Vulnerable Groups Act 2006 <a href="http://www.legislation.gov.uk/ukpga/2006/47/contents">www.legislation.gov.uk/ukpga/2006/47/contents</a>	x

CH – Children’s homes.

**Table 2: disqualified by way of orders relating to the care of children**

Order	Legislation	CH
Care order	The Children Act 1989, section 31A: <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/31A">www.legislation.gov.uk/ukpga/1989/41/section/31A</a>	x
	The Children (Northern Ireland) Order 1995, section 50(1)(a): <a href="http://www.legislation.gov.uk/nisi/1995/755/article/50">www.legislation.gov.uk/nisi/1995/755/article/50</a>	x
	Any order that would have been deemed to be a care order by virtue of paragraph 15 of schedule 14 of the Children Act 1989 (transitional provisions for children in compulsory care) had it been in force immediately before the day on which part 4 of the Children Act 1989 came into force: <a href="http://www.legislation.gov.uk/ukpga/1989/41/schedule/14">www.legislation.gov.uk/ukpga/1989/41/schedule/14</a>	x
Supervision order	The Children (Scotland) Act 1995, section 70: <a href="http://www.bailii.org/uk/legis/num_act/1995/ukpga_19950036_en_1.html">www.bailii.org/uk/legis/num_act/1995/ukpga_19950036_en_1.html</a>	x
	The Social Work (Scotland) Act 1968, section 44	
Child protection	A fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968: <a href="http://www.bailii.org/nie/legis/num_act/caypai1968438/s140.html">www.bailii.org/nie/legis/num_act/caypai1968438/s140.html</a> The Social Work (Scotland) Act 1968 – rights of children vested in the local authority under section 16.	x

**Table 3: disqualified by way of having been refused or cancelled registration or having a prohibition imposed or having committed a prescribed offence in relation to registration**

Position	Legislation	CH
Refusal or cancellation in relation to childminders or childcare providers	The Children (Northern Ireland) Order 1995, part XI: <a href="http://www.legislation.gov.uk/nisi/1995/755/part/XI">www.legislation.gov.uk/nisi/1995/755/part/XI</a>	x
	The Children and Young Persons Act (Northern Ireland) 1968, section 11(5), 15 or 127: <a href="http://www.bailii.org/nie/legis/num_act/caypai1968438/s11.html">www.bailii.org/nie/legis/num_act/caypai1968438/s11.html</a> <a href="http://www.bailii.org/nie/legis/num_act/caypai1968438/s15.html">www.bailii.org/nie/legis/num_act/caypai1968438/s15.html</a> <a href="http://www.bailii.org/nie/legis/num_act/caypai1968438/s127.html">www.bailii.org/nie/legis/num_act/caypai1968438/s127.html</a>	x
	The Children Act 1989, section 49–50(9), Parts X or X, paragraph 1 of schedule 5 and paragraph 1 of schedule 4: <a href="http://www.legislation.gov.uk/ukpga/1989/41/contents">www.legislation.gov.uk/ukpga/1989/41/contents</a>  Part 2 of the Children and Families (Wales) Measure 2010	x
Childminding and day care specified regulatory action	The Children Act 1989, section 79D (operating without registration): <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/79D">www.legislation.gov.uk/ukpga/1989/41/section/79D</a>	x
	The Children Act 1989, section 79F(6) (failure to comply with conditions of registration): <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/79F">www.legislation.gov.uk/ukpga/1989/41/section/79F</a>	x
Fostering a child	The Children Act 1958, section 14*	x
Private fostering	A prohibition at any time under The Children (Northern Ireland) Order 1995, article 110: <a href="http://www.legislation.gov.uk/nisi/1995/755/article/110">www.legislation.gov.uk/nisi/1995/755/article/110</a>	x
	The Children Act 1989, sections 16 and 70: <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/16">www.legislation.gov.uk/ukpga/1989/41/section/16</a> <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/70">www.legislation.gov.uk/ukpga/1989/41/section/70</a>	x
	A prohibition imposed under The Children Act 1989, section 4 and 69: <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/4">www.legislation.gov.uk/ukpga/1989/41/section/4</a> <a href="http://www.legislation.gov.uk/ukpga/1989/41/section/69">www.legislation.gov.uk/ukpga/1989/41/section/69</a> Section 10 of the Foster Children Act 1980 (power to prohibit the keeping of foster children)	x

