

Social care compliance handbook

This handbook explains our powers and the legal background to our compliance work. Under the Care Standards Act 2000, we regulate adoption support agencies, children's homes, residential holiday schemes for disabled children, independent fostering agencies, residential family centres and voluntary adoption agencies.

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

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

Introduction

1. The law gives Ofsted a range of powers to deal with:
 - registered persons who fail to meet the legal requirements for social care settings that are regulated under the Care Standards Act 2000
 - persons carrying on or managing a setting without the appropriate registration.

We exercise these powers, for example, to take 'enforcement action'. This is to reduce the risk of harm to children, young people and adults who use regulated social care services. We also enforce compliance with the law to improve the quality of services.¹ The protection of children and adults is a fundamental part of our work.

2. Our compliance and enforcement powers are set out in the Care Standards Act 2000. They apply to the establishments and agencies² that we regulate. These are:
 - adoption support agencies
 - children's homes, including secure children's homes
 - residential holiday schemes for disabled children
 - independent fostering agencies
 - residential family centres
 - voluntary adoption agencies.³
3. This handbook sets out our approach to compliance and enforcement action. It also covers how we handle concerns raised about a registered person's non-compliance with the law.

Our policy on compliance and enforcement action

4. The protection of children, young people and adult service users is paramount to our approach to compliance and enforcement. We:

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

² Referred to as 'settings' in this guidance.

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

- act immediately on any information that suggests that the welfare of children, young people or adults is not safeguarded or that they are at risk of harm or being harmed
 - take appropriate action that:
 - is timely
 - reduces the risk of harm or actual harm to children, young people or vulnerable adult service users
 - takes account of, and is proportionate to, the seriousness of the non-compliance
 - will secure compliance with the law and improve the quality of the setting
 - uses our statutory or non-statutory compliance or enforcement powers when a relevant threshold is met.⁴
5. In carrying out our compliance and enforcement work, we:
- consider the particular circumstances of each case
 - act swiftly to address any non-compliance with the relevant legislation or where children or vulnerable adult users are at risk
 - keep accurate records and an audit trail of all aspects of a case, including records about decision-making
 - are proportionate in our approach
 - regularly review the progress of a case
 - take timely legal advice
 - revise our approach as appropriate
 - ensure that all Ofsted staff are suitably trained and have high-quality support, advice and supervision when taking compliance action
 - publish information about our compliance policies
 - comply with the Regulators' Code.⁵

Principles of recording case information

6. It is essential that all Ofsted staff who are involved in a compliance case at any stage record all relevant information, actions, decisions and reasoning in the appropriate place under the appropriate name of document (see Annex E).
7. Information will be recorded accurately, including the source of the information, dates and distinguishing between fact and opinion.

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

⁵ Regulators' Code, Better Regulation Delivery Office, 2014; www.gov.uk/government/publications/regulators-code.

8. Where required, any rationale for decision-making should be recorded, clearly indicating the 'next steps'.

Part 2: Responding to information of concern

2.1 Responding to concerns and notifications

9. We may receive information from a variety of sources. Information or concerns may come from:
 - notifications from registered persons. The law requires registered persons to inform us of certain matters (notifications). A notification from a registered person must be made 'without delay' after the event taking place or concern arising
 - notifiable incidents from a local authority⁶
 - other agencies, such as the police, schools, environmental health, fire safety, local authority children's services departments, local health authority and (while still in existence) Local Safeguarding Children Boards (LSCBs)
 - other regulators/inspectorates, such as the Care Quality Commission, Food Standards Agency and HMI Constabulary
 - parents and carers
 - children and young people, or their representatives
 - members of staff
 - the public, including neighbours
 - Ofsted's inspections of social care or other settings.
10. The information we receive may suggest that:
 - children, young people or adult service users are or may be at risk of harm
 - a registered person is not meeting the relevant regulations or conditions of registration
 - a person is no longer fit for registration to carry on or manage a setting
 - a person is providing or managing a children's social care setting without the required registration.
11. When we receive concerns from a member of the public, service user or other similar third party, we always try to keep their name and details confidential if that is their wish. However, sometimes the provider may be able to guess their identity from the content. Occasionally, we may have to reveal the identity of a

⁶ Formerly 'serious incident notifications'.

complainant to allow a thorough investigation of the concern, or when action results in a court or tribunal hearing. In these cases, we would always explain any need to the complainant before doing so. Any actions or decisions must be recorded in Cygnum.⁷

12. We will always conduct an immediate assessment of risk on receiving any information. This will determine whether any safeguarding or compliance action is required. We liaise with other agencies as necessary, but we always conduct our own investigation or inspection where appropriate.
13. Ofsted is not the statutory authority for the conduct of enquiries into specific child protection concerns under section 47 of the Children Act 1989. We will make a referral to the relevant local authority children's services and/or the police of any concerns about safeguarding or allegations of abuse identified through any part of our work.⁸

2.2 Risk categorisation of information

14. Ofsted receives information via:
 - notifications, which are recorded on Cygnum and reviewed by the relevant inspector⁹
 - the Applications, Regulatory and Contact (ARC) team, which may receive information by phone or email. This information should be recorded on Cygnum and categorised in the normal way
 - an inspection or from another professional who contacts inspectors directly. This information should be sent to the categorisation mailbox and recorded on Cygnum.
15. Any information that requires immediate attention or fast-track notifications is automatically forwarded to the regulatory inspection manager (RIM) and the social care compliance inspector (SCCI) in the region. This information falls within one of the following categories:
 - the death of a child, young person or vulnerable adult
 - the instigation of a child protection inquiry or an update to an enquiry
 - the referral of a person working in a home pursuant to section 35 of the Safeguarding Vulnerable Groups Act 2006.

For secure children's homes, the following categories are also included:

⁷ Cygnum is the software that underpins Ofsted's inspection system and processes.

⁸ See 'Safeguarding children and young people and young vulnerable adults policy', Ofsted, February 2015; www.gov.uk/government/publications/ofsted-safeguarding-policy.

⁹ The relevant inspector is the social care regulatory inspector (SCRI) or social care compliance inspector (SCCI) responsible for the setting.

- a child who is, or is suspected to be, involved in or subject to sexual exploitation (including a circumstance in which a child accesses or receives electronic material that may suggest they are at increased risk of, or being subjected to, sexual exploitation)
 - a child who absconds from the secure children's home or from an escort service while away from the secure children's home.
16. The SCCI makes an initial assessment within 24 hours of receipt of the notification. They record the decision of any action to be taken and categorise it on Cygnum. This includes whether a case review or discussion with the RIM or other manager is necessary or whether no further action is required. Where no further action is required, the SCCI sends this to the allocated inspector to record as any other notification received.
 17. If further action is required, the duty SCCI opens a compliance case on Cygnum. They record the actions that they have taken, any discussions that they have had and information that they have received. They must consider whether this meets the criteria for a serious incident briefing for senior managers.¹⁰
 18. In all other cases, information is sent to the allocated inspector for their review. They must assess the information in line with the social care common inspection framework (SCCIF) guidance relevant to that particular type of setting.
 19. The RIM must maintain oversight of serious cases to ensure that we take swift action to protect and promote the welfare of service users.
 20. When we receive information about a setting's manager or member of staff being suspended because of an allegation of abuse, or about the death of a child or vulnerable adult, we will speak to the police immediately if they are involved. We will conduct a case review as soon as is reasonably practical to consider our next steps and whether there needs to be an urgent monitoring visit. If the police state that Ofsted is not permitted to visit the setting, this matter must be referred to the relevant senior HMI, social care. There may be occasions when the setting has been designated as a crime scene. We will continue to liaise with the police and, as soon as they agree, we must consider an urgent monitoring visit.
 21. Information may not suggest a risk when viewed in isolation. However, when viewed in the context of other recent events and information, it may suggest fundamental problems.
 22. SCCIs and inspectors must use the risk factors in Table 1 below when making decisions about further action.

¹⁰ See internal guidance on serious incident briefing on SharePoint.

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

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

Inspectors must consider:

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

Action following risk assessment

23. When information suggests a risk of harm, immediate action must be taken to protect children, young people and adult service users. Action may include conducting an inspection/monitoring visit and/or alerting child protection agencies, such as the local authority and the police.
24. For guidance on how we handle child protection concerns about children, please refer to 'Concerns about children: guidance for all Ofsted staff'.¹¹
25. The guidance requires us to ensure that any child protection concerns are referred to the local authority without delay after receiving the information. The allocated SCCI will confirm our referral in writing within 24 hours of the decision

¹¹ 'Concerns about children: guidance for all Ofsted staff', Ofsted, June 2015;
www.gov.uk/government/publications/concerns-about-children-guidance-for-all-ofsted-staff.

to refer. SCCIs are responsible for ensuring that child protection referrals to local authority child protection teams are made.

26. If we are dissatisfied with any action that a local authority child protection team has taken or is proposing to take, we must convene an urgent case discussion to decide what further action we may need to take. This may include a senior HMI, social care.
27. If children's, young people's or young adults' continued placements at the setting are at risk, the regional senior HMI, social care and regional director should be alerted so that they can discuss these concerns with the relevant directors of children's services (DCSs). In addition, a discussion should be held about whether a serious incident briefing is required. A record of the discussions held, documents examined, actions taken and decisions made must be kept on Cygnum.

Recording notifications (non-fast track)

28. The SCRI must record their assessment of all notifications on Cygnum on the day it is completed. This must include:
 - a brief summary of the reason for the notification
 - details of the action taken by the registered person(s) in response to the event being reported
 - details of any contact with the registered person(s), or other relevant people
 - any advice sought from SCCIs or legal colleagues
 - action taken by Ofsted in response to the notification
 - agreed next steps, if any.
29. Deciding whether a notification has been unacceptably delayed must take account of the reasons for the delay. If the delay is to provide more comprehensive information from another agency about the action being taken to protect children, this is acceptable. The more serious the issue, the more important it is that notifications are provided quickly.
30. When we receive a delayed notification, the SCRI must investigate and record on Cygnum the reasons for the delay.
31. We keep our compliance cases under regular review and continue to monitor risk. We should consider changing our action when new information suggests increased or decreased risk. Any change in our judgment must be recorded on Cygnum.

Notifiable incidents from local authorities¹²

32. Local authorities have a duty to notify Ofsted of a serious childcare incident within five working days of becoming aware of the concern. These notifications are normally received by ARC and sent to the serious case review/serious incident notification (SCR/SIN) team. This team uploads them to SharePoint. It makes them available to the senior HMI, social care and regional director for the area where the setting operates.
33. The criteria for notifying Ofsted are:
 - a child has died or been seriously harmed, and abuse or neglect is known or suspected
 - a child looked after has died (including where abuse or neglect is not known or suspected)
 - a child in a regulated setting or service has died (including where abuse or neglect is not known or suspected).
34. If a serious incident relates to a regulated social care setting, we may receive:
 - the serious incident notification from the local authority and/or
 - a notification from the setting concerned under the Care Standards Act 2000.
35. If any member of staff receives a notification relating to a regulated setting that fits any of the criteria above, they must contact the Ofsted Principal Officer, Safeguarding, to inform them of the notification and check whether a local authority notifiable incident has been received.

2.3 Decision-making, discussions and case reviews

36. We make decisions about our next steps in case reviews. This forms a critical part of our decision-making process. From the point when we receive information about a setting to the closure of a compliance case, discussions and case reviews are the ways by which we continually assess risk, make decisions about what we will do, monitor the outcomes of these actions and consider new information.
37. Inspectors and SCCIs may have informal discussions with their RIM when they first receive information. These could be about relatively straightforward issues or concerns, or to prepare for a case review to ensure that RIMs have an effective case overview. The outcome of these discussions must be recorded on Cygnum in the chronology.

¹² Formerly 'serious incident notifications'.

38. If we believe a case may be complex, it is important that the region seeks legal advice as early as possible.

Case reviews

39. There will always be situations when a case review is called very quickly. These situations could be when an inspector is on an inspection and discovers something very serious, or a notification/complaint is received that requires urgent attention – for example, an unexplained death. In those circumstances, the RIM and SCCI should work together to carry out the case review in the most efficient and effective way. The case review minutes must record the rationale and the decision.

Case review following an inadequate judgement

40. Either during the inspection, or following an inadequate judgement, the SCRI should notify the RIM that they have made an inadequate judgement.
41. The RIM notifies the SCCI of the need for a case review. They note whether any other colleagues will be required, for example a legal adviser or senior HMI, social care. The timing of case review must be proportionate to the risk and certainly no later than **five working days** following the inspection. Although it is important that this is held as quickly as possible, the timing of the review must allow time for the SCRI to prepare their evidence. A lack of organised evidence reduces the effectiveness of a case review.
42. The SCCI arranges a case review and requests a minute taker.
43. The RIM organises a post-inspection debrief meeting with the SCRI. It should be held as soon after the inspection as possible and before the case review. It is to discuss in more detail the inspection and the quality of the evidence, and to consider what action they wish to discuss in the case review. It also provides an opportunity for the RIM and the SCRI to discuss the inspection if it has been difficult and for the RIM to address any performance matters.
44. The SCRI provides a summary of the evidence and evaluation, which supports the inadequate judgement for the post-inspection debrief. The summary is then referred to in the case review. The format of the summary must allow the RIM and SCCI to see easily and readily how the judgement of inadequate has been reached.
45. In the post-inspection debrief meeting, the SCRI and RIM discuss pertinent evidence and shortfalls. The RIM reviews the evidence to confirm that the judgement appears sound. The sending and content of the DCS letter can be agreed at this point or deferred to the case review.
46. If the RIM does not consider that the evidence supports the judgement, they must discuss this with the senior HMI, social care and decide on the next steps. These may include referral to the regional director and using the protocol,

'Gathering additional evidence to secure an incomplete inspection'.¹³ If the RIM does not support the inadequate judgement, the RIM notifies the SCCI that the case review is no longer necessary.

47. The SCRI and RIM discuss their proposed recommendation to the case review. The recommendation is to take:
 - no further action, giving the reasons behind this
 - enforcement action, providing information about which regulation the provider has breached, or
 - action under the Care Standards Act 2000.
48. The RIM consults, notifies or requests the senior HMI, social care's attendance at the case review if required.
49. The evidence and initial recommendation are sent to the SCCI to review and to populate the case review notes template.
50. At the case review:
 - the SCCI is the chair
 - the RIM or (if required) the senior HMI, social care is the decision-maker
 - the SCRI presents the evidence
 - the SCCI challenges and tests the evidence by discussion to ensure that it is robust and meets the threshold for compliance action
 - the SCCI provides advice on the value and effectiveness of the RIM's and SCRI's proposals
 - the SCCI ensures that any other matter has been taken into account, including whether the fitness of the manager/responsible individual has been considered, particularly if this is not a first inadequate judgement or the responsible individual/registered manager is at fault
 - the RIM or senior HMI, social care confirms the decision
 - the content of the DCS letter is agreed (if this has not been done already).

Minute taker

51. The ARC adviser joins the case review at the beginning. They take minutes on the case review record¹⁴ to record:

¹³ 'Gathering additional evidence to secure an incomplete inspection: Ofsted protocol', April 2017; www.gov.uk/government/publications/gathering-additional-evidence-to-secure-an-incomplete-inspection-ofsted-related-protocol.

¹⁴ The case review record is an internal form for staff use on the Ofsted intranet

- a summary of the outcome of the case review and the shortfalls in practice, as directed by the SCCI
 - any advice given and by whom
 - decisions made
 - the reasons behind the decisions.
52. The SCCI reviews the minutes and the RIM provides the final quality assurance/sign-off of the minutes.

Case review following a monitoring visit

53. Following all monitoring visits either a case review or discussion will be held (dependent on the outcome of the visit) to discuss the next steps. The following activities are undertaken
- a RIM calls a case review by notifying the SCCI and SCRI
 - the SCCI arranges the case review and includes a minute taker
 - the RIM arranges a post-monitoring visit meeting with the SCRI to review the evidence and outcome of the visit and prepare for the case review
 - the RIM can request that a risk assessment document is prepared if necessary
 - in the post-monitoring visit meeting, the SCRI and RIM discuss key evidence and shortfalls and the RIM undertakes a review of the evidence to confirm that the outcome or change of judgement is sound. This meeting provides an opportunity for de-brief if the visit has been difficult and for the RIM to address any performance matters
 - the SCRI and RIM discuss their initial proposals for further action. The recommendation is either to:-
 - take no further action and to record the reasons behind this
 - change the judgement from inadequate to requires improvement
 - take enforcement action, and provide information on what regulation the provider has breached or whether there is a recommendation to take action under the Care Standards Act 2000
 - the RIM consults, notifies or requests the Senior HMI, Social Care's attendance if required
 - the evidence and initial recommendation is sent to the SCCI to review and to populate the case review notes template.

Minute taker

54. The ARC adviser joins the case review at the beginning. They take minutes to record:

- a summary of the outcome of the case review and the shortfalls as directed by the SCCI
- any advice given
- the decisions made
- the reasons behind the decisions.

Case reviews for all other circumstances

55. Case reviews may also be held when there is a complaint or a notification of concern. In these circumstances, the RIM and SCCI should work together to carry out the case review in the most efficient and effective way. The case review minutes must record the rationale and the decision. If the case review is called urgently, it may not be possible to schedule a minute taker.

Participants and roles in a case review

56. The attendees of a case review will depend on the complexity and nature of the case. As a minimum, it must include a decision-maker, who is either a RIM or SHMI, and an SCCI. It should also have a minute taker, where possible. Policy or legal colleagues may attend where appropriate. Full details of the decisions made at a case review or case discussion and the decision-maker are shown in Annex B. The decision-maker must sign any notice or letter that is issued as a result of a case review.

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

Considerations in a case review

58. A case review must consider all the evidence before making a decision. We consider the following in making our decisions:

- history – all compliance information from previous cases and information from inspections, any trends in non-compliance, the registration history of the registered person(s), information relating to any other setting registered to the provider or previous registrations of the manager
- identifying issues – the concerns leading to the case review, including the risk of harm to children, young people and/or adult service users, any non-compliance with legislation, or the fitness of an individual to be involved in providing or managing children’s social care
- information from other agencies – this may include information from the police, local authority children’s services, a Disclosure and Barring Service (DBS) check or elsewhere
- new information – gained during the course of the investigation: for example, information from the registered person or applicant, including any action that a person has taken to reduce the risk of harm

- robustness of evidence – challenging our evidence, checking that it is comprehensive
- managerial accountability – clearly identifying who is accountable for the breach and whom we could/should take action against (registered provider and/or registered manager)
- compliance and enforcement options – full consideration of all options open to us and why these are appropriate or not. This may include using more than one form of action at the same time. When this is being considered, advice from the legal services team may be sought. We must consider the impact of our decisions on service users and ensure that our decisions are proportionate
- referral to the DBS – considering whether any person involved in the setting should be referred to the DBS. See chapter on ‘Making referrals to the Disclosure and Barring Service’ (page 101) for more information
- arrangements for serving of any notices – clarifying who will draft and serve notices and arranging legal review, where necessary. See chapter on ‘Notice of proposal/notice of decision process’ (page 77) for more details
- timescales and actions – the necessary actions, who is responsible for each action and clear timescales for completion. We should ensure that we avoid drift or delay and take into account booking time with the legal team, preparing press or serious incident briefings and briefing senior managers
- further compliance or enforcement action – other action we may take if the person fails to comply
- monitoring visits – the arrangements for monitoring visits to check on the safety of service users and the registered provider’s compliance with our action
- communication – who needs to be notified about the outcomes of the decision (for example, local authorities, the Care Quality Commission, parents/carers). We must also consider whether the action we intend to take should be communicated to the provider at this point
- linked settings – consider related settings and any implications. We may need to collaborate with colleagues from other remits or other regions about the actions we are taking, or plan to take. The case review must identify these settings and inform relevant colleagues
- date of, or trigger for, the next case review.

Fitness of registered persons

59. As well as maintaining a focus on specific breaches of regulations and law, we should look in a holistic manner at our evidence regarding a registered person’s overall fitness and their ability to maintain a good standard of care. This may include considering integrity and character. We should establish whether the

registered person or (where the registered provider is a corporate entity) the responsible individual and other directors:

- have attempted to keep information away from Ofsted that we should have been informed about (for example, failure to notify of significant events or significant change within the settings)
- have been dishonest in the information they have provided (for example, copying a statement of purpose from a different setting, or making misleading statements in record-keeping)
- have offered only limited or restricted information, rather than full and accurate information
- have attempted to obstruct Ofsted staff in carrying out their duties
- have been slow in providing information to Ofsted or responding to requests for information (for example, returning an action plan)
- have insufficient knowledge of and compliance with the relevant legislation, regulations and standards for the setting
- have not demonstrated that the safeguarding of children, young people and adult service users is their utmost priority
- have not taken other relevant guidance into account in carrying on or managing the setting, for example, 'Working together to safeguard children',¹⁵ 'Statutory guidance on children who run away or go missing from home or care'¹⁶ and 'Child sexual exploitation: Definition and a guide for practitioners'¹⁷
- have a history of being unable to maintain a good standard of care or to respond to requirements/compliance action in a timely and appropriate manner.

Managerial responsibility

60. In deciding what compliance action we will take, we must identify against whom we should be taking this action. The relevant regulations set out clear duties and responsibilities of the registered provider and registered manager. In considering our evidence, we must carefully look at who is responsible under the regulations and at what evidence we have to show that their action or

¹⁵ 'Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children', March 2015; www.gov.uk/government/publications/working-together-to-safeguard-children--2.

¹⁶ 'Statutory guidance on children who run away and go missing from home or care', Department for Education, January 2014; www.education.gov.uk/aboutdfe/statutory/g00222839/children-who-run-away-and-go-missing-from-home-or-care.

¹⁷ 'Child sexual exploitation: Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation', Department for Education, February 2017; www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance.

inaction contributed to the breach. The regulations state whether the 'registered person', 'registered provider' or 'registered manager' is responsible. In the majority of cases, the regulations make the 'registered person' responsible, which includes both the registered provider and the registered manager.

61. When a regulation has been breached, we must consider the roles of both persons in deciding what action we should take against whom. For example:
 - a children's home employs a member of staff who is not fit. Under the regulations, the 'registered persons' are responsible for the fitness of staff. We should, therefore, consider taking action against both the registered manager and the registered provider for the breach. We must ensure that our evidence demonstrates the involvement of both persons in the recruitment process and/or decision, for example, evidence that the registered individual and registered manager were both involved in sifting applications, interviewing and/or checking the staff member's referees and employment history.
62. Inspectors must review the relevant regulations to check which registered persons are responsible for meeting each regulation.
63. The duties that are exclusive to the registered provider include:
 - appointing a suitable responsible individual, who is responsible for supervising the management of the setting
 - appointing a fit manager who is in charge on a day-to-day basis
 - maintaining financial viability of the setting and holding appropriate insurance.
64. Where a registered provider fails in any of the above, we must question their fitness and consider taking action against them.
65. There may be some occasions when we are taking serious action against a registered provider, such as cancelling their registration, but we decide not to take action against the registered manager. This may occur when we have built up evidence over a period of time to suggest that the registered provider is not fit, but they have recently appointed a new registered manager. In this case, we may not feel that it is appropriate to cancel the manager's registration. When this occurs, we must carefully record on Cygnum our reasons for this. See 'Cancellation of registration' (page 63) for further details.
66. Responsible individuals are not registered with Ofsted, but are appointed by the registered provider. The legal duty lies with a registered provider to ensure that the person they appoint as the responsible individual is suitable to take on the role.

67. It may come to Ofsted's attention that a responsible individual is not suitable. When this occurs, we must consider how this reflects on the registered provider's fitness, as they appointed the person and considered them to be suitable when there is evidence to suggest that they are not. This does not prevent us from considering the quality of the supervision and oversight provided by the responsible individual in determining a registered provider's ongoing fitness
68. When there is evidence that a responsible individual has been neglectful in their supervision or that their action/inaction has contributed to a breach of regulations, we must take this into account when considering what action we will take against the registered provider. We cannot take action against the responsible individual directly.¹⁸
69. A responsible individual may commit offences found in the Care Standards Act 2000, such as obstruction. A responsible individual may also become disqualified. When we cancel the registration of a provider and/or a manager of a children's home, any person who had a financial interest or who was concerned in the management of the home at the time becomes disqualified. This extends to the responsible individual and will make them disqualified.¹⁹ See chapter on 'Children's homes disqualification and written consent' (page 100) for further details.

2.4 Unregistered social care provision

Introduction

70. A person who carries on or manages an establishment or agency that falls within the definitions in the Care Standards Act must be registered in respect of it under Part 2 of that Act. A failure to register is an offence under section 11 of the Act and we may prosecute.²⁰
71. Operating an unregistered social care setting may pose a significant safeguarding risk to service users.
72. The relevant offences are:

'Any person who carries on or manages an establishment or agency of any description without being registered under this Part in respect of it (as an

¹⁸ Unless they commit an offence for which we can prosecute any person, such as obstruction. See chapter on 'Prosecution' (page 56) for more detail.

¹⁹ Regulation 2(7)(c) of the Disqualification from Caring for Children (England) Regulations 2002; www.legislation.gov.uk/ukxi/2002/635/made.

²⁰ This does not apply to voluntary adoption agencies. Offences under adoption are set out in the Adoption and Children Act 2002; www.legislation.gov.uk/ukpga/2002/38/contents.

establishment or, as the case may be, agency of that description) shall be guilty of an offence.²¹

Exemptions from registration

73. There are some settings for children, young people and adults that do not require registration with Ofsted. The exemptions are set out in the Care Standards Act 2000 and setting-specific regulations.

Unregistered managers

74. It is an offence under Section 11(1) of the Care Standards Act 2000 to manage an establishment or agency (other than a voluntary adoption agency) without being registered in respect of it.
75. We expect the manager of a registered establishment or agency to apply to us for registration as soon as possible but always within six weeks of the first date of their employment. This is to minimise the risk that unsuitable people may manage establishments or agencies. When a provider notifies us they have appointed a new manager, the inspector should ask the applications team to write to the manager to remind them that they are required by law to register. Inspectors should ensure that a copy of the letter, and any response, is stored on Cygnum.
76. Where there is no application from a manager within six weeks of the first date of their employment, the inspector should contact the RIM or social care compliance inspector for advice and record this discussion on Cygnum. If the manager has failed to submit an application after 12 weeks of being in post, the RIM should consider what action is to be taken. This may include opening a compliance case if it is appropriate to take enforcement action. If the RIM decides that enforcement action is not required, they must share this with the SHMI.

Responding to a report of an unregistered setting

Initial response

77. When we discover, or receive a report, that a person or organisation may be providing or managing a setting that requires registration with us, we check Cygnum for any previous knowledge about the setting, individual or company. We look to see whether:
- the person or organisation has submitted an application for registration

²¹ S.11(1) Care Standards Act 2000; 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, a responsible individual or a manager of a different setting
- we have previously investigated the person for providing or managing children’s social care without being registered
- we have previously refused the person registration.

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

Visits to potentially unregistered settings and/or managers

79. Before any visit, the region should review available information and seek legal advice to inform the planning of the visit.

80. These visits are not statutory inspections. Rather, we use our powers under section 31(2) of the Care Standards Act 2000 to enter and inspect these settings. We have the right to enter any premises that we consider may be operating without registration.

81. When planning a visit, we must take into account any advice provided by legal services. We should also plan how to adopt the principles set out in the codes of practice that accompany the PACE Act.²²

82. Inspectors should apply the following guidance when visiting a setting that we believe may be being provided or managed without registration:

- Visits to establishments should normally be unannounced, but may be announced in exceptional circumstances, for example, in the case of some agencies or offices, to enable best evidence to be collected.
- Once at the premises, establish the identity of the person or persons who are suspected of carrying on and/or managing the setting.
- If the person or persons carrying on and/or managing are not on site, take full contact details for them and attempt to make contact immediately, informing them that you are at the setting. Invite them to attend at the earliest opportunity.
- Obtain full details about the setting and provider. Relevant questions can include:
 - information about the nature of care or service provided

²² Police and Criminal Evidence Act 1984 (PACE) codes of practice, Home Office; www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice.

- the age and needs of the children, young people or adults to whom services are being provided
 - detail of the services being provided, including the date the setting first operated
 - detail of any placing authorities and/or commissioner of services
 - any other information required to establish whether this setting is operating within the law.
83. It may be necessary to take copies of documents relevant to the setting to assist in establishing the above points. These could be, for example, documents containing the details of children placed, their placing authorities and their care plans. We always ask if we can have copies of these documents. If the provider refuses to provide these, we have the power to seize evidence or take copies of documents under Code B of the PACE Act 1984.
84. Once the inspector has sufficient information or has exhausted all attempts to obtain information/contact the provider, they must leave the setting and advise that we will be in contact. Inspectors will not normally give a decision at this stage as to whether registration is required.
85. If the inspector has reasonable grounds to suspect that any person present is carrying on and/or managing a provision that requires registration, they should caution that person. Alternatively, if any other person starts to admit to carrying on and/or managing an unregistered provision, the inspector should immediately caution that person. This is so that their rights are protected and any information gathered can be used in action taken later. Any interview at the setting should be brief and used to obtain basic information. Anything said by that person after caution in relation to the suspected offence is important and should be recorded. Please see 'PACE Act caution' section for more guidance (page 51).
86. If the inspector is confident that any person is operating an unregistered setting, they should advise them that it is likely that we will request that they stop operating. We must tell the person(s) operating the establishment to contact the placing authorities to alert them that they may have to find an alternative placement for any child they have placed.
87. If the inspector is in any doubt as to how to proceed, they should contact a RIM or SCCI for advice.
88. Before any further decisions are taken, an urgent case review must be held to determine next steps.

Safeguarding

89. If the inspector considers that young people are at risk at the setting, irrespective of whether it should be registered or not, they must refer any

information, partial or incomplete, immediately to the local authority children's services and/or the police.

Taking the investigation forward

90. Following the visit, we assess the information and decide at a case review which of the following apply. We take into account legal advice and the guidance for inspectors on unregistered settings.
- If the service provided does not require registration with Ofsted, we must:
 - confirm this in writing to the provider and, where appropriate, the manager. Any correspondence must clarify that, although we are of the opinion that the setting did not require registration at the time of our visit, it may in the future if the nature of care provided, or regulations, change. We should also clarify that it is the provider's responsibility to ensure that they remain up to date about whether registration is appropriate.
 - If the setting does require registration, we must:
 - inform the provider and/or manager that they must cease operating. We can allow the provider a short time to contact the placing authority to make alternative arrangements for children's placements. We should, where possible, work with the placing authorities and allow a limited amount of flexibility to support them in their plans. When children and young people are already living at the service, every effort should be made to ensure that they leave that day. If this is not possible, plans should be made for them to leave on the following day
 - inform the provider that if they wish to operate this service, they must submit an application and cease operating until a decision is made on the application
 - inform the local authority that it has placed a child in unregistered provision. We must ask the authority to provide any relevant documents, for example anything that indicates that the establishment was registered. We must inform the placing authority that these documents may be used as evidence in any action we may take
 - conduct visits to the setting to ensure that it has ceased operating.
91. If the decision of the case review is that the region wants to consider prosecution of a person or persons, the region must consult with legal services. Advice may be given about whether it is necessary to gather further evidence or to conduct further enquiries before an interview under caution can take place. After the investigation and interview have been carried out and all reasonable lines of enquiry have been pursued, the case will be referred to legal services. They will consider and advise on whether the case meets the evidential and public interest tests (see pages 57–58).

2.5 Investigating concerns and collecting evidence

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

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

94. When we receive low-level concerns that do not suggest a risk to the safety or well-being of service users, and when the provider's compliance and inspection history does not give us cause for concern, we may ask a provider to submit information to us on how they have responded to a concern. In these instances, we write to the registered person(s), normally within five working days of the decision, asking them to provide us with a comprehensive report on the steps they have taken (which may be in the form of an action plan) in response to the concerns. The inspector and the RIM will make this decision and record their reasons on Cygnum. The registered person(s) is normally given seven working days from the date of our letter in which to respond.
95. On receipt of the registered person's response, the inspector assesses the information within two working days. They determine whether it adequately deals with the concern. The inspector must record on Cygnum a summary of the response, an analysis of its content and conclusion about whether it is satisfactory. RIMs must review and agree the inspector's recommendation and close on Cygnum within a further two days.
96. If we do not receive a response to our letter within seven working days, the SCCI and RIM must decide on a course of action. This could be to contact the provider or conduct an immediate inspection or monitoring visit, depending on the urgency and severity of the concern.
97. Where the response or action plan is unsatisfactory, we will assess the risk and determine when to complete an inspection or monitoring visit.
98. Where the action plan or response is appropriate, the inspectors must check that the actions are complete when they next inspect the setting.

Investigating a concern at inspection or at a monitoring visit

99. There are four different types of visit that Ofsted can conduct in relation to concerns about a provider.²³ These are:
- an inspection that includes an investigation into information received that suggests there may be a breach of regulations
 - a monitoring visit to investigate information received that suggests there may be a breach of regulations
 - a monitoring visit to monitor compliance with enforcement action, for example compliance with a restriction of accommodation notice or compliance notice
 - a monitoring visit following an inadequate judgement (which may include monitoring of a compliance notice).
100. The decision to undertake a statutory inspection or a monitoring visit is made by the RIM or a senior HMI, social care, via a case review. See chapter on 'Decision-making, discussions and case reviews' (page 11).
101. The decision will be made using the factors in Table 1 (page 9). It is based on the level of risk and the inspector's professional judgement.
102. We may investigate a concern as part of a statutory inspection, for example, by bringing forward the inspection or scheduling an interim inspection for a previously good children's home or outstanding provider. If we decide to investigate a concern as part of an inspection, we must comply with our notice periods as set out in the inspection guidance for that type of setting. We should cover all the elements that are usually considered and judged at a full or interim inspection and not solely concentrate on the concerns raised. The inspection report should mention that the inspection was brought forward to address concerns and report any findings.
103. We will usually conduct a monitoring visit to a setting when:
- 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 a full and interim inspection in the current inspection cycle. If a children's home has already had a full inspection and no interim inspection was planned, then we would usually carry out an interim inspection²⁴

²³ The power to inspect in all of these types of visits comes from section 31(2) of the Care Standards Act 2000.