Position	Legislation	CH
Children's home or Voluntary home	<a href="#">Care Standards Act 2000</a> , sections 11(1), 13, 14, 20(1), 24 and 25–27: <a href="http://www.legislation.gov.uk/ukpga/2000/14/contents">www.legislation.gov.uk/ukpga/2000/14/contents</a>	X
	The Children (Northern Ireland) Order 1995, articles 80, 82, 96 and 98: <a href="http://www.legislation.gov.uk/nisi/1995/755/contents">www.legislation.gov.uk/nisi/1995/755/contents</a>	X

Notice given under section 1(3) of the Children and Young Persons Act (Northern Ireland) Act 1968 (withholding consent to the care and maintenance of a child being undertaken by a person).

**Table 4: disqualified by way of being convicted of any of the following offences**

Some of the offences set out in this table are listed under repealed legislation. However, a person is disqualified if he or she has at any time committed any of the offences under the specified legislation when it was in force.

Offence	Legislation	CH
Abduction of a child in care	The Children Act 1989, section 49 or 50(9): <a href="http://www.legislation.gov.uk/ukpga/1989/41/contents">www.legislation.gov.uk/ukpga/1989/41/contents</a>	X
	Children (Northern Ireland) Order 1995, article 68 or 69(9): <a href="http://www.legislation.gov.uk/nisi/1995/755/contents">www.legislation.gov.uk/nisi/1995/755/contents</a>	X
Cruelty to children	Children and Young Persons Act 1933, section 1: <a href="http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/1">www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/1</a>	X
Murder of an infant	Infanticide Act 1938, section 1: <a href="http://www.legislation.gov.uk/ukpga/Geo6/1-2/36/section/1">www.legislation.gov.uk/ukpga/Geo6/1-2/36/section/1</a>	X
Rape of a child under 13	Sexual Offences Act 2003, section 5: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/5">www.legislation.gov.uk/ukpga/2003/42/section/5</a>	X
Assault of a child under 13 by penetration	Sexual Offences Act 2003, section 6: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/6">www.legislation.gov.uk/ukpga/2003/42/section/6</a>	X
Sexual assault of a child under 13	Sexual Offences Act 2003, section 7: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/7">www.legislation.gov.uk/ukpga/2003/42/section/7</a>	X
Causing or inciting a child under 13 to engage in sexual activity	Sexual Offences Act 2003, section 8: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/8">www.legislation.gov.uk/ukpga/2003/42/section/8</a>	X