²⁴ Regulation 27 (3A) of Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2017 states:

- we need to make a joint visit with another agency or remit within Ofsted, for example early years
- concerns are numerous or potentially complex and would not allow sufficient time to explore them alongside the matters that we must look at and judge as part of an inspection
- we assess that the risks to children, young people and, where appropriate, adults' safety and welfare warrant a visit at any other time.

104. The case review will determine the timescales for conducting the monitoring visit or inspection. It can also determine whether the visit should be announced or unannounced, irrespective of the usual practice at inspection for that service type. There may be circumstances in which it is appropriate to give notice, for example, if it is important for the provider or manager to be on site to respond to our enquiries.

2.6 Planning an inspection or monitoring visit

105. All inspections and monitoring visits are carefully planned and recorded on Cygnum. The planning should take account of the following:

- whether it needs to be a joint visit with another agency
- whether we may need to take any action to protect children, young people or adult service users
- whether to contact the person who raised the concern to gain further information
- whether to inform the registered person(s) or person in charge about the concerns we have received
- what observations of practice we need to see
- what specific lines of enquiry we need to consider
- whether there are any concerns about the manager and the nature of those concerns
- how involved the registered provider, responsible individual and registered manager are
- how we will protect the identity of the complainant, where applicable

'Where in any year an inspection in that year results in a report prepared under section 32(5) of the Care Standards Act 2000(1): (a) which records a judgement that the overall experiences and progress of children and young people living in a children's home are good or outstanding; and (b) there has been no subsequent inspection in that year resulting in a report prepared under that Act which records a judgement that the overall experiences and progress of the children and young people are less than good, the Chief Inspector must arrange for that home to be inspected at least once in the year following inspection.' This does not apply to secure children's homes;
www.legislation.gov.uk/ukxi/2017/245/contents/made.

- who needs to be interviewed
- what documents need to be examined, copied and/or seized
- what action we may need to take if the provider is non-compliant with relevant legislation
- what to do if we are refused entry to the setting
- how work is divided if more than one inspector is conducting the visit, including who is leading the visit.

2.7 Undertaking a visit with another agency

106. Ofsted's statutory rights of entry and rights to view and copy documents may not, in general, be shared with another agency. Therefore Ofsted should not undertake joint visits with any other agency or enable others to visit a provider using Ofsted's powers of entry. There may be occasions where it would be permissible for Ofsted to undertake a visit **at the same time** as another agency, where both have concerns about a provider.
107. In such cases the other agency must be able to enter the setting, and take action whilst at the setting, under their own legal powers, such as those provided to the police. Both agencies must explain the purpose of their visit to the provider before entering the setting so that the provider can give informed consent to both visits. When an Ofsted visit takes place at the same time as that of another agency, it is important that the other agency does not influence (or appear to influence) any decision or action taken by Ofsted. The two agencies should collect evidence separately. Evidence collected by Ofsted should not be shared with the other agency and vice versa. Any visit undertaken at the same time as a visit by another agency must be agreed by the RIM in advance.

2.8 On site during an inspection or monitoring visit

108. We inform the registered person(s) or person in charge at the time of the inspection or monitoring visit that we are investigating a concern, and of any information we have that suggests non-compliance. When we relay our concerns to the person in charge instead of the registered person(s), we ask and record how they will inform the registered person(s) of what we have said.
109. There may be circumstances where it is not appropriate to share all the information about a concern. Examples of this include: 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.

2.9 Recording evidence

110. When undertaking a monitoring visit or an investigation during an inspection, all evidence must be recorded accurately.

111. All evidence must:

- show what time of day the visit started and ended
- note who was spoken to and what they said
- note the documents seen and provide an evaluation of their contents. This may include taking photographs or copies of relevant records
- contain analysis of any risks or potential risks to children's, young people's and/or adult service users' safety and welfare and what this means in relation to compliance or enforcement
- be sufficient in quality, quantity and range to evaluate the specific requirements subject to investigation
- clearly state the source of all evidence
- support any compliance or enforcement outcomes
- provide a record, which underpins and secures the decisions and inspection judgements.

2.10 Taking photographs

112. Inspectors can take photographs during an inspection or monitoring visit.

113. Inspectors cannot take photographs of children, staff or children's personal possessions without their consent.

114. It is unlikely that inspectors will need to take photographs on routine inspections when there are no concerns.

115. Photographs can be valuable evidence when it is difficult for inspectors to describe what they have seen. They are also useful when the condition of something is poor and could be changed quickly, for example a dirty kitchen.

116. When records are important pieces of evidence as a more practical option, inspectors may take photographs of records as an alternative to taking photocopies and is preferable to summarising what is in a record, which could be disputed.

117. Inspectors should print photographs and make sure that the date is either imposed on the photograph or that they write the date and sign the photograph on the back.

2.11 Providing feedback at the monitoring visit

118. Inspectors must summarise the information at appropriate times during the inspection or visit, and share this with the registered person(s) or person in charge. This helps to consider matters as they emerge and to ensure that inspectors fully understand and note the responses correctly. It also helps the

registered person(s) to consider any other evidence they wish us to know about.

119. When giving feedback to the registered person(s) or person in charge, inspectors must:

- use plain language
- be clear about whether we believe there are breaches of regulations, and on what evidence
- be clear as to whether we consider that service users are being harmed or may be at risk of harm
- give a clear basis for any action that the provider must take by identifying issues that are central to improvement and/or protection
- write down their own response to any feedback provided by staff, registered person(s) or person in charge
- explain Ofsted's options for further action, both non-statutory and statutory
- explain that the inspector must review the evidence with colleagues before making a final decision on the next steps to take
- give an estimated timescale within which the registered person(s) will receive a decision or update.

2.12 After the visit or inspection

120. Inspectors must:

- record the information and evidence from the inspection or visit on Cygnum, usually within 24 hours of the visit or inspection
- advise and consult the RIM about the next steps to take, usually through the case review process
- scan any relevant documents or photos and upload them on Cygnum.

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

122. There is no need to keep original documents unless we intend to prosecute. Consult legal services on where these should be stored.

2.13 'Inadequate' judgement at inspection

123. Inspectors should refer to the SCCIF for the relevant setting type to establish what they need to consider in the case discussion and case review. They should also use it for service-specific guidance on monitoring visits following inadequate judgements.

Part 3: Range of compliance and enforcement action

3.1 Compliance and enforcement powers available to Ofsted

124. The law gives Ofsted a range of powers to regulate children's social care settings. We use both statutory (compliance and enforcement action supported by law) and non-statutory powers, which flow from the express and ancillary powers of HMCI approaches to address non-compliance with the relevant legislation. The diagram on page 33 below sets out the range of powers available to us. In all cases, in exercising our functions we must have regard to the need to safeguard and promote the rights and welfare of children and, if necessary, vulnerable adults.

Multiple compliance actions

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

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

127. For example, while issuing a notice of proposal to cancel registration or impose conditions on a registration, we may also restrict accommodation to provide immediate protection to children, young people and adult service users.

3.2 Statutory and non-statutory enforcement actions

128. Non-statutory enforcement actions available to us are to:

- **Raise a requirement at inspection/monitoring visit:** we raise a requirement in an inspection report against the regulations.
- **Make a recommendation at inspection/monitoring visit:** we make a recommendation for action in an inspection report against the national minimum standards or the 'Guide to the children's homes regulations including the quality standards'.
- **Issue a warning letter:** when a person has admitted an offence, but we do not feel that it is proportionate to prosecute or issue a simple caution. A copy of the warning letter will be kept on Cygnum and referred to if the person commits a further offence or applies to register a further setting.
- **Issue a simple caution:** when a person admits an offence, but we decide not to prosecute, a simple caution can be administered. This can also be taken into account if similar offences are committed in the future

and in future civil compliance action.²⁵ These cautions have no statutory basis and are not recorded as a police caution would be on someone's criminal record. A record of the simple caution will be kept on Cygnum. We may refer to it if the person commits a further offence or applies to register a further setting.

129. Statutory enforcement actions available to us are:

- **Prosecution for an offence:** we can prosecute a person for committing an offence. A person can appeal against a conviction through the criminal courts.
- **Imposing or varying conditions of registration:** we do this through the notice of proposal/notice of decision route to impose or vary conditions of a person's registration. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Granting registration with conditions not previously agreed with the applicant:** we can grant registration with conditions not previously agreed by the applicant through the notice of proposal/notice of decision route. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Refusal of a request to vary or remove conditions of registration:** a registered person can request that we vary or remove conditions of their registration. If we intend to refuse, we do this through a notice of proposal/notice of decision route. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Serving a compliance notice:**²⁶ the notice sets out an action that a person must perform by a set date, when they are failing to meet a regulation. If the person does not complete the action within the specified timeframe, this is grounds for cancellation. They have committed an offence that we could prosecute for. There is no right of appeal against a compliance notice.
- **Suspension of a registration:** we can suspend the registration of a provider or manager through the notice of proposal/notice of decision route. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action. It is grounds for cancellation if

²⁵ Please consult the legal services team with regard to relevant time limits relating to the applicability of historic simple cautions.

²⁶ A decision to issue a compliance notice may be subject to judicial review.

they continue to operate while suspended. It is an offence for a person to fail to comply with a suspension once it has taken effect.

- **Restriction of accommodation:** we can issue a notice to restrict accommodation at a children's home, residential family centre or holiday scheme for disabled children. The notice takes immediate effect from the time it is served. It prevents the setting from taking any new placements. Children and young people currently residing at the setting may continue to do so, but cannot be discharged and re-admitted. A registered person may appeal to the First-tier Tribunal against this action.²⁷
- **Cancellation of a registration:** we may cancel a person's registration through the notice of proposal/notice of decision route. This will stop the person from carrying on or managing the service. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action.
- **Refusal of a registration:** we may refuse a person's application for registration through the notice of proposal/notice of decision route. A person may make written representations to Ofsted and/or appeal to the First-tier Tribunal against this action. A refusal will disqualify a person from being able to carry on, be otherwise concerned in the management of or have a financial interest in a children's home in the future unless that person has secured Ofsted's consent.
- **Emergency suspension:** we may suspend a person's registration in an emergency by serving them with a notice. The suspension takes effect from the point of service. It is an offence for a person to fail to comply with the suspension. A person may appeal to the First-tier Tribunal.²⁸
- **Emergency action to vary or impose conditions of registration:** we may apply to a magistrate to impose or vary a person's conditions of registration. The order takes immediate effect. It is an offence not to comply with conditions of registration. The person may appeal to the First-tier Tribunal.²⁹
- **Emergency cancellation of registration:** We may apply to a magistrate to cancel a provider's or manager's registration. If granted, the order takes immediate effect. It is an offence for the person to continue to provide or manage the service. The person will also be disqualified from the type of involvement detailed above in children's homes in future unless

²⁷ These appeals are subject to our expedited appeals process. Please see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for more detail.

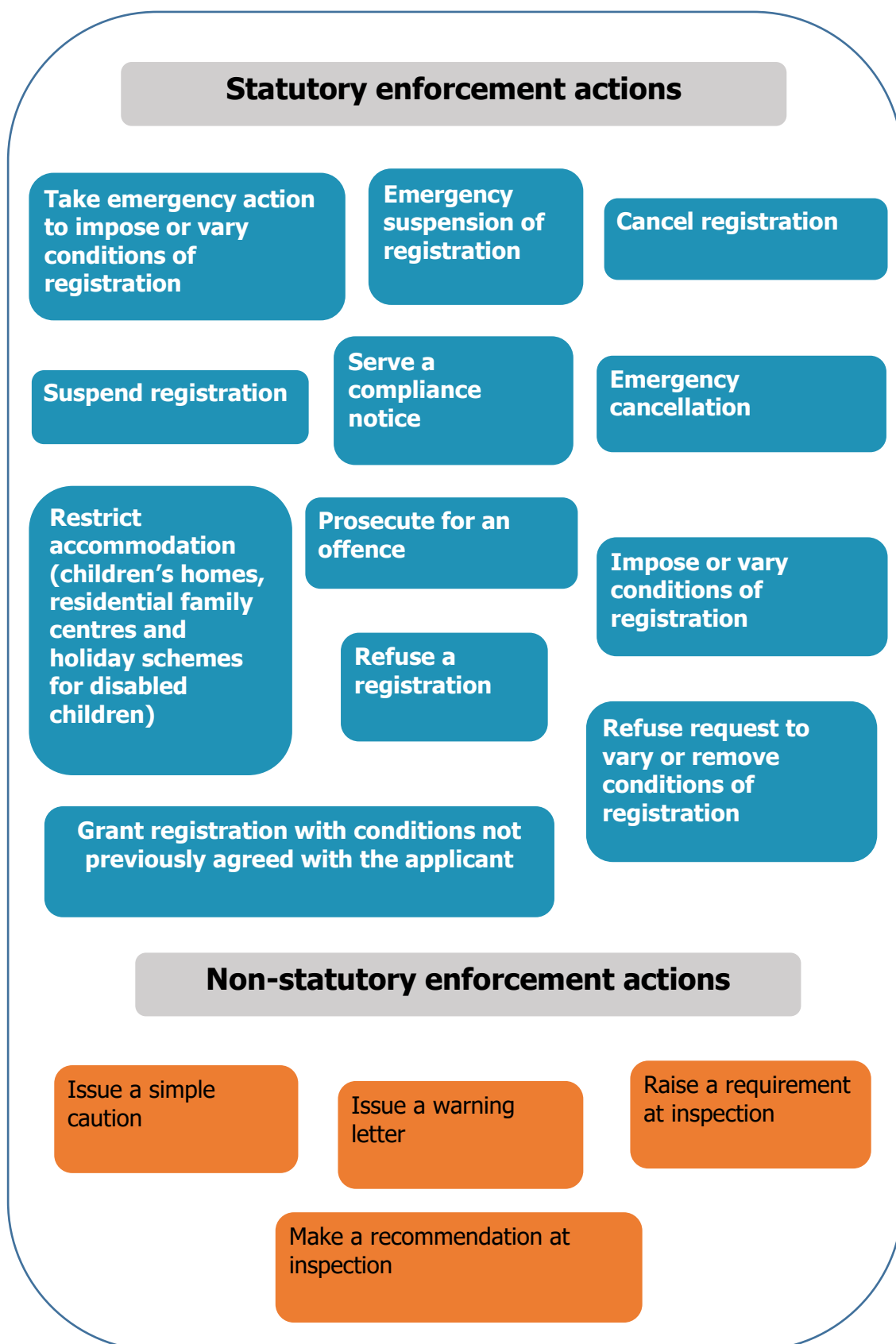
²⁸ These appeals are subject to our expedited appeals process. Please see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for more detail.

²⁹ These appeals are subject to our expedited appeals process. Please see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for more detail.

they have obtained Ofsted's consent. The person may appeal against the cancellation to the First-tier Tribunal.³⁰

³⁰ These appeals are subject to our expedited appeals process. Please see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for more detail.

130. Non-statutory and statutory enforcement actions are set out in the following table.



3.3 Compliance notices

Introduction

131. The aim of a compliance notice is to remedy a specific matter rather than to place a general obligation on a provider to continue to meet the relevant statutory framework. Compliance notices set out the steps that a registered person must take by a certain date to meet the requirements imposed by the relevant regulations.
132. A registered person commits an offence if they do not complete the steps(s) set out in a compliance notice by the date specified. This is a ground for cancellation.

Threshold

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

Legal basis for serving a compliance notice

134. We serve compliance notices under section 22A of the Care Standards Act 2000.
135. This section specifies that the requirements that may be the subject of a compliance notice are those imposed by regulations made under:
- section 22 of the Care Standards Act 2000
 - section 9 of the Adoption Act 1976
 - section 9 of the Adoption and Children Act 2002.
136. We may issue a compliance notice against a registered provider or a registered manager of:
- an adoption support agency
 - a children's home, including a secure children's home
 - a residential holiday scheme for disabled children
 - an independent fostering agency
 - a residential family centre

- a voluntary adoption agency.