Offence	Legislation	CH
Causing or inciting a child to engage in sexual activity	Sexual Offences Act 2003, section 10: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/10">www.legislation.gov.uk/ukpga/2003/42/section/10</a>	x
Sexual activity with a child	Sexual Offences Act 2003, section 9: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/9">www.legislation.gov.uk/ukpga/2003/42/section/9</a>	x
Engaging in sexual activity in the presence of a child	Sexual Offences Act 2003, section 11: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/11">www.legislation.gov.uk/ukpga/2003/42/section/11</a>	x
Causing a child to watch a sexual act	Sexual Offences Act 2003, section 12: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/12">www.legislation.gov.uk/ukpga/2003/42/section/12</a>	x
Indecent photographs of children	Protection of Children Act 1978, section 1: <a href="http://www.legislation.gov.uk/ukpga/1978/37/section/1">www.legislation.gov.uk/ukpga/1978/37/section/1</a>	x
	Protection of Children (Northern Ireland) Order 1978, article 3: <a href="http://www.bailii.org/uk/legis/num_act/1978/1006310.html">www.bailii.org/uk/legis/num_act/1978/1006310.html</a>	x
	The Customs and Excise Management Act 1979, section 170: <a href="http://www.legislation.gov.uk/ukpga/1979/2/contents">www.legislation.gov.uk/ukpga/1979/2/contents</a>	x
	Customs Consolidation Act 1876, section 42: <a href="http://www.legislation.gov.uk/ukpga/Vict/39-40/36/section/42">www.legislation.gov.uk/ukpga/Vict/39-40/36/section/42</a>	x
Abduction of a child by a parent	Child Abduction Act 1984, section 1: <a href="http://www.legislation.gov.uk/ukpga/1984/37">www.legislation.gov.uk/ukpga/1984/37</a>	x
Possession of an indecent photograph of a child	Criminal Justice Act 1988, section 160: <a href="http://www.legislation.gov.uk/ukpga/1988/33/contents">www.legislation.gov.uk/ukpga/1988/33/contents</a>	x
	Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988, article 15: <a href="http://www.bailii.org/nie/legis/num_orders/1988/nisi_19881847_en_1.html">www.bailii.org/nie/legis/num_orders/1988/nisi_19881847_en_1.html</a>	x
Abuse of position of trust: causing or inciting a child to engage in sexual activity	Sexual Offences Act 2003, section 17, 21, 22, 23 or 24: <a href="http://www.legislation.gov.uk/ukpga/2003/42/contents">www.legislation.gov.uk/ukpga/2003/42/contents</a>	x
Abuse of position of trust: sexual activity in the presence of a child	Sexual Offences Act 2003, section 18: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/18">www.legislation.gov.uk/ukpga/2003/42/section/18</a>	x

Offence	Legislation	CH
Abuse of position of trust: causing a child to watch a sexual act	Sexual Offences Act 2003, section 19: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/19">www.legislation.gov.uk/ukpga/2003/42/section/19</a>	x
Abuse of position of trust: acts done in Scotland	Sexual Offences Act 2003, section 20: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/20">www.legislation.gov.uk/ukpga/2003/42/section/20</a>	x
Sexual activity with a child family member	Sexual Offences Act 2003, section 25: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/25">www.legislation.gov.uk/ukpga/2003/42/section/25</a>	x
Inciting a child to engage in sexual activity	Sexual Offences Act 2003, section 26: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/26">www.legislation.gov.uk/ukpga/2003/42/section/26</a>	x
Making a threat to kill a child	Offences against the Person Act 1861, section 16: <a href="http://www.legislation.gov.uk/ukpga/Vict/24-25/100">www.legislation.gov.uk/ukpga/Vict/24-25/100</a>	x
Paying for sexual services of a child	Sexual Offences Act 2003, section 47: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/47">www.legislation.gov.uk/ukpga/2003/42/section/47</a>	x
Causing or inciting child prostitution or pornography	Sexual Offences Act 2003, section 48: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/48">www.legislation.gov.uk/ukpga/2003/42/section/48</a>	x
Controlling a child prostitute or a child involved in pornography	Sexual Offences Act 2003, section 49: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/49">www.legislation.gov.uk/ukpga/2003/42/section/49</a>	x
Arranging or facilitating child prostitution or pornography	Sexual Offences Act 2003, section 50: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/50">www.legislation.gov.uk/ukpga/2003/42/section/50</a>	x
Supplying or offering to supply class A drugs to a child	Misuse of Drugs Act 1971, section 4(3): <a href="http://www.legislation.gov.uk/ukpga/1971/38/section/4">www.legislation.gov.uk/ukpga/1971/38/section/4</a>	x
Being concerned in the supplying of class A drug to a child	Misuse of Drugs Act 1971, section 4(3): <a href="http://www.legislation.gov.uk/ukpga/1971/38/section/4">www.legislation.gov.uk/ukpga/1971/38/section/4</a>	x
Being concerned in the making to a child of an offer to supply class A drugs	Misuse of Drugs Act 1971, section 4(3): <a href="http://www.legislation.gov.uk/ukpga/1971/38/section/4">www.legislation.gov.uk/ukpga/1971/38/section/4</a>	x