Evidence required for a compliance notice

137. We serve a compliance notice when we have evidence that the registered person is failing/has failed to comply with a legal requirement imposed on them in relation to the setting, for example, when the person has breached the relevant regulations.
138. We must have evidence that shows the failure to comply. Examples of evidence include inspectors' observation evidence (when evidenced by contemporaneous notes), an inspection report, an investigation report and/or photographs and records from the setting (copies or originals). This evidence must demonstrate that, based on the balance of probabilities, the person has breached the regulation.

Making the decision to serve a compliance notice

139. The decision to serve a compliance notice must be made in a case review, as set out in 'Decision-making, case discussions and case reviews' (page 11).
140. We do not have to set requirements before issuing a compliance notice. There may be circumstances in which it is appropriate for us to immediately serve a compliance notice when the breach is sufficiently serious and/or the risk indicates that the need and/or the history of compliance by the registered person is of concern.
141. We must carefully consider on which registered person we should serve the compliance notice. This means asking: does evidence demonstrate that the breach of regulations relates to the actions or inactions of the registered provider, the registered manager or both? However, it is usual to serve the notice on the registered provider.

Drafting a compliance notice

142. The inspector generates a notice from Cygnum and drafts the content, which is reviewed by an SCCI. It is quality assured and signed off by the case review decision-maker. When the compliance notice is being issued following a statutory inspection, the report must be sent at the same time as the compliance notice. The notice must not go out without the report. This process should usually take no longer than seven days.
143. Most compliance notices do not need to be sent to legal services for review, unless they are complex or part of some ongoing action. The RIM must quality assure and review a compliance notice before it is sent to the legal team.
144. Any notice must be drafted with the most important aspect of the concern first, followed by a summary of the best evidence that illustrates the person's failure to comply.

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

Information to be included in a compliance notice

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

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

149. We must set an appropriate timeframe for the completion of the steps set out in the compliance notice. The timescale for the registered person to comply with the notice starts from the date of the notice and not the date that we serve it (see chapter on ‘Notice of proposal/notice of decision process’ (page 77) for further details). This means that the date of the notice and the effective service date should be the same as far as possible, and served immediately when a registered person is required to undertake urgent action.
150. Compliance notices can be served quickly to require a person to put matters right and to comply with the law quickly. When we need a provider to take immediate and urgent action, we can set a timeframe of 24 hours, where appropriate. When urgent steps are required, we must consider delivering the notice by hand so that the registered person is able to comply with the

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

151. As a general guide, no compliance notice should give a timescale for completion of more than 12 weeks. We may consider serving a compliance notice in conjunction with other compliance or enforcement action where we have wide-reaching concerns.

Serving a compliance notice

152. We must serve a compliance notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 77).

Monitoring a compliance notice

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

- record the findings of the visit on Cygnum.
159. During a monitoring visit, we may also find evidence that a registered person is failing to meet requirements other than those specified in our compliance notice(s). If this occurs, we should convene a case review and consider what further action we may take against these additional breaches of regulation. We may use a pattern of non-compliance as general evidence of lack of fitness for continued registration. This may form the basis for undertaking other enforcement action, such as issuing a notice of proposal to cancel the registration.
160. With the exception of cases of residential accommodation in further education colleges, we will send a report detailing the outcome following the monitoring visit. This report will be published on our website alongside the registered provider's inspection reports, unless there are exceptional reasons not to do so.³¹

Determining whether a compliance notice has been met

161. When following up the requirements on a compliance notice, we consider what action the registered person has taken, including any submissions they have made in respect of meeting the compliance notice. A registered person must fully comply with the steps set out in the compliance notice within the deadline specified. Partial completion of a step is not sufficient. The inspector conducting the visit recommends to the subsequent case review that the action has or has not been met. The decision will be made at the case review and noted in the case review record.
162. There are no exemptions or excuses provided in law for failing to comply with a compliance notice. This means that a person must meet the notice, even when they have applied to cancel their registration voluntarily and that cancellation has not yet taken effect, or when they have no current service users.
163. If the case review decision is that the compliance notice has been met, we confirm this in the monitoring or inspection report. We then consider whether to close the compliance case.
164. If the case review decision is that a compliance notice has not been met, the case review must consider what further action we will take. Failure to comply is a ground for cancellation. If a provider fails to comply with a notice, we should either take steps to cancel their registration or issue a further notice. Although an offence has been committed under section 22A (4) of the Care Standards Act 2000, the case review must consider whether pursuing prosecution is the most appropriate action.

³¹ For further education colleges, we send the letter to the college. We do not publish the report.

165. If the registered person has complied with the requirements set out in the notice, but, during a visit we observe a different failure, this does not constitute a failure to comply with the notice. The case review should consider whether this breach can be remedied via a requirement or a further notice.

3.4 Suspension of registration

Introduction

166. Ofsted has the power to suspend a registration under sections 14A and 20B of the Care Standards Act 2000. The power to suspend a registration applies to all regulated settings. This power allows Ofsted to suspend the registration of a provider. The decision to suspend a registration must be made at a case review and a record kept of the decision and decision-maker. Ofsted will normally issue a notice of suspension for 12 weeks.

167. On rare occasions, we may decide to suspend a registered manager. For example, a registered manager may have been arrested and/or charged with a significant offence, which brings into question their fitness as a manager. If the registered provider has refused to suspend the registered manager, then we may use our powers to suspend them.

168. It is an offence for a person to carry on or manage a setting while their registration is suspended. We may suspend through:

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

169. Urgent suspension enables:

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

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

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

Threshold for emergency procedure

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

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

174. The notice is effective from the time it is served by hand. This means that the moment the notice is served, the registered manager and registered provider should no longer operate the setting.

175. When Ofsted decides to suspend a registration in an emergency, we must communicate our decision to the provider by telephone as soon as that decision has been made in case review and prior to drafting the notice. We should record a summary of the conversation on Cygnum. Ofsted will also notify the placing authorities of our decision and of our reason for doing so at the same time, to give the maximum amount of time available for them to find alternative and suitable accommodation for any children placed. Decisions about who will notify the registered person(s) and placing authorities should be made during the case review.

176. We must be mindful of the difficult task in this situation of the placing authorities, which have to find alternative accommodation for their young people. We should, where possible, work with the placing authorities and allow a limited amount of flexibility to support them in their plans. However, we must bear in mind that we have suspended the registration because we consider that children may be at risk. Every effort should be made to ensure that children and young people leave on the day of the suspension. If this is not possible, plans should be made for them to leave on the following day.

Threshold for non-urgent procedure

177. A suspension under the non-urgent procedure is subject to the notice of proposal, written representations, notice of decision and appeal process. A suspension will not take effect until the 28-day period for lodging an appeal against the notice of decision with the First-tier Tribunal has passed, or when an appeal has been lodged and the Tribunal has heard and dismissed the appeal.

178. Ofsted can suspend a registration under this procedure when it can demonstrate that the 'establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements'.

179. Ofsted will suspend a registration using the non-urgent procedure when this is considered a reasonable option to deal with the regulatory breaches found and to secure children's, young people's and adult service users' safety and well-being. The test for a non-urgent suspension is the same as for cancelling registration. Whenever we consider taking this action, we must discuss whether cancellation is appropriate instead and, if not, record the reasons for this.

Serving a suspension notice

180. We must serve the notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 77).

Drafting the notice to suspend registration

181. We must include as much information as possible in the notice to explain the reasons for our decision. However, there may be occasions when we are not able to provide full information as it may compromise the investigation of another agency, such as the police. In these cases, inspectors must record on Cygnum the reasons for withholding any information. We must ensure that any information we share is in accordance with the Data Protection Act 1998.

182. Emergency procedure – the notice of suspension must:

- state that it is given under section 20B of the Act
- state Ofsted's reasons for believing that the circumstances fall within section 20B(1)(b) of the Act
- specify the period (or extended period) of suspension (section 20B(4)(c))
- explain the right of appeal conferred by section 21 of the Act.

183. Non-urgent procedure – the notice of proposal to suspend registration must:

- state that it is given under section 17(4)(aa) of the Act
- state Ofsted's reasons that the circumstances fall within section 14A(2) of the Act
- specify the period (or extended period) of suspension
- explain the right to make representation under section 18 of the Act.

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

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

Issuing a further suspension of either type

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

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

186. Further periods of suspension will normally be of 12 weeks. When a further period of suspension is to be imposed, the notice must comply with all the detail required in the original notice of suspension. In addition, the notice must clearly set out:

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

Reviewing the decision to suspend a registration

187. Ofsted will monitor suspensions at least twice during the 12-week period of suspension. This should include at least one visit in the first six weeks and one further visit in the second six weeks.

188. The suspension decision must be reviewed:

- before the period expires, or earlier when there is evidence that the relevant test is no longer being met

or

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

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

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

190. Ofsted must issue a new suspension notice for any further suspension period it decides to apply. Depending on the level of concern and the facts of the case, Ofsted can use the non-urgent or emergency procedure.
191. After two periods of 12 weeks of suspension under the emergency procedure, we should consider cancellation. Any decisions not to proceed with this step must be recorded in the minutes of the case review. This decision should be kept under review and the reason for the ongoing suspension agreed and recorded monthly.

Notifying local authorities of the suspension

192. Ofsted must send a notification to every local authority in England and Wales when:³²
- issuing a notice to suspend registration (emergency procedure)
 - issuing a notice of decision to suspend (non-urgent procedure)
 - issuing a further notice to suspend
 - lifting a suspension
 - the registered person appeals against a suspension, including the outcome of any appeal.

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

193. Registered persons can apply to remove, or vary, the period of suspension under section 15(1)(c) of the Act. They can do so by writing to Ofsted, outlining the reasons why the risks to children, young people or adult service users have been removed. There is a requirement for the application to be accompanied by a fee. At present, the relevant fee level has not been prescribed in regulations by the Department for Education. Therefore, until the fee has been prescribed, an application should be accepted without an accompanying fee.
194. We must convene a case review within three working days of receipt of the application to decide whether to grant or refuse the application.
195. If Ofsted decides to grant the application, a notice outlining the decision is served in writing on the applicant (stating, where applicable, the new timescale for the suspension).
196. If Ofsted refuses to grant the application, we serve a notice of proposal and then a notice of decision to the applicant, giving our reasons why this decision has been taken.

³² Section 30A of the Care Standards Act 2000.

Written representations and appeals against a notice to suspend registration

197. A registered person, who is subject to an emergency suspension under section 20B, has no right to make written representations to Ofsted but can appeal to the First-tier Tribunal once the suspension takes effect. The registered person has 28 days from receipt of the notice served under section 20B to make an appeal. An expedited process applies to appeals against emergency suspension.³³
198. The registered person who has been served with a notice under the non-urgent procedure has the right under section 21 of the Act to make an appeal against the suspension to the First-tier Tribunal before the decision to suspend takes effect. The registered person has 28 days from the date on which the notice of decision is served to make an appeal. See chapter on 'Written representations' (page 83) and 'Appeals to First-tier Tribunal, Health and Social Care Chamber' (page 89) for further details.

3.5 Restriction of accommodation

Introduction

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

Legal basis for a notice restricting accommodation

200. A notice restricting accommodation in effect prevents a children's home, residential family centre or holiday scheme for disabled children from accepting any new placements, while allowing those service users who were residing at the home, centre or scheme at the time the notice was served to remain.
201. 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.'

Threshold

202. Section 22B of the Care Standards Act 2000 does not set a statutory 'test' or threshold to be met to restrict accommodation.

³³ Please see 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for more detail.

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

Making the decision to serve a notice restricting accommodation

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

Drafting the notice restricting accommodation

209. We must create a notice restricting accommodation for both registered person(s): the registered provider and the registered manager. The Act specifies the information that we must include in the notice restricting accommodation:

- explain the requirements imposed by the notice
 - specify the establishment or holiday scheme that the restriction applies to
 - give our reasons for serving the notice
 - explain the person's right of appeal under section 21 of the Care Standards Act 2000.
210. The law does not require us to impose a period after which the notice shall cease to have effect. However, our policy is to include a period in all notices restricting accommodation to ensure that we are taking proportionate action and not allowing the notice to continue without monitoring and review. The length of each period of restriction should be based on the individual facts of the case. As a general rule, the period of restriction will be 12 weeks at any one time, although notices can be issued for further 12-week periods.
211. We must provide full information in the notice that makes clear to the registered person the reasons for restricting the accommodation, why we reasonably believe that there is a risk of harm to service users and the potential impact if we do not take this step.
212. There may be occasions when we are not able to provide full information at the time of issuing the notice as it may compromise the investigation of another agency, such as the police. In these cases, we give as much information as possible, ensuring that any information we withhold is both necessary and proportionate. Inspectors must record on Cygnum the reasons for withholding any information. We must ensure that any information that we share is done so in accordance with the Data Protection Act 1998.
213. The inspector generates a notice from Cygnum and drafts the content as quickly as possible and within no more than two days from the case review. The notice is reviewed by an SCCI, normally within no more than a further two days and signed off by the decision-maker from the case review normally within one further day. The inspector may also ask legal advisers to review the notice.

Serving the notice restricting accommodation

214. On the day when the notice will be served, the inspector should inform the registered persons, usually by telephone, of the action that we are about to take and the reasons for this. This gives the registered person(s) time to contact their solicitor, if they wish to, and to notify placing authorities and/or to provide any additional information, which may be relevant to our decision to take this action. A restriction of accommodation takes immediate effect at the time of service. We must follow our procedure in 'Notice of proposal/notice of decision process' (page 77).

Notifying local authorities of the restriction

215. 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 appeal.

Reviewing the decision to restrict accommodation and progress

216. If necessary, we can restrict accommodation for further periods. Again, there is no legal restriction on timing, but our usual policy is to set a period of 12 weeks. When a third or further period is being considered, the case review should also consider whether additional and/or alternative action, such as imposing conditions of registration or issuing a compliance notice, or taking steps to cancel the restriction, may be more appropriate.

217. While a restriction is in place, we must review whether the reasons for the restriction continue to apply whenever relevant new information comes to our attention and, in any case, after each monitoring visit. The SCCI records on Cygnum:

- 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 any decision to extend the restriction of accommodation.

218. If we are reviewing a restriction of accommodation after four periods of 12 weeks (48 weeks), we must consider cancellation and record in the case review minutes any decisions not to proceed to cancellation.

219. A registered person does not have a right to make written representations to Ofsted against the notice or to make an application to have the restriction lifted. A registered person subject to a notice restricting accommodation has a right of appeal to the First-tier Tribunal. However, they can provide us with any information that they believe could influence our decision to restrict accommodation at any time. We consider this information to determine whether the restriction of accommodation continues to be an appropriate step.

Drafting a notice for a further period of restriction of accommodation

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

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

Lifting the notice

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

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

or

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

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

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

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

Compliance with a restriction of accommodation

225. We must monitor that the registered persons are complying with the order by carrying out unannounced visits to the setting at least twice during each 12-week restriction – once in the first six weeks and a further visit in the second six weeks.

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

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

Making an appeal

227. A registered person has the right of appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against a notice restricting accommodation within 28 days of the day on which we serve the notice.³⁴ The tribunal applies an expedited process to these appeals.³⁵ See chapter on 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for further details.
228. When we restrict accommodation and take other enforcement action, such as imposing or varying conditions of registration, the First-tier Tribunal may hear the provider's appeals against both of these actions at the same time.

3.6 Offences

Introduction

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

Range of offences

230. Ofsted is the prosecuting body for a number of offences within the social care remit:

Care Standards Act 2000

- any person who carries on or manages an establishment or an agency of any description without being registered in respect of it (offence under section 11(1))
- failure to comply with a compliance notice (offence under section 22A(4))
- failure without reasonable excuse to comply with conditions of registration (offence under section 24)
- carrying on or managing a setting while the person's registration is suspended (offence under section 24A)
- naming, describing or in any way holding out unregistered premises, undertaking or organisation to be an establishment or agency with intent to deceive (offence under section 26(1))

³⁴ Section 21 Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

³⁵ 'Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber (HESC)', Ofsted, May 2014; www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc.

- holding out an establishment or agency as being able to provide a service or do something that would be in breach of a condition of registration, with intent to deceive (offence under section 26(3))
- knowingly making a statement which is false or misleading in a material respect in an application for registration or for a variation of a condition (offence under section 27)
- failure to display a certificate of registration (offence under section 28)
- intentional obstruction of a person exercising any power under sections 31 and 32 (offence under section 31(9)(a))
- failure, without reasonable excuse, to comply with any requirement under sections 31 or 32 (offence under section 31(9)(b))

The Adoption and Children Act 2002

- a breach of section 92(1) of the Adoption and Children Act 2002 (performing certain adoption activities without registration) is an offence under section 93
- a breach of section 94(1) of the Adoption and Children Act 2002 (restriction on reports) is an offence under section 94(2) or 94(3).

Other adoption offences

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

- disclosing information in contravention of regulation 7 without reasonable excuse (regulation 17 of The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005)³⁶
- disclosing information in contravention of section 57, which is an offence pursuant to regulation 21 of The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005.³⁷

232. It is also an offence to contravene or not comply with the regulations referred to in regulation 29 of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005.^{38 39}

³⁶ The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005; www.legislation.gov.uk/uksi/2005/890/contents/made.