Theft of a child below the age of puberty	Scottish Common Law Offence of Plagium*	x
Taking or sending a child out of the United Kingdom	Child Abduction Act 1984 (Scotland), section 6: <a href="http://www.legislation.gov.uk/ukpga/1984/37/section/6">www.legislation.gov.uk/ukpga/1984/37/section/6</a>	x
Inducing a child to abscond or harbouring a child or preventing them from returning	Children (Scotland) Act 1995, section 83 or 89: <a href="http://www.bailii.org/uk/legis/num_act/1995/ukpga_19950036_en_1.html">www.bailii.org/uk/legis/num_act/1995/ukpga_19950036_en_1.html</a>	x
Any offence specified in schedule 1 – offences against a child under the age of 17	Criminal Procedure (Scotland) Act 1995: <a href="http://www.bailii.org/uk/legis/num_act/1995/ukpga_19950046_en_1.html#sch1">www.bailii.org/uk/legis/num_act/1995/ukpga_19950046_en_1.html#sch1</a>	x
Causing or allowing the death of a child or vulnerable adult	Domestic Violence, Crime and Victims Act 2004, section 5: <a href="http://www.legislation.gov.uk/ukpga/2004/28/section/5">www.legislation.gov.uk/ukpga/2004/28/section/5</a>	x
Any offence specified	The Children and Young Persons Act (Northern Ireland) 1968, schedule 1: <a href="http://www.bailii.org/uk/legis/num_act/1968/2907686.html">www.bailii.org/uk/legis/num_act/1968/2907686.html</a>	x
Offences outside the UK	Criminal Law (Consolidation) (Scotland) Act 1995, section 16B: <a href="http://www.legislation.gov.uk/ukpga/1995/39/section/16B">www.legislation.gov.uk/ukpga/1995/39/section/16B</a>	x
Detention of absentees	Children and Young Persons Act 1969, section 32(3): <a href="http://www.legislation.gov.uk/ukpga/1969/54/contents">www.legislation.gov.uk/ukpga/1969/54/contents</a>	x
Child sex offences committed by children or young persons (1) A person under 18 commits an offence if s/he does anything that would be an offence under any of sections 9–12 if s/he were aged 18.	Sexual Offences Act 2003, section 13: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/13">www.legislation.gov.uk/ukpga/2003/42/section/13</a>	x

Arranging or facilitating commission of a child sex offence	Sexual Offences Act 2003, section 14: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/14">www.legislation.gov.uk/ukpga/2003/42/section/14</a>	x
Meeting a child following sexual grooming, etc.	Sexual Offences Act 2003, section 15: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/15">www.legislation.gov.uk/ukpga/2003/42/section/15</a>	x
Trespassing with intent to commit a sexual offence – for children’s social care this only applies where the intended offence was against a child	Sexual Offences Act 2003 section 62 or 63: <a href="http://www.legislation.gov.uk/ukpga/2003/42/contents">www.legislation.gov.uk/ukpga/2003/42/contents</a>	x

**Table 5: disqualified by way of being convicted of any of the following offences against a child or any other offence involving bodily injury to a child**

Offence	Legislation	CH*
Murder	Criminal Justice and Court Services Act 2000, schedule 4, paragraph 2(a): <a href="http://www.legislation.gov.uk/ukpga/2000/43/schedule/4">www.legislation.gov.uk/ukpga/2000/43/schedule/4</a>	x
Kidnapping	Criminal Justice and Court Services Act 2000, schedule 4, paragraph 2(c): <a href="http://www.legislation.gov.uk/ukpga/2000/43/schedule/4">www.legislation.gov.uk/ukpga/2000/43/schedule/4</a>	x
Manslaughter	Criminal Justice and Court Services Act 2000, schedule 4, paragraph 2(b): <a href="http://www.legislation.gov.uk/ukpga/2000/43/schedule/4">www.legislation.gov.uk/ukpga/2000/43/schedule/4</a>	x
False imprisonment	Criminal Justice and Court Services Act 2000, schedule 4, paragraph 2(d): <a href="http://www.legislation.gov.uk/ukpga/2000/43/schedule/4">www.legislation.gov.uk/ukpga/2000/43/schedule/4</a>	x
Wounding and causing grievous bodily harm	Offences Against the Person Act 1861, section 18 or 20: <a href="http://www.legislation.gov.uk/ukpga/Vict/24-25/100/contents">www.legislation.gov.uk/ukpga/Vict/24-25/100/contents</a>	x
Assault occasioning actual bodily harm	Offences Against the Person Act 1861, section 47: <a href="http://www.legislation.gov.uk/ukpga/Vict/24-25/100/section/47">www.legislation.gov.uk/ukpga/Vict/24-25/100/section/47</a>	x
Rape	Sexual Offences Act 2003, section 1: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/1">www.legislation.gov.uk/ukpga/2003/42/section/1</a>	x