³⁷ The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005; www.legislation.gov.uk/uksi/2005/888/contents/made.

³⁸ Regulations 5(1) to (7), 6, 7(1) and (4), 8(2), 9(1), 10, 11, 12(1) and (2), 13, 14, 16 to 18, 19(1), 20, 21(1), 22, 23, 24(1) and (2), 25, 26 and 27(1)

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

- why we are of the opinion that the registered person has violated or is violating any of the regulations, or has failed or is failing to comply with the requirements of any of the regulations
- what action the registered person should take to comply with any of those regulations
- the period, not exceeding 12 weeks, within which the registered person should take action.

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

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

Investigating a suspected offence

235. When we suspect that an offence is being or has been committed, we should advise the person that we have the power to prosecute if the offence is proven. We cannot proceed to prosecution unless we have investigated the circumstances.

236. In deciding whether to investigate further the suspected offence, we consider:

- the impact of the breach, including the risk of harm to children, young people and adult service users
- whether there was a deliberate intention to avoid compliance
- any excuse or explanation the person gives (only for offences that have the 'reasonable excuse' defence).

PACE Act caution

237. Ofsted staff are able to caution someone if we reasonably believe that the person may have committed an offence. We must advise the person that we believe they have committed an offence and caution them in line with the PACE Act codes of practice before asking any further questions. We must caution any

³⁹ The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005; www.legislation.gov.uk/ukxi/2005/2720/contents/made.

person as soon as we become aware that the person may have committed an offence. We must also caution a person at the start of any recorded interview under caution.

238. 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.'

239. We caution for two reasons. Firstly, the caution advises the person about his or her rights, if asked to explain his or her actions or omissions. Secondly, evidence we gather before cautioning, including any record of what is said by suspects, may not be admissible in court as part of a prosecution case. Cautioning a person or undertaking a PACE interview is not a sanction.

240. Immediately after giving the caution, inspectors must take a word-for-word written record of anything significant that is said.

241. We must give the person a notice that sets out their rights where we intend to search the premises and/or seize property. We must do this to comply with Code B of the PACE Act. If we fail to do this, the evidence that we seize may be inadmissible in court. After cautioning and providing the Code B notice to the person, the inspector must follow our procedures in 'Recording evidence under PACE' on what information they must record.

242. 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.⁴⁰

243. Inspectors must preserve, and securely store, any evidence of the offence committed that they gather at the visit and adopt the PACE Act revised codes of practice procedures by recording material that can be used as evidence in hard copy, dated and signed. Documents can be securely stored at Ofsted's Nottingham office. Please take legal advice about which documents require secure storage.

244. Inspectors must collect, store and record all other evidence on Cygnum. Inspectors must keep original documents rather than photocopies of documents.

⁴⁰ A witness statement form is a standard template that 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 to corroborate other information. We must provide original witness statements in any court or tribunal hearing. This template is available on the Ofsted intranet.

245. If we uncover evidence of a separate offence during an interview under a PACE Act 1984 caution, we must caution the registered person again before asking any questions about that separate offence. We must also issue another Code B notice, detailing which offence we are now searching the premises or seizing evidence for. If necessary, we can conduct a separate interview under caution about the separate offence at a later stage.

Recorded interviews under a PACE Act caution

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

247. We must record on tape or disc any interviews that we conduct under a PACE Act 1984 caution. We must tell the person subject to the interview how we will store the records of that interview.

248. Inspectors usually carry out those interviews conducted under a Police and Criminal Evidence Act 1984 caution. A colleague who has received the relevant professional training must be present throughout the interview. The person being interviewed can be accompanied to the interview by a legal representative only.

249. We must follow the spirit of Code E of the PACE Act 1984 revised codes of practice when carrying out a tape- or disc-recorded interview under caution.

3.7 Warning letters

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

Drafting a warning letter

251. A warning letter must state:

- the offence that we investigated
- the actions or omissions that constituted the offence and what the person needs to do to remedy the position
- the fact that we interviewed the person in connection with the offence
- the fact that the person admitted the offence
- that, on this occasion, we will not pursue a prosecution for the offence
- that, if the person should commit the same offence, or another offence, in the future, we may pursue a prosecution

- that the details of the matter will remain on our files and we will take them into consideration in future when deciding whether to take enforcement action.

3.8 Simple cautions

252. We may offer and issue a simple caution in cases where we have sufficient evidence to secure a prosecution and the person has admitted committing the offence but we decide not to prosecute because it is not in the public interest to do so. A simple caution is one of the ways in which we can address the commission of a criminal offence and is issued in line with Ministry of Justice guidance.⁴¹
253. We may issue a simple caution against any person, whether registered with Ofsted or not, who commits an offence for which we are the prosecuting authority.
254. Simple cautions are different from a PACE Act 1984 caution, which we administer when we suspect that a person has committed an offence/offences prior to questioning the person about the offence(s).

Threshold

255. We may issue a simple caution if **all** the following apply:
- the person admits the offence
 - there is a realistic prospect of a conviction if the person refuses to accept the caution
 - the offender accepts the simple caution
 - other compliance action is unlikely to be effective
 - prosecution would not be in the public interest.

Making the decision to issue a simple caution

256. When a person admits an offence, we must first consider whether we have sufficient evidence to secure a prosecution. The admission must be genuine and we do not use the possibility of a simple caution to obtain an admission. We must also be confident that we could secure a conviction if the case were to go to court and the person pleads 'not guilty', contrary to any earlier admission under a PACE Act 1984 caution.
257. If a person has previously received a simple caution, we should not normally consider a further simple caution. However, if there is a sufficient lapse of time

⁴¹ 'Simple cautions for adult offenders: guidance for police officers and Crown Prosecutors', Ministry of Justice, November 2013; www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors.

to suggest that a previous caution was a significant deterrent (two years or more), or the subsequent offence is unrelated, we can administer a further simple caution.

258. We must interview the person under a PACE Act 1984 caution to gather evidence. In making the decision to offer a simple caution, we must have decided that, if we offer the caution and the person refuses to accept it, we are prepared to pursue a prosecution.

Offering a simple caution

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

Administering a simple caution

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

Recording and storing a simple caution

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

Making a referral to the Disclosure and Barring Service

264. Where we issue a simple caution, we must consider whether the threshold is met to refer the person to the Disclosure and Barring Service (DBS). See chapter on 'Making referrals to the Disclosure and Barring Service' (page 101) for further details.

Future consideration of the simple caution

265. We will take the simple caution into account when making any future judgements about a person's registration, including their fitness to be

registered. We also consider the caution, where relevant, when making further decisions about whether to pursue a prosecution in future.

266. If we subsequently prosecute a person who has previously accepted a simple caution, we may seek to rely on this as supporting evidence to show that the provider has committed an offence previously. If a court finds the person guilty of a similar offence, we can advise the court before it passes sentence about any previous similar offences or instances when that person has accepted a simple caution.
267. We may use the simple caution as part of any evidence that we submit to the First-tier Tribunal if a person appeals against any action that we take in future in respect of his or her registration.

3.9 Prosecution

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

Who we can prosecute

270. We can prosecute any person who commits an offence when we are the prosecuting authority. This includes the prosecution of:
- an individual
 - a corporate body
 - an unincorporated association.
271. 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).
272. If a registered person is a body corporate, and we decide to prosecute it for an offence, we prosecute the organisation, and not an individual person who is a member or an officer of the organisation.
273. However, under certain circumstances, we are able to prosecute both an individual who is an officer or member of the organisation and the organisation. If the offence was committed with the consent or connivance of, or is

attributable to any neglect on the part of, any director, manager or secretary of the body corporate, or any person acting in this capacity, the individual as well as the body corporate is guilty of the offence.

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

General prosecution thresholds

275. Proceedings must be commenced within six months of the date on which we find evidence that an offence has been committed, which is sufficient in our opinion to warrant the proceedings.⁴²

Evidential test

276. As the prosecutor, we must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. We must consider what the defence case may be and how it is likely to affect the prospects of conviction. A case that does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
277. The finding that there is a realistic prospect of conviction is based on our objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts must apply. A court may only convict if it is sure that the defendant is guilty.
278. When deciding whether there is sufficient evidence to prosecute, we should ask ourselves the following:
- Can the evidence be used in court?
 - What is the likelihood of that evidence being held as **inadmissible** by the court; and
 - The importance of that evidence in relation to the evidence as a whole?
 - Is the evidence **reliable**? Consider the reliability of the evidence, including its accuracy or integrity.
 - Is the evidence **credible**? Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

⁴² Six months relates to offences under the Care Standards Act. If a prosecution is being brought under a different Act, legal advice should be sought on the applicable time constraints.

Public interest test

279. In every case in which there is sufficient evidence to justify a prosecution, we must go on to consider whether a prosecution is required in the public interest.
280. We should only consider this stage if the evidential test is met. However, before carrying out a full investigation, we should bear in mind the important factors.
281. The list is not exhaustive, but some of the factors to take into account are:
- How serious is the offence committed?
 - What is the level of culpability of the suspect?
 - What are the circumstances of and the harm caused to the victim?
 - What is the impact on the community?
 - Is prosecution a proportionate response?
 - Is prosecution the best way to achieve the desired change?
 - Do sources of information require protecting?
282. When we have previously informed a person that they must register with us and they have failed to do so, we must decide whether to prosecute them. Only in exceptional circumstances should we provide them with a further opportunity to submit an application for registration to us.

'Without reasonable excuse'

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

286. Whether matters amount to a reasonable excuse will depend on the facts of the specific case. We should seek advice from our legal advisers in making this decision.

Making the decision to prosecute

287. We must consider the evidence of the breach and make our decision via case review. We will first hold a case review to determine the arrangements for interviewing the person under PACE and what further evidence we need to obtain. We must write to the person inviting them to attend the PACE interview. The letter must include:

- the precise section of the Act or regulations that we allege has/have been breached
- the name and address of the setting that the alleged offence is related to
- the person's rights with regards to the invitation, including their right to refuse to attend the interview and to have legal representation
- the arrangements for holding the interview, including the proposed date and location.

288. After gathering all our evidence, including any interviews under caution, we will hold a further case review. This will determine what action we should take and whether we will pursue a prosecution. We record our reasons for this, including whether the general prosecution thresholds are met, and reasons why the public interest test is/is not met. We must seek legal advice in making this decision. A decision should not be taken to prosecute without positive legal advice that the evidential test has been met.

289. If a person fails to attend an interview under caution, or refuses to attend, this will not prevent us from prosecuting the person. In these cases, we must be able to demonstrate to the courts the action we have taken to try to carry out the interview.

290. If a person attends an interview under caution but denies committing the offence, this does not mean that we have insufficient evidence to pursue a prosecution. An explanation given by a person during interview may open further lines of enquiry that need to be followed. We must pursue all reasonable lines of enquiry. After this, we must consider all the evidence we have to determine whether we have a realistic prospect of conviction.

291. At the appropriate stage, we will provide a briefing for the clerk to the justice on our powers and statutory duties. This is likely to be done via Ofsted's legal representative handling the case.

Consequences of a conviction

292. The penalties that the court can impose on a person found guilty of an offence differ for each offence and are set out in the legislation. For the bulk of

proceedings, the guilty person will receive a summary conviction with a fine, not exceeding level 5 on the standard scale. Other offences may result in larger fines or imprisonment.

293. A conviction for certain offences in relation to an establishment or agency may also become a ground for cancellation of a person's registration. See 'Cancellation of registration' (page 63) for further details. It may also trigger disqualification from certain involvement in the case of cancellation in respect of a children's home.
294. We also consider any conviction in determining a person's ongoing fitness and deciding whether any other action is necessary.

3.10 Refusal to grant registration

295. The 'Social care registration processes guidance – guidance for staff'⁴³ sets out the process that we follow in considering a provider's or manager's application to register with us. It should be read alongside this handbook. It sets out the factors we consider and who may make recommendations about refusing a registration.
296. We may have concerns about an application for registration early in the application process. This may include, for example, receiving a statement of purpose that is not sufficiently detailed or tailored to the setting, or a DBS disclosure that indicates that a person has been convicted of an offence. When an inspector first has concerns about an application for registration, they should discuss this with their RIM and record a summary of the discussion and any actions or approach agreed, as part of a compliance case, on Cygnum.
297. The inspector still retains overall responsibility for the application and they should continue to process checks and other information while considering our action in response to our concerns. We may decide to request further information from the applicant, or prepare lines of inquiry to explore with them at interview. If, after completing the check, the inspector recommends that the registration be refused, we must set up a case review.

Written representations and appeals against a notice to refuse registration

298. A registered person has 28 days from receipt of the notice of proposal to make written representations to Ofsted.
299. An applicant who has been served with a notice of decision to refuse registration is entitled to appeal to the First-tier Tribunal before the decision takes effect. The applicant has 28 days from the date on which the notice of decision is served to make an appeal. See chapters on 'Written representations'

⁴³ This is an internal document for Ofsted staff.

(page 83) and 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for further details.

Withdrawal of an application for registration

300. There are no express legislative provisions about withdrawal of applications for registration.
301. An applicant may withdraw an application for registration before any Notice of proposal (NoP) to refuse an application is served. Ofsted will accept this.
302. If an NoP has been served, Ofsted will usually accept an application to withdraw, for example because of health/experience issues.
303. Ofsted will not accept the withdrawal of an application after an NoP if there are concerns about a provider's or manager's ability to safeguard the welfare of children. This may be due to their lack of integrity, safeguarding practice/knowledge, any relevant offences they may have committed or other relevant information. In these instances, we should hold a case review and seek legal advice if we are not minded to allow the withdrawal of an application.
304. When a person withdraws their application, we cannot continue with our action to refuse their registration. In these cases, we must summarise the concerns that we have about the applicant in the compliance case summary on Cygnum before closing the case. We must send a letter, as set out in the 'Guide to registration for children's social care services'.⁴⁴ This information will be retained and may be referred to if the person seeks registration with us again or in assessing their ongoing fitness if the person holds other registrations with us.
305. There may be occasions when we discover that a provider has made full checks on the person that they put forward as the manager or responsible individual, but the information proves to be incorrect or incomplete, for example, when a previous employer provides a false or misleading reference. In these cases, it is unlikely that this will reflect negatively on the provider's fitness. However, we must consider the fitness of the employer who provided the false or misleading reference if they are registered with us.
306. All decisions should be made in a case review. We must keep a detailed record of our decision and record the reasons on Cygnum.

⁴⁴ 'Guide to registration for children's social care services', Ofsted, April 2017;
www.gov.uk/government/publications/guide-to-registration-for-childrens-social-care-services.

3.11 Imposing, varying or removing conditions of registration

307. We have powers to impose, vary or remove conditions of registration as part of our compliance action.⁴⁵ We can do this through two processes:

- by a notice of proposal and notice of decision

or

- by application to a magistrate.

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

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

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

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

311. We must serve the notice of proposal in line with our procedures in 'Notice of proposal/notice of decision process' (page 77).

312. A registered person has the right to make written representations against our notice of proposal. They must make these within 28 days of the serving of our notice. See chapter on 'Written representations' (page 83) for further details. It is an offence not to comply with a condition of registration without reasonable excuse.

Notice of decision and issuing the new certificate of registration

313. When we issue a notice of decision to vary, impose or remove conditions of registration, the registered person has 28 days in which to appeal against our action to the First-tier Tribunal. Once the 28-day period has lapsed without an appeal being lodged, or the First-tier Tribunal has heard and dismissed the appeal, the decision will take effect.

⁴⁵ Section 13(5) Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

314. At this point, we write to the registered person informing them that the decision has taken effect and issuing them with their new certificate of registration containing the amended conditions. We ask the person to return their old certificate of registration.

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

315. A provider may apply to Ofsted to vary, remove or impose conditions of their registration, but there may be circumstances under which we do not agree to their request.

316. Following the receipt of information from the provider and/or a visit to the setting where there are concerns, the SCRI must discuss these with the RIM and open a compliance case and convene a case review.

317. If we decide at the case review to refuse the request, we issue a notice of proposal and a notice of decision.

318. The provider has a right of appeal to the First-tier Tribunal if we refuse a request to vary, remove or impose a condition of registration. See chapter on 'Appeals to First tier Tribunal, Health, Education and Social Care Chamber' (page 89).

3.13 Cancellation of registration

319. Please note that this guidance on cancellation of registration does not apply to cancelling registration due to non-payment of fees. Please see the 'Social care registration processes: guidance for staff'⁴⁶ for further information on this.

Our powers to cancel registration

320. We have two ways to cancel a provider's and/or a manager's registration:

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

321. A registered provider or manager may also apply voluntarily to Ofsted for the cancellation of their registration.⁴⁷ When this occurs and we do not have concerns about the provider or manager, we must follow our processes in the 'Social care registration processes guidance: guidance for staff'. However, when

⁴⁶ This is internal Ofsted staff guidance

⁴⁷ Section 24 of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

we have concerns or are in the process of taking compliance action against the person, we must follow the guidance in this handbook.