Offence	Legislation	CH*
Assault by penetration	Sexual Offences Act 2003, section 2: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/2">www.legislation.gov.uk/ukpga/2003/42/section/2</a>	x
Sexual assault	Sexual Offences Act 2003, section 3: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/3">www.legislation.gov.uk/ukpga/2003/42/section/3</a>	x
Causing a person to engage in sexual activity without consent	Sexual Offences Act 2003, section 4: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/4">www.legislation.gov.uk/ukpga/2003/42/section/4</a>	x
Sexual activity with a person with a mental disorder impeding choice	Sexual Offences Act 2003, section 30: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/30">www.legislation.gov.uk/ukpga/2003/42/section/30</a>	x
Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity	Sexual Offences Act 2003, section 31: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/31">www.legislation.gov.uk/ukpga/2003/42/section/31</a>	x
Engaging in sexual activity in the presence of a person with a mental disorder impeding choice	Sexual Offences Act 2003, section 32: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/32">www.legislation.gov.uk/ukpga/2003/42/section/32</a>	x
Causing a person, with a mental disorder impeding choice, to watch a sexual act	Sexual Offences Act 2003, section 33: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/33">www.legislation.gov.uk/ukpga/2003/42/section/33</a>	x
Inducement, threat or deception to procure sexual activity with a person with a mental disorder	Sexual Offences Act 2003, section 34: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/34">www.legislation.gov.uk/ukpga/2003/42/section/34</a>	x

Offence	Legislation	CH*
Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception	Sexual Offences Act 2003, section 35: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/35">www.legislation.gov.uk/ukpga/2003/42/section/35</a>	x
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder	Sexual Offences Act 2003, section 36: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/36">www.legislation.gov.uk/ukpga/2003/42/section/36</a>	x
Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception	Sexual Offences Act 2003, section 37: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/37">www.legislation.gov.uk/ukpga/2003/42/section/37</a>	x
Care workers: sexual activity with a person with a mental disorder	Sexual Offences Act 2003, section 38: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/38">www.legislation.gov.uk/ukpga/2003/42/section/38</a>	x
Care workers: causing or inciting sexual activity	Sexual Offences Act 2003, section 39: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/39">www.legislation.gov.uk/ukpga/2003/42/section/39</a>	x
Care workers: sexual activity in the presence of a person with a mental disorder	Sexual Offences Act 2003, section 40: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/40">www.legislation.gov.uk/ukpga/2003/42/section/40</a>	x
Care workers: causing a person with a mental disorder to watch a sexual act	Sexual Offences Act 2003, section 41: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/41">www.legislation.gov.uk/ukpga/2003/42/section/41</a>	x
Causing or inciting prostitution for gain	Sexual Offences Act 2003, section 52: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/52">www.legislation.gov.uk/ukpga/2003/42/section/52</a>	x