322. If a person whose registration is cancelled carries on or manages a social care setting, they will be committing a criminal offence.⁴⁸

Grounds and threshold for cancelling registration

323. The Care Standards Act 2000 and establishment or agency-specific regulations set out the grounds for cancelling a person's registration. The Act gives us the power to use discretion as to whether we cancel.

324. The grounds to cancel a registration are that:

- the registered person has been convicted of a relevant offence
- any person has been convicted of a relevant offence in relation to the establishment or agency
- the agency or establishment is being, or has at any time been, carried on or managed otherwise than in accordance with the relevant requirements
- the registered person has failed to comply with a compliance notice
- the registered person has failed to pay a prescribed fee
- the registered person has made a statement that is false/misleading in a material respect or provided false information in an application for registration or in an application for the variation or removal of a condition of registration
- the establishment or agency has ceased to be financially viable, or is likely to cease to be so within the next six months.

325. When relying on the above grounds for cancellation, we also apply the following thresholds. Whether:

- a child, young person or adult service user has been exposed to, or has suffered, serious harm or injury
- cancellation is the only way to assure the safety and well-being of children, young people or adult service users due to risk of harm or potential risk of harm
- other compliance action is inappropriate or has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale
- there has been a failure to make or sustain improvement in practice over a period of time, and we do not believe that the registered person is able to consistently meet the relevant requirements for registration

⁴⁸ Section 11 of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

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

'Relevant requirements'

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

'any requirements or conditions imposed by or under Part 2 of the Care Standards Act 2000 or the requirements of any other enactment which appear to us to be relevant.'⁴⁹

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

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

Offence grounds for cancellation

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

- any offence under Part II of the Care Standards Act 2000 or regulations made under it
- any offence under the Registered Homes Act 1984 or regulations made under it
- any offence under the Children Act 1989 or regulations made under it
- an offence under the regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999
- an offence under the Adoption and Children Act 2002 or regulations made under it
- an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part
- an offence under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016.

Making the decision to cancel a person's registration

330. In some cases, we may take other action, before taking steps to cancel a registration, with the intention of encouraging the registered person to put matters right. However, when a registered person has failed to do this and/or

⁴⁹ The Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

we have lost confidence in their ability to make and sustain improvements to meet regulations, we can decide to cancel their registration.

331. We may also move to cancel a registration without taking any previous action when service users are at risk of harm. We will always consider cancelling a provider's and/or a manager's registration at a children's home when the home has been judged 'inadequate' for overall effectiveness at the last two full inspections.
332. In making our decision, we are mindful that cancelling the registration of a children's home provider will result in children and young people losing their home, possibly affecting contact with family and friends, and their place in school or college. Once we have made the decision to cancel a registration, we can contact placing authorities to ensure that they have sufficient notice to make alternative plans for any child living at the home.
333. We make decisions about cancelling a registration at a case review.
334. Our evidence must show 'on the balance of probabilities' that our decision to cancel a person's registration is justified.
335. When we are considering cancelling a registration, we maintain a full audit trail of our evidence, decision-making and, where necessary, communication with the registered person during the cancellation process.

Managerial responsibility

336. We must consider which person registered in respect of the setting we should be cancelling. We may cancel the registration of the registered provider, the registered manager or both.
337. In making this decision, we must consider which regulations or requirements have been breached and on whom the legislation places responsibility to meet that regulation or requirement, or who has committed the specific offence that forms the ground for cancellation. The regulations will often make the 'registered person' responsible. This is both the registered provider and the registered manager.
338. We must carefully consider the action or inaction of both persons in the breach/es and how this affects their overall fitness. When a registered manager has been trying to rectify the situation, but has been overruled by the registered provider, this may affect our decision.
339. In all cases, we must carefully record on Cygnum our discussion about managerial responsibility, the reasons for our decision as to whom we are taking cancellation action against and why.
340. If we successfully cancel, we will notify the Health and Care Professionals Council (HCPC) if the person is also registered with this body.

Drafting the notice of proposal to cancel

341. We serve notices of proposal to cancel registration in writing, using our standard notice format.
342. The inspector must draft the notice, normally within two working days of the case review. The notice of proposal must include:
- the reason(s) for the proposal
 - the exact part of the Care Standards Act 2000 and/or relevant regulations that have been breached, or the offence committed
 - an overview of the evidence to support our action
 - the consequences of cancellation (disqualification for certain individuals in respect of children's homes)
 - the registered person's right to make written representations, in accordance with the Care Standards Act 2000, section 18(1).
343. Once the notice is drafted, the inspector must ensure its review by an SCCI and our legal adviser, where necessary. The final version of the notice is signed-off by the decision-maker normally within one day of their receiving it. The review and any redrafting of the notice must be completed as soon as possible and within no more than five days after the decision to cancel was made.

Serving the notice

344. We must serve the notice in line with our procedures in 'Notice of proposal/notice of decision process' (page 77).

Registered persons applying to voluntarily cancel their registration

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

Applications for voluntary cancellation after the NoP has been served

346. Section 15(2) of the Care Standards Act 2000 provides that a person may not make an application for voluntary cancellation if an NoP has been served, unless Ofsted has decided not to take that step. However, if an application for voluntary cancellation is received after an NoP has been served, we will assess each case on an individual basis and consider whether it is still our intention to take steps to cancel or whether it is proportionate to cease cancellation action and accept an application for voluntary cancellation.
347. We would not accept an application for voluntary cancellation, after an NoP has been served if we have concerns about the provider's ability to safeguard the

welfare of children. This may be due to their lack of integrity, safeguarding practice/knowledge, any relevant offences they may have committed or other relevant information.

348. If Ofsted is minded not to accept an application after an NoP is served, we should hold a case review and seek legal advice. If we have serious concerns about the person, we may decide to refuse to accept the person's application for voluntary cancellation and serve a notice of proposal to cancel their registration under section 14 of the Care Standards Act 2000 instead. We must be very clear about our reasons for doing this. For example, when the person is registered in relation to a children's home, we may cancel their registration under section 14 because we strongly believe that they should become disqualified from future involvement in children's homes, childcare and childminding.
349. In these situations, we must consider whether any additional information submitted with the registered person's application will undermine our own case to a point at which we no longer believe that on the balance of probabilities we have sufficient evidence to support our decision and cannot justify our position at a subsequent Tribunal hearing. The desire for a person to be disqualified is not, in itself, a ground for cancellation. We should always consider whether we have sufficient evidence to refer someone to the DBS.
350. When we do not believe that we can justify cancelling a person's registration under section 14 after they have submitted an application for voluntary cancellation, we must accept the voluntary cancellation application under section 15. However, before we close the compliance case, we must record a summary of our concerns at the point of the voluntary cancellation. We may refer to this information in future if that the person seeks registration with us again. We may also share this information with another agency, such as the Care Quality Commission, if the person holds a registration with them.
351. When the person holds other registrations with us, we must convene a case review to consider how the concerns impact on the person's fitness in relation to those registrations. If the registrations relate to settings in other regions, we must refer the information to colleagues in those regions for their consideration.

Voluntary cancellation requests made after the serving of notice of decision to cancel registration

352. Under section 15(2), a registered person is not permitted to apply to voluntarily cancel their registration after Ofsted has served a notice of proposal to cancel registration, unless we have decided not to take that step.
353. When a notice of decision has been served, we should seek legal advice. We should also consider the following issues in terms of whether we should accept the application: whether

- the timeframe for appealing against the notice of decision has lapsed without the person lodging an appeal. If so, the cancellation will have taken effect

or

- the person has made an appeal to the Tribunal that it has not yet determined.

354. If either of the above applies, the registered person is not permitted to make an application for voluntary cancellation, and we must return the application to them. We send a letter with the returned application, explaining that we cannot consider it because of the timescales above.

355. There may be circumstances in which we feel that it is appropriate to accept the person's request for voluntary cancellation, for example, when we are cancelling a provider's registration solely because they have ceased to be financially viable. In this case, an appropriate outcome is achieved by accepting the voluntary cancellation.

356. In other cases, we may consider it appropriate not to accept voluntary cancellation due to the seriousness of the breaches involved and/or the poor quality of care provided and/or other registrations they hold with us or with another regulator, such as the Care Quality Commission. When an individual is registered in respect of a children's home, we may consider it appropriate to cancel their registration under section 14 to render them disqualified.

357. In these situations, we must consider whether any additional information submitted with the registered person's application will undermine our own case. The desire for a person to be disqualified is in itself, not a ground for cancellation.

358. Following the decision, we will write to the registered person informing them of our decision and reasons.

Issuing a further notice of proposal following new concerns

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

Making written representations

360. Once we have served a notice of proposal to cancel, a registered person is entitled to make written representations and to have these considered before we make our decision. See chapter on 'Written representations' (page 83) for further details.

Monitoring visits once we have served a notice to cancel

361. When we decide to cancel a registration, we must consider the safety and welfare of those people who may continue to receive services from the registered person during the period between serving the notice of proposal and the cancellation taking effect. These considerations include whether it is in the best interests of service users for us to conduct monitoring visits, using our powers of entry, during this interim period.
362. We must consider the evidence gathered after each monitoring visit to identify any significant change that may require further action or stopping the cancellation process. There may be occasions when the quality of services has deteriorated to a level at which we believe there is a serious risk to service users. When this happens, we must arrange an urgent case review and take immediate action to secure the welfare of service users. This could include taking further enforcement action, such as an urgent suspension or restriction of accommodation.
363. Where our test for emergency cancellation action is met, we may apply to a magistrate for an emergency order to cancel, vary or impose conditions on the person's registration. When this is granted, it is effective immediately but is still subject to appeal.

The notice of decision to cancel

364. We issue the notice of decision after the period for written representations has passed or after the written representations have been considered.
365. A notice of decision issued after written representation will include information on why we have decided to take the step, including any matters considered during the consideration of written representations. 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.
366. In certain circumstances, the notice of decision may be sent to the legal team for review. We usually serve the notice of decision to cancel within five days of the end of the period for written representations or, when the person made written representations, within 10 working days of considering the written representations. We must act promptly to show the seriousness of our concerns leading to the decision to cancel registration.
367. The inspector must also draft the associated letters notifying other persons identified in the case review about our decision to cancel registration. These may include the responsible individual and/or registered manager. These letters should be completed after the notice of decision is finalised, as that document takes priority.

368. Under section 30A of the Care Standards Act 2000, we must notify every local authority in England and Wales when we issue a notice of decision to cancel registration.

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

369. If we find evidence on a monitoring visit that the registered person is making significant progress, we will consider whether cancellation of the registration is still appropriate. The Tribunal may uphold an appeal when the person has made improvements between the issuing of the notice of decision and the appeal, which suggest that the cancellation is no longer justified. Therefore, we must take into account the ability of the provider to maintain those improvements.

370. However, in cases in which, for example, a breach has resulted in serious harm or injury to a service user, or there is a history of improvement followed by decline, the progress may not lead us to withdraw our action.

371. When we decide that we will no longer pursue a decision to cancel or defend the registered person's appeal, we must inform the registered person and, if appropriate, the Tribunal of the reasons for our decision, and that the proposal/decision to cancel registration is no longer appropriate. We must send a letter to the registered person and, where applicable, the Tribunal confirming our action and decision.

Appeals against a notice of decision to cancel

372. Registered persons may appeal to the Tribunal against our decision to cancel their registration. It assesses whether our step to cancel is proportionate and appropriate. See chapter on 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for further details.

373. When a registered person appeals against our notice of decision to cancel, we must send a notification to every local authority in England and Wales.

Appeals involving emergency cancellation

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

When a cancellation takes effect

375. A person remains registered until 28 calendar days after we have served the notice of decision or, when the person appeals, until the appeal is determined or abandoned.

376. Once the cancellation has taken effect, the inspector must send a letter to the person informing them that:

- the cancellation has taken effect
- they will be committing an offence if they continue to carry on or manage the setting
- they must return their certificate of registration to Ofsted
- if they are an individual whose registration in respect of a children's home is cancelled, the cancellation renders them disqualified from carrying on, being concerned in the management of or having a financial interest in a children's home, and from involvement in childminding and childcare under section 65 of the Children Act 1989.

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

Consequences of cancellation

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

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

380. Cancellation in respect to a children's home is likely to trigger disqualification from future involvement in children's homes for those who have been cancelled or were connected with a cancelled children's home registration. They also become disqualified from childminding and childcare. See chapter on 'Children's homes disqualification and written consent' (page 100) for further details.

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

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

382. In these cases, when the cancellation of the provider's registration takes effect, the manager's registration does **not** end at the same time. Rather, the manager remains registered in respect of the setting. However, the manager

cannot carry on the setting under their registration as a manager as they will be committing an offence of operating an unregistered setting if they do so.

383. In these circumstances, we must write to the manager, enclosing/attaching a voluntary cancellation form and inviting them to apply to us to voluntarily cancel their registration under section 15 of the Care Standards Act 2000 (voluntary cancellation). This will allow us to accept their application and end the registration.
384. If the manager refuses to do this, we must take action to cancel their registration. We will do this by issuing a notice of proposal to cancel under section 14(1)(c) of the Care Standards Act 2000 and must consult with the legal services team.

Managers registered in respect of children's homes

385. In addition to the above, when a manager is registered in respect of a children's home, the manager will become a disqualified person when the cancellation of the registration of the children's home's provider takes effect. See chapter on 'Children's homes disqualification and written consent' (page 100).
386. If the manager refuses to apply to voluntarily cancel their registration, we must follow the procedures outlined above to take steps to cancel their registration under section 14 of the Care Standards Act 2000.

Concerns received late about the registered manager

387. If we decided not to take cancellation action against the manager in our original decision-making, but evidence subsequently comes to our attention that the manager was not meeting the relevant registration requirements, we can still take action against them at a later stage. When this action is to cancel, rather than to invite the manager to apply to voluntarily cancel their registration, we must issue a notice of proposal to cancel their registration under section 14 of the Care Standards Act 2000 instead.
388. When we successfully cancel the registration of a manager of a children's home under section 14, they become disqualified from carrying on, being concerned in the management of or having a financial interest in a children's home in the future. They also become disqualified from involvement in childminding and childcare.
389. We notify the HCPC if the person is also registered with this body.

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

390. There may be occasions when a manager registered in respect of a setting is no longer employed by the provider of that setting. This may occur when the

registered manager resigns or they are dismissed by the provider. In these circumstances, the registration of the manager does not automatically lapse as they hold a separate registration from that of the provider.

391. When this occurs and we do not have concerns about the registered manager, or when our concerns are not sufficient to justify cancelling their registration under section 14, we must write to the registered manager and invite them to apply to voluntarily cancel their registration.
392. When we have serious concerns about the manager (for example, in circumstances under which they are dismissed for gross misconduct, which has placed service users at risk) we must consider cancelling their registration under section 14.

Visits following a cancellation taking effect

393. We do not routinely carry out a visit after a cancellation has taken effect but will do so if we have identified a cause for concern. This may include:
 - when the person has indicated that they intend to continue operating
 - when a children's home, holiday scheme for disabled children or residential family centre, prior to cancellation, had been subject to a notice restricting accommodation that was breached, giving us cause to suspect that it may operate without registration
 - when we receive information that suggests that the person is providing or managing a social care setting that requires registration.

3.14 Emergency action

Introduction

394. Section 20 of the Care Standards Act 2000 allows us to make an application to the magistrates' court for an emergency order to take action in relation to a person's registration. We may ask a magistrate to grant an order to:
 - cancel a provider's or manager's registration – this is the strongest enforcement power we have
 - impose, vary or remove conditions of registration.

Emergency suspension

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

Threshold

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

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

Making the decision to take emergency action

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

Seeking an order

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

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

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

400. 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 HMCI's power to make the application, and we provide a briefing about our powers, where this is necessary.

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

Applications made for emergency cancellation with or without notice to the registered person

402. We usually make an application to a magistrate, in the area where the registered person operates, so that it is easier for them to attend.
403. We seek to make these applications (even those made out of hours), having given the registered person notice of the application and our reasons for making the application. (This is known as 'inter parte'). 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.
404. We only make an application without giving notice (known as 'ex parte') in exceptional circumstances, in which:
- the risk is so serious that the application must be made straightaway and there is no time to notify the other party
 - notifying the other party would risk that they would destroy evidence
 - notifying the other party would place children, young people or adult service users at risk of harm
 - we are unable to contact the registered person despite making a thorough effort to do so. (We must record all attempts that we have made to contact the person).
405. When we make an application without notice, we must record the reasons why we have done so on Cygnum.

Note of the hearing

406. If it is an application without notice, 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.
407. The note is not a verbatim record of the hearing, but as full a summary as possible. We decide in the case review who will take the note.