<b>Offence</b>	<b>Legislation</b>	<b>CH*</b>
Controlling prostitution for gain	Sexual Offences Act 2003, section 53: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/53">www.legislation.gov.uk/ukpga/2003/42/section/53</a>	x
Trafficking into the UK for sexual exploitation	Sexual Offences Act 2003, section 57: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/57">www.legislation.gov.uk/ukpga/2003/42/section/57</a>	x
Trafficking within the UK for sexual exploitation	Sexual Offences Act 2003, section 58: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/58">www.legislation.gov.uk/ukpga/2003/42/section/58</a>	x
Trafficking out of the UK for sexual exploitation	Sexual Offences Act 2003, section 59: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/59">www.legislation.gov.uk/ukpga/2003/42/section/59</a>	x
Administering a substance with intent	Sexual Offences Act 2003, section 60, 61: <a href="http://www.legislation.gov.uk/ukpga/2003/42/contents">www.legislation.gov.uk/ukpga/2003/42/contents</a>	x
Trafficking people for exploitation	Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 4: <a href="http://www.legislation.gov.uk/ukpga/2004/19/section/4">www.legislation.gov.uk/ukpga/2004/19/section/4</a>	x
Exposure	Sexual Offences Act 2003, section 66: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/66">www.legislation.gov.uk/ukpga/2003/42/section/66</a>	x
Voyeurism	Sexual Offences Act 2003, section 67: <a href="http://www.legislation.gov.uk/ukpga/2003/42/section/67">www.legislation.gov.uk/ukpga/2003/42/section/67</a>	x

\* CH – children’s homes

## Annex J. Who should apply for written consent and when

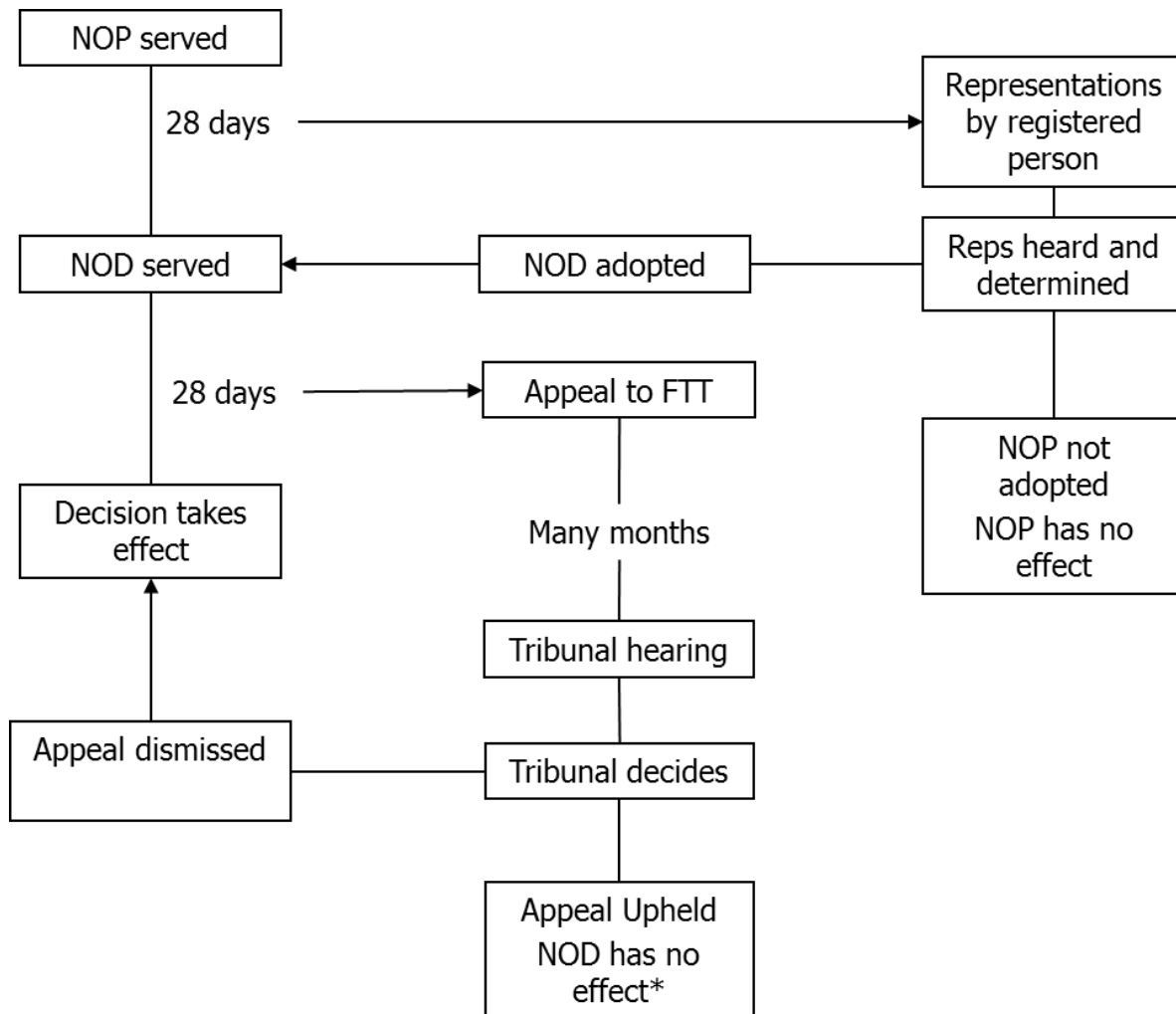
Type of disqualified person	Application or existing registration	Who must apply for written consent?	When does the written consent need to be applied for?	Who do we send the outcome of the written consent panel to?	Who has the right of appeal?
Manager	New application (both new manager and provider)	Manager applicant	Prior to the application for registration being lodged	Manager applicant	Manager applicant
Manager	New manager application for an existing setting	Registered provider	Before they employ the person they wish to register as manager	Registered provider	Registered provider
Manager	Existing registration (for example, the manager becomes disqualified after registration)	Registered manager	Once the manager has become disqualified	Registered manager	Registered manager
Provider	Application (for example, one of the people making up the provider is disqualified)	Provider applicant	Prior to the application for registration being lodged	Provider applicant	Provider applicant
Provider	Existing registration – this includes where one of the people making up the registered person	Registered provider	As soon as the person becomes disqualified	Registered provider	Registered provider