The magistrate's order

408. 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 when the magistrate grants it.
409. The provider may appeal to the First-tier Tribunal (Health, Education and Social Care Chamber). However, the order remains in place until the appeal is determined. The Tribunal operates an expedited process for appeals against a magistrate's orders. See chapter on 'Appeals to First-tier Tribunal, Health, Education and Social care Chamber' (page 89) for further details.

410. 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, from 'The children's home ...'). If the wording does not fit with this, we must raise this with the magistrate.

Serving the magistrate's order on the registered person

411. We serve the registered person with a copy of the order, a copy of the written statement that supported the application and a notice of the registered person's right to appeal to the Tribunal against the decision, as soon as is practicable after the hearing.

412. If the application was without notice (*ex parte*), we also serve the registered person a copy of the note of the hearing and copies of all evidence and documentation relied on to grant the order, unless to do so would prejudice an investigation into whether children, young people and adults are at risk. When 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

413. We must inform the appropriate authorities immediately after making an application for emergency action. The appropriate authorities are:

- the local authority in whose area the setting is situated
- any statutory authority that we think it appropriate to notify.

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

415. We record details of whom we notified and reasons for this on Cygnum.

416. We should also consider whether a referral to the DBS is appropriate.

3.15 Notice of proposal/notice of decision process

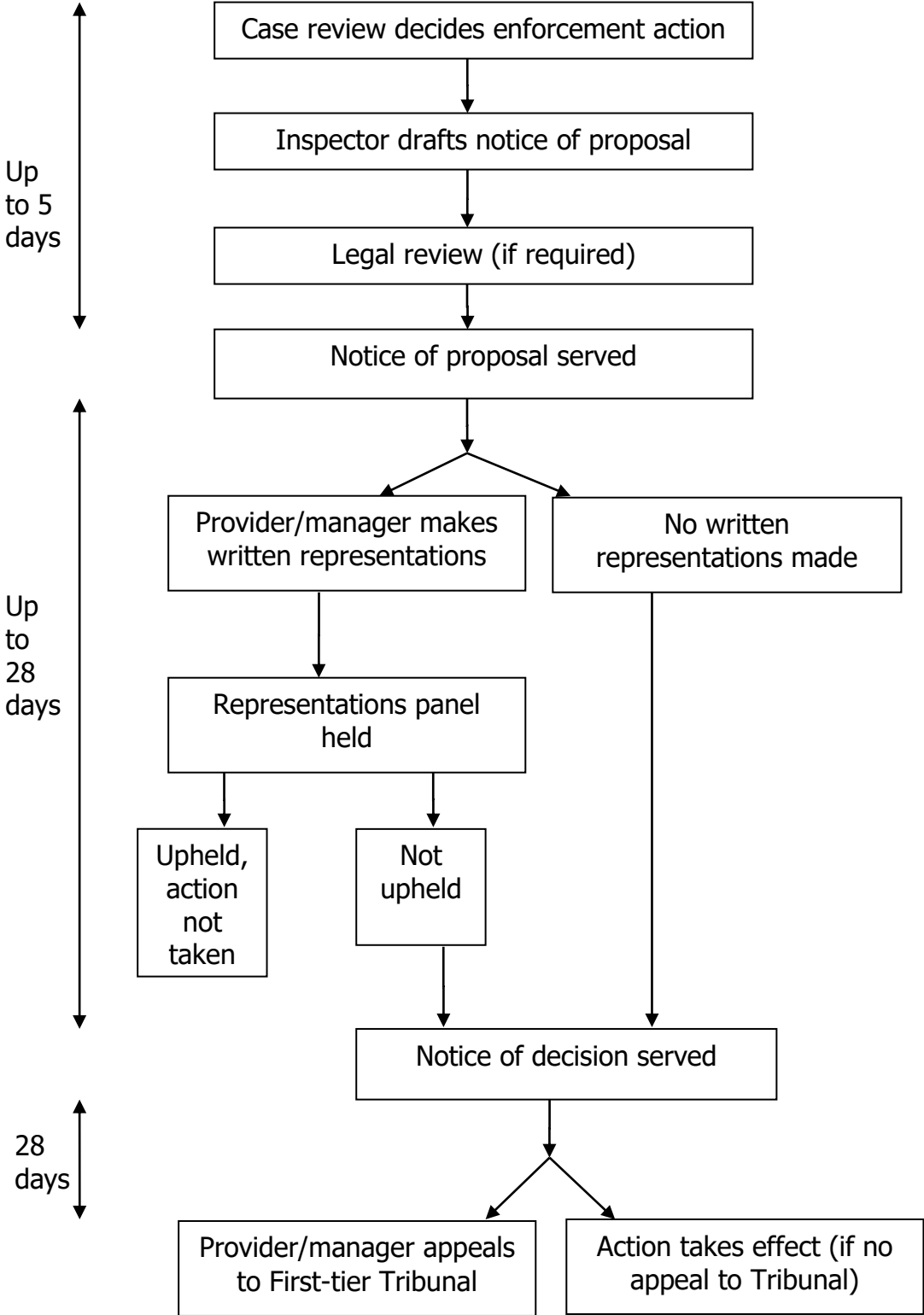
417. As outlined above, many of our enforcement actions take place through the notice of proposal and notice of decision process. We must continue to monitor compliance with the relevant legal requirements and, importantly, the risk to children, young people or adults using the service throughout this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

418. The steps involved in this process are:

- Case review and decision to take enforcement action.
- Drafting notice of proposal: we usually finalise the notice within five days of the case review. The notice may be reviewed by a legal adviser if necessary.

- Serving of the notice: we must lawfully serve the notice on the correct registered person or applicant for registration. See later in this chapter.
- Written representations: a person has 28 days from the time when the notice of proposal is served to make written representations to us. See chapter on 'Written representations' (page 83) for further details.
- Notice of decision: if we decide not to uphold a person's written representations, or the person does not make written representations, we write a notice of decision, telling the person why we have decided to take this action and detailing the evidence that we have. We serve the notice of decision according to our procedures outlined in this chapter.
- Appeals to the First-tier Tribunal: in most cases, a person has 28 days from the service of our notice of decision to appeal to the First-tier Tribunal. There are some exceptions. See 'Appeals to First-tier Tribunal, Health, Education and Social Care Chamber' (page 89) for further details.
- Notice of decision takes effect: the notice takes effect once the 28-day appeal window has lapsed with no lodging of an appeal or when the registered person's appeal to the First-tier Tribunal is dismissed. We write to the person to inform them that the action has now taken effect.
- Monitoring compliance: we must ensure that the person is complying with the notice.

Notice of proposal and notice of decision process



Drafting a notice

419. If the region feels that it is necessary to seek a legal review of the notice, the inspector must provide the following to the legal services team:

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

Serving a notice

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

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

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

Method of serving notices

422. We can serve a notice:

- in person
- by courier
- by post in a registered letter or by the recorded delivery service.⁵⁰

When the service of the notice takes effect

423. When we serve a notice in person, or by courier, the notice takes effect on the day it is served. Any time periods in the notice (for example, the appeal period) will commence from the next working day, with the exception of compliance notices (see information below). When served by email and followed up by post, the notice only takes effect on the third day after it was sent.

The persons on whom we serve the notice

424. We serve notices as follows:

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

⁵⁰ Section 37(1) of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

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

Type of person	Applicant or registered	Which person notice is addressed to and to what address it is served	Which person to serve the notice on
Local authority provider	Applicant	Notice is addressed to the director of children's services and served at the local authority's principal office (or office where the DCS is located)	Director of children's services
Local authority provider	Registered	Notice is addressed to the director of children's services and served at the local authority's principal office (or office where the DCS is located)	Director of children's services

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

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

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

3.16 Written representations

Written representations

425. The ability to make written representations 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 before we make our decision.

Circumstances in which a person is allowed to make written representations

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

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

- refuse an application to vary or remove conditions of registration.⁵¹

Timescales for making written representations

427. A person must make their written representations to us within 28 days of the date on which the notice of proposal is served or deemed to be served.^{52,53} Written representations must be made in writing and sent to:

Applications, Regulatory and Contact Team

Ofsted

Piccadilly Gate

Store Street

Manchester

M1 2WD

Email: enquiries@ofsted.gov.uk

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

429. We make a record of the call and a summary of what we have told the person and any response they make on Cygnum.

Written representations received late

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

Written representations received after a notice of decision has been issued

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

⁵¹ Section 18 of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

⁵² Section 18(1) of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

⁵³ '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; www.legislation.gov.uk/ukpga/1978/30).

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

Content of written representations

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

Receiving the written representations

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

- record that we have received it on Cygnum
- write to the person acknowledging the receipt of their written representations
- inform the decision-maker (either RIM or senior HMI, social care) and the allocated inspector.

Convening a panel

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

436. The panel will usually consist of (up to three persons and minute taker):

- the RIM or senior HMI, social care who made the decision and chairs the panel
- the allocated SCCI, SCRI or RIM (if not the decision-maker)
- a minute taker or a member of the panel who also takes minutes.

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

438. Minutes are taken of the panel's meeting.⁵⁴

Decision-making by the panel

439. Before commencement of the panel meeting, all members of the panel must have read and considered all documents relevant to the making of the original decision and any written representations provided by the registered person/applicant. It is advisable to do so well in advance of the panel meeting to be able to access any additional information they may require.

440. The panel considers and discusses all information provided in the written representations against the notice of proposal issued before a decision is made on the outcome. The decision can only be made based on the notice of proposal issued and the information provided in the written representations against that notice.

441. The decision will be to:

- uphold the written representations
- or
- not uphold the written representations.

442. There is no power to impose additional conditions or to undertake a different course of action.

443. When a panel upholds the written representations but believes a different course of action or other conditions are more appropriate, it may suggest this. If this occurs, a case review should be convened as quickly as possible after the panel to decide what action to take. Any recommendations must be detailed in the outcome letter sent to the the registered person/applicant.

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

444. We may initially inform a person of the panel's decision in person or by telephone, but we must always confirm this in writing.

445. In all cases, we write to the registered person or applicant within 10 working days of considering the written representations.

446. When we uphold the written representations and will not issue a notice of decision, we send a representations outcome letter confirming this position and that the notice of proposal no longer applies. We may also send a letter requiring the registered persons to meet regulations. We may also issue a new

⁵⁴ We will provide a copy of these to the person making the written representations if they request them.

notice of proposal if we have decided that other conditions or actions are more appropriate.

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

Attendance by the registered person or applicant at a panel meeting

448. If the provider wishes to present their written representations in person, by telephone or video conferencing, we will consider this, if viable and reasonable. We will not unduly delay convening the panel to accommodate this.
449. A panel is not a forum by which to cross-examine evidence. The person is asked to read or give account of what is in their written representation. The panel only asks questions of the person presenting the written representations if panel members do not understand all the information provided; the panel does not challenge the information given. Similarly, the person presenting the written representations, or their representative, is not permitted to challenge the panel.
450. When the registered person/applicant attend the meeting with a representative, the representative'd role it to support the registered person/applicant. When the representatives are solicitors, they can advise their client on legal points that may affect the decision, but we do not enter into a legal debate with them. Any legal arguments should already be included in the written representations made.
451. The panel may adjourn the meeting at any time if it considers that it needs time to discuss a particular aspect of the written representations or to seek advice from others within Ofsted.

Conduct of the panel meeting

452. The senior HMI, social care or RIM who is the decision-maker will chair the panel meeting. The chair must:
- introduce themselves and the other panel members
 - ask the panel members to set out their views on the written representations
 - ask for any updates since the NOP was served which the panel can take into account, for example a provider has made significant changes at the setting
 - discuss any further points

- ask each panel member to state their view on whether the appeal should be upheld or not
- make the decision
- agree with panel members the evidence on which the decision has been made

Conduct of the panel meeting when a person attends

453. The senior HMI, social care or RIM who is the decision-maker will chair the panel meeting. The chair must:

- introduce themselves and the other panel members
- 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 presenting the written representations
- explain that the panel is not a court and that there is no opportunity to cross-examine regarding the evidence, but that either party can ask for clarification on any points through the chair
- explain that we review the information they have submitted prior to hearing before we make our decision
- explain that they can present any new or extra information, which we may consider. However if the additional evidence is lengthy, we may have to adjourn the meeting in order for the panel members to review and digest this
- explain that if we do not uphold their written representations we will issue a notice of decision, against which they have a right of appeal to the tribunal
- the outcome of the panel decision is made in writing
- tell the applicant/registered person what he or she can do next if the written representations are not upheld.

Record-keeping and retaining notes from the panel meeting

454. We record the decision with the reasons on Cygnum.

455. All members of the panel review the minutes for accuracy before they are signed off by the chair. The minutes are stored as part of the compliance case on Cygnum.

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

3.17 Appeals to the First-tier Tribunal, Health, Education and Social Care Chamber

Introduction

457. In some circumstances, registered persons or applicants for registration may appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) against decisions we make.⁵⁵

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

- refuse registration
- grant registration with conditions that the applicant has not previously agreed to
- cancel registration
- impose, vary or remove conditions of registration
- refuse a request to vary, remove or impose conditions of registration
- refuse to give written consent for a disqualified person⁵⁶
- suspend a registration (by notice or in an emergency)
- restrict accommodation (for children's homes, residential family centres and residential holiday schemes for disabled children only).

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

- cancel a registration
- vary or remove a condition of registration
- impose a new condition of registration.⁵⁷

Timescales for making appeals

460. To appeal against most actions⁵⁸ a registered person or applicant has 28 days after:

- the date on which we serve a notice of decision

or

⁵⁵ Section 21 of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

⁵⁶ A decision made under section 65 of the Children Act 1989. Appeals are made under section 65A of the Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/contents.

⁵⁷ We may apply to a magistrate for an emergency order under section 20 of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

⁵⁸ Section 21(2) and (2A) of the Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

- the date on which the magistrate makes their order.

461. The only exception to this is when a person is appealing against our decision not to grant written consent for a disqualification.⁵⁹ In this case, the person has three months in which to appeal.⁶⁰

462. The First-tier Tribunal counts the time limits for an appeal from the first working day after we serve the notice.⁶¹ This means that if the provider/applicant receives a notice on a Saturday, the period begins on the following Monday.

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

Ofsted Action	Formal written representations to Ofsted?	Appeal body	Appeal period
Compliance notice	No	No right of appeal	
Warning letter	No (offence has been admitted)	No right of appeal	
Suspension of registration by notice	Yes	First-tier Tribunal	28 days
Suspension of registration in emergency	No	First-tier Tribunal	28 days
Restriction of accommodation	No	First-tier Tribunal	28 days
Simple caution	No (only issued by consent)	No right of appeal (only issued by consent)	
Refusal to grant registration	Yes	First-tier Tribunal	28 days
Granting registration with conditions not agreed by the applicant	Yes	First-tier Tribunal	28 days
Imposing, varying or removing conditions of registration by notice	Yes	First-tier Tribunal	28 days

⁵⁹ Section 65A of the Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/contents.

⁶⁰ Schedule (a) under rule 20(1)(d) of 'The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008'; www.legislation.gov.uk/uksi/2008/2699/contents/made.

⁶¹ Rule 1 of 'The First-tier Tribunal (Health, Education and Social Care Chamber) Rules 2008', defines a working day as 'any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971'.

Ofsted Action	Formal written representations to Ofsted?	Appeal body	Appeal period
Imposing, varying or removing conditions of registration in emergency	No	First-tier Tribunal	28 days
Refusal of a request to vary, remove or impose conditions of registration	Yes	First-tier Tribunal	28 days
Refusal to give written consent for a disqualified person	No	First-tier Tribunal	3 months
Cancellation of registration by notice	Yes	First-tier Tribunal	28 days
Cancellation of registration in emergency	No	First-tier Tribunal	28 days

Expedited appeals

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

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

465. Parties subject to the appeal process, which are covered by the expedited process, must comply with the timescales for expedited appeals as set out in the memorandum of understanding.⁶²

How to appeal to the First-tier Tribunal

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

HMCTS – Care Standards

1st floor

Darlington Magistrates Court

⁶² ‘Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber’, Ofsted, May 2014;
www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc.

Parkgate

DL1 1RU

Telephone: 01325 289350

Fax: 01264 785013

Email: cst@hmcts.gsi.gov.uk

467. A person must appeal to the First-tier Tribunal in writing. Applications to appeal **must** include a copy of the notice of decision and an appeal application form. This form can be downloaded from: www.justice.gov.uk/tribunals/care-standards. On receiving an appeal, the secretary of the Tribunal sends the information from the appellant to Ofsted. Unless the appeal is being dealt with under the expedited procedure, we must respond to the Tribunal within the timescales set out below.
468. On receiving the notice of an appeal, the senior HMI, social care decides whether to defend the appeal, taking into account the recommendations of colleagues and legal advisers. The decision regarding whether to defend the appeal must be made immediately. If we decide to defend the appeal, the legal team **must** be notified immediately.