	becomes disqualified				
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<b>Type of disqualified person</b>	<b>Application or existing registration</b>	<b>Who must apply for written consent?</b>	<b>When does the written consent need to be applied for?</b>	<b>Who do we send the outcome of the written consent panel to?</b>	<b>Who has the right of appeal?</b>
Employee (someone seeking to be employed at a children's home)	n/a	Registered provider who wishes to employ the person	Before the home employs them	Registered provider who wishes to employ the person	Registered provider who wishes to employ the person
Employee (someone who is already working at a children's home and becomes disqualified)	n/a	Registered provider who operates the children's home	Once the person has become disqualified	Registered provider who operates the children's home	Registered provider who operates the children's home
Person seeking to have a financial interest in a children's home	Application	Disqualified person	Prior to the application for registration being lodged	Provider applicant	Provider applicant
Person seeking to have a financial interest in a children's home	Existing registration	Disqualified person (as they are applying to become part of the registered provider)	Before they apply to Ofsted to become part of the registered provider	Disqualified person	Disqualified person

<b>Type of disqualified person</b>	<b>Application or existing registration</b>	<b>Who must apply for written consent?</b>	<b>When does the written consent need to be applied for?</b>	<b>Who do we send the outcome of the written consent panel to?</b>	<b>Who has the right of appeal?</b>
Person disqualified by virtue of living with someone who is disqualified	Both	Manager/registered provider/person seeking to have a financial interest in an existing registration	As detailed above	Manager/registered provider/person seeking to have a financial interest in an existing registration	Manager/registered provider/person seeking to have a financial interest in an existing registration

## Annex K. NOP / NOD timeline



\*tribunal can impose conditions in some cases



## Annex L. SCCT case review form

### SCCT case review

Date: Time:	Provider: Setting Name: URN: C number:
Attendees – case review held by conference calling Decision maker: Chair: Note taker:	
Registration and Inspection History: Registration date: Date of inspections/outcome: C cases/outcomes:	
Conditions of Registration:	
Reason for case review  1. New case: Date of referral – Instigator name – Details of referral –	

<p>2. Follow on case review:          Previous case review dates –          Previous actions / decisions –</p>	
<p>3. Inadequate inspection outcome:          Date of inspection –</p>	
<p>Record of Discussion –</p>	
<p>When will the next inspection take place:</p>	
<p>Summary of Decision:</p>	
<p>Actions with date for completion</p>	<p>To be taken forward by:</p>
<p>Case review minutes to be reviewed by</p>	
<p>Date of, or trigger for next case review:</p>	