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

469. We must prepare the necessary documents and a covering letter of instruction, and forward them initially to the legal team that decides how the matter will be dealt with. The legal adviser dealing with the matter will complete the form providing Ofsted's response, once they have sufficient instructions, and return it to the secretary of the Tribunal.
470. The draft response must include:
- an acknowledgement that we have received the copy of the application for appeal
 - confirmation that we oppose the application
 - a brief outline of the reason we are opposing the appeal
 - the name and address of the solicitor representing us
 - a copy of any order made by a magistrate and a copy of the statement (where applicable).
471. If we do not respond to the information from the secretary to the Tribunal within the appointed timescale, we run the risk of taking no further part in the proceedings. This means that the Tribunal can decide the outcome of the appeal without hearing our defence. The Tribunal may also consider that we

have acted unreasonably in conducting our part of the proceedings, and may subsequently make an order for us to cover the other party's costs.

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

- post
- hand
- fax
- email, when the Tribunal permits this.⁶³

Responding to notification of an appeal

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

- **three working days** of receipt of an appeal against:
 - restriction of accommodation at a children's home, residential family centre or residential holiday camp for disabled children
 - an urgent suspension of registration
 - a magistrate's order for emergency cancellation or variation of conditions of registration⁶⁴
- **20 working days** of receipt in relation to all other appeals.

Withdrawal of an appeal

474. Either party to an appeal may request to withdraw their case by sending a written notice to the Tribunal or orally at a hearing. A withdrawal will not take effect unless the Tribunal consents to it.⁶⁵

475. When the Tribunal gives its consent for a party to withdraw its case, that party may apply to have its case reinstated. Requests must be made in writing and be received by the Tribunal within 28 days of the written notice to withdraw or the oral hearing occurring.

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

⁶³ Paragraph 13 of 'The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008'; www.legislation.gov.uk/uksi/2008/2699/contents/made.

⁶⁴ 'Memorandum of understanding between Ofsted and the First-tier Tribunal of the Health, Education and Social Care Chamber', Ofsted, May 2014;
www.gov.uk/government/publications/memorandum-of-understanding-between-ofsted-and-hesc.

⁶⁵ Rule 17 of 'The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008'.

Notice of the First-tier Tribunal hearing

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

Preparation for the First-tier Tribunal hearing

478. SCCIs and RIMS take responsibility for coordinating and managing our response, including managing advice from solicitors.
479. The timescales for action vary. If either party has asked for a directions hearing, or if the principal judge or nominated chair considers it necessary to hold a directions hearing, timescales are agreed or imposed.
480. 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.
481. The responsible SCCI must follow Ofsted's internal legal guidance in preparing and compiling evidence and communicating with witnesses.
482. The legal adviser, with involvement from SCCIs, will complete the bundle (the package of documentation that we submit to the Tribunal) and arrange for the transfer of documents to the Tribunal and other parties. We must take account of this extra step when setting timescales.

The hearing

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

After the hearing

The outcome

485. The Tribunal will tell both parties about its decision. In oral hearings, the Tribunal may choose to tell both parties of its decision verbally or reserve its decision while considering the facts and submissions. The tribunal must provide each party as soon as reasonably practicable after making its decision with:⁶⁶

⁶⁶ Paragraph 30 of 'The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008'; www.legislation.gov.uk/ukxi/2008/2699/contents/made.

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

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

487. The decision takes effect on the date on which the Tribunal makes the decision.⁶⁷ Once we have received the decision, if the appeal has been dismissed we write to the appellant informing them that the decision has now taken effect and what this means for them. Where we have cancelled their registration, we warn the person in the letter that it is an offence for them to continue to carry on or manage the setting and we may prosecute them if they do so.

Decisions affecting conditions of registration

488. If the Tribunal's decision is to vary or add conditions to the registration, the SCCI must record the decision on Cygnum. If the Tribunal decides that a registration should continue with amended conditions, we must issue a new certificate of registration with the conditions as set out by the Tribunal. We do not need to send a new notice of proposal in these cases, but we must ask the registered person to return their old certificate of registration to us.

Notifying local authorities of the outcome of an appeal

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

A review of the First-tier Tribunal decision

490. In certain circumstances, we, or the appellant, may apply to the principal judge of the Tribunal for a review of the Tribunal's decision.⁶⁸ Neither party can apply for a review on the ground that they do not agree with the decision. Rather, the only ground for making an application for a review is that there is an error of law in the decision.

⁶⁷ 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'.

⁶⁸ Rule 49 of 'The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008'.

491. We should make an application to the principal judge no later than 28 working days after receiving the decision. A senior HMI, social care must authorise an application to ask for a review before the legal adviser makes the application.
492. If the Tribunal decides not to review the decision, or reviews it and decides to take no action, the party can make an application to the Tribunal for permission to appeal. The Tribunal must send to both parties, as soon as is practicable:
- a record of its decision
 - a statement of its reasons for refusal to review, or to review
 - details of any rights to appeal to the Upper Tribunal and the timeframes for this
 - details of any rights to make representations.

Appeals to the Upper Tribunal

493. Either party may apply to the Upper Tribunal for permission to appeal. A party can only do this after it has first applied to appeal to the First-tier Tribunal and had this application refused. An application for permission to appeal must be made in writing and be received by the Upper Tribunal no later than one month after the date on which the First-tier Tribunal made the decision to refuse its permission to appeal.⁶⁹
494. We will only consider appealing to the Upper Tribunal in exceptional circumstances. The relevant regional director is responsible for making the decision about whether to appeal to the Upper Tribunal.
495. The instructed solicitor or barrister will discuss with us whether there are grounds for appeal and provide the necessary advice on an appeal.

Part 4: Other compliance and enforcement guidance

4.1 Working with other agencies and serious case reviews

Introduction

496. This section sets out our role in child protection concerns, including how we work jointly with other agencies in strategy discussions and serious case reviews, to protect children and young people.
497. Ofsted's 'Safeguarding children and young people and young vulnerable adults' policy applies to all our staff, and to those who provide contracted services for us.⁷⁰ It provides staff with consistent advice on dealing with potential issues

⁶⁹ Rule 21(3)(b) of 'The Tribunal Procedure (Upper Tribunal) Rules 2008'.

⁷⁰ 'Safeguarding children and young people and young vulnerable adults policy', Ofsted, February 2015; www.gov.uk/government/publications/ofsted-safeguarding-policy.

involving the safeguarding and protection of children and young people and, where appropriate, vulnerable adults, and promotes effective multi-agency working as provided for in the Children Act 2004, and 'Working together to safeguard children'.^{71,72}

498. We have a number of protocols with other agencies that set out in detail our agreed working arrangements with them. These protocols are published on Ofsted's website.⁷³ This section contains further information about Local Safeguarding Children Boards(LSCBs).
499. Ofsted's processes for dealing with whistleblowing referrals are set out in 'Whistleblowing to Ofsted about children's social care services'.⁷⁴ This document includes details of our whistleblowing hotline.⁷⁵

Strategy discussions⁷⁶

500. Local authority children's services arrange strategy discussions in accordance with statutory guidance.⁷⁷

Attendance at strategy discussions

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

Our role at strategy discussions

502. At strategy discussions, we support robust, timely steps to protect children and promote their welfare, and challenge decisions that we believe will not do so.
503. We work collaboratively with other agencies to:

⁷¹ Children Act 2004; www.legislation.gov.uk/ukpga/2004/31/contents.

⁷² 'Working together to safeguard children', Department for Education, March 2015; www.gov.uk/government/publications/working-together-to-safeguard-children--2.

⁷³ Memorandums of understanding between Ofsted and partner organisations; www.gov.uk/government/collections/ofsted-memorandums-of-understanding.

⁷⁴ 'Whistleblowing to Ofsted about children's social care services', Ofsted, January 2016; www.gov.uk/government/publications/whistleblowing-about-childrens-social-care-services-to-ofsted.

⁷⁵ whistleblowing@ofsted.gov.uk.

⁷⁶ This meeting can be known by other names, such as a 'section 47 meeting' or strategy meeting. However, 'Working together to safeguard children' (Department for Education, March 2015) refers to this as a strategy discussion. www.gov.uk/government/publications/working-together-to-safeguard-children--2.

⁷⁷ The purpose and tasks of strategy discussions are set out on pages 36–38 of: www.gov.uk/government/publications/working-together-to-safeguard-children--2.

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

504. We also explain to other agencies that registered person(s) can appeal to the tribunal against some of the decisions we make. We ensure that, when necessary, we secure the agreement of those attending the strategy meeting to attend any tribunal if necessary, and/or supply witness statements.

505. We must also agree with the other organisations the information that we can share with the registered person(s) about the concern. The police or local authority have to decide how much information they are willing to place in the public domain, without it having a negative impact on their investigation, but they need to understand the constraints that this can place on Ofsted’s actions.

506. Local authority children’s services may decide to investigate the concern under section 47 of the Children Act 1989, or the police may decide to make enquiries as to whether an offence has occurred.⁷⁸ We will not be involved directly in these investigations, as we do not conduct child protection investigations with, or on behalf of, children’s services or the police, but we may carry out a joint visit as described in the section, ‘Working with other agencies when planning an investigation’.

⁷⁸ Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/contents.

At the close of an external agency investigation

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

Serious case reviews

509. LSCBs have a duty to review the role of professional bodies that come into contact with:
- any child who dies, where abuse or neglect is known or suspected to be a factor
 - any child who is seriously harmed, where abuse or neglect is known or suspected to be a factor and where there are concerns about how organisations or professionals have worked together to safeguard the child.
510. These reviews are known as 'serious case reviews'.⁷⁹ Membership of LSCBs includes representatives from a broad range of agencies that provide services to children.
511. The primary purpose of a serious case review is to consider whether there are lessons that can be learned about the ways in which organisations work together to safeguard and promote the welfare of children. Guidance on LSCBs and serious case reviews is in 'Working together to safeguard children'.
512. The LSCB may request any involved agency to submit an individual management review of its involvement in the case. Ofsted may be requested to do so when regulated provision is an element of the case.
513. The review will be conducted by a suitable person who is at the grade Band A or above. The review may agree recommendations to improve Ofsted practice.

⁷⁹ The circumstances in which serious case reviews are held are set out in Regulation 5 of the Local Safeguarding Children Boards Regulations 2006; www.legislation.gov.uk/uksi/2006/90/contents/made.

4.2 Children's homes disqualification and written consent

Introduction

514. There is no disqualification regime within the Care Standards Act.

Disqualification from carrying on, being involved in the management of, having a financial interest in or being employed in a children's home arises when a person⁸⁰ is disqualified from privately fostering a child. The circumstances that give rise to disqualification from privately fostering a child are set out in section 68 of the Children Act and the regulations made under it (the Disqualification from Caring for Children (England) Regulations 2002). A full list of the circumstances that bring about disqualification from privately fostering a child can be found in Schedule 1 of the Disqualification from Caring for Children (England) Regulations 2002.⁸¹

515. A person is disqualified from private fostering if the person is:

- the parent of a child for whom specified types of court orders relating to the care of that child have been made
- subject to cancellation of the registration of a children's home under the Care Standards Act; or refusal of registration of a children's home under the Care Standards Act; been concerned in the management of, or had any financial interest in, a children's home in respect of which the registration of any person has been cancelled under the Care Standards Act
- prohibited under section 69 of the Children Act 1989, section 10 of the Foster Children Act 1980 or section 4 of the Children Act 1958 from privately fostering
- been subject to cancellation or refusal of registration relating to the provision of childcare
- convicted of the offences specified in the Disqualification from Caring for Children (England) Regulations 2002
- convicted of any offence, which involved bodily injury to, or death of, a child.

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

⁸⁰ Please note that disqualification cannot attach to a corporate entity, it can only attach to a "natural person" i.e. a human being and not a corporate entity

⁸¹ The circumstances referred to in the schedule include convictions for criminal offences, family court orders and certain regulatory action.

Written consent

517. Ofsted has a separate role as the appropriate authority under section 65 of the Children Act 1989, which grants waivers to disqualified persons. Any disqualified person that wishes to carry on, be concerned in the management of, have a financial interest in a children's home or wishes to employ a disqualified person must apply for written consent from Ofsted first. This role is distinct from Ofsted's role as a registration authority under the Care Standards Act 2000. A disqualified person or an employer seeking to employ a disqualified person has 28 days in which to notify Ofsted that they are disqualified/wish to employ a disqualified person and apply for written consent. Failure to do so is an offence.⁸²
518. If we find that a disqualified individual (without written consent) is involved with a children's home in any of the relevant capacities or that a registered person has employed a disqualified person to work in a children's home, we must hold a case review as soon as possible. It is a criminal offence under section 65(4) for a disqualified person to be involved in children's home in any of the relevant capacities or for someone to employ a disqualified person to work in a children's home. A legal adviser should be asked to attend a case review in this instance.
519. There is no disqualification regime which attaches to the cancellation or refusal relating to the other types of establishments or agencies which are regulated by the Care Standards Act 2000.⁸³ If a person or organisation has been refused registration or had their registration cancelled for an establishment or agency which is not a children's home, that information does not trigger any form of disqualification. It may however be relevant if that person seeks to be registered in the future and it may also form the basis of information sharing between Ofsted and other regulatory bodies.

4.3 Making referrals to the Disclosure and Barring Service

Introduction

520. We have a statutory power⁸⁴ to refer individuals to the DBS. The referral is made so that the DBS can decide whether to include the individual on a list of

⁸² Section 65(4) Children Act 1989; <http://www.legislation.gov.uk/ukpga/1989/41/contents>

⁸³ Holiday schemes for disabled children, residential family centres, voluntary adoption agencies, adoption support agencies, independent fostering agencies

⁸⁴ Under section 45 of the Safeguarding of Vulnerable Groups Act 2006 Supervisory authorities: [power] to refer: (1) A supervisory authority [may] provide [DBS] with any... information it holds relating to a person if the first and second conditions are satisfied. (2) The first condition is that the supervisory authority thinks, on the basis of relevant evidence—(a) that paragraph 1, 2, 7 or 8 of Schedule 3 applies to the person, (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 3 occurring after the commencement of this section, or (c) that the harm test is satisfied. (3) The harm test is that the person may— (a) harm a child or vulnerable adult, (b) cause a child or vulnerable adult to be harmed, (c) put a child or vulnerable adult

people who are barred from working with children and/or vulnerable adults (the DBS's barred lists).

521. We refer individuals to the DBS when we have evidence of conduct or behaviour that resulted in harming a child or young person, or which placed a child or young person at risk of harm.
522. The DBS is responsible for making decisions about whether to include a person in a barred list.
523. We notify the HCPC if the person is also registered with this body.

When to make a referral

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

- the person has been cautioned or convicted of a relevant (automatic barring) offence
- the person has engaged in conduct that has harmed or posed a risk of harm to a child or vulnerable adult
- the person has satisfied the harm test (has not engaged in relevant conduct but poses a risk of harm to a child or vulnerable adult)
- the person is or has been, or might in future be, engaged in regulated activity⁸⁵
- except in cases of automatic barring subject to representations, we consider that the DBS may consider it appropriate for the person to be included in a barred list⁸⁶

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

- harm a child or vulnerable adult

at risk of harm, (d) attempt to harm a child or vulnerable adult, or (e) incite another to harm a child or vulnerable adult. (4) The second condition is that the supervisory authority thinks— (a) that the person is or has been, or might in future be, engaged in regulated activity... ,and (b) (except in a case where paragraph 1 [or 7] of Schedule 3 applies) that [DBS] may consider it appropriate for the person to be included in a barred list. (www.legislation.gov.uk/ukpga/2006/47/contents).

⁸⁵ The legal definition of regulated activity is set out in schedule 4 of the Safeguarding Vulnerable Groups Act 2006; www.legislation.gov.uk/ukpga/2006/47/contents.

⁸⁶ Paragraphs 1 and 7 of Schedule 3 of the Safeguarding Vulnerable Groups Act 2006; www.legislation.gov.uk/ukpga/2006/47/contents.

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

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

- registered person(s)
- people whose registration we have cancelled
- people who have voluntarily cancelled their registration
- people who have resigned or been dismissed from a regulated activity ⁸⁷
- people employed (even if unpaid) to work directly with children, young people or vulnerable adults by a registered person
- applicants for registration.

527. In some cases, we may decide to refer an individual for consideration for inclusion before we have gathered all the evidence relating to misconduct, but when the limited information that we have satisfies the relevant tests for referral, for example, when a social care provider (who is an individual) applies for voluntary cancellation before we complete our investigation and we have not issued a notice of our proposal to cancel but we have concerns about that person.

Duty on employers to refer to DBS

528. Employers have a statutory duty to refer an individual to the DBS if they have removed the person because they have harmed or posed a risk of harm to a child or vulnerable adult. ⁸⁸ If we become aware that the registered person has not taken this step, we make the referral ourselves. We also let the DBS know that the employer failed to make the appropriate referral.

529. When a provider refers an individual to the DBS, we can forward any additional evidence we hold that may assist the DBS in reaching a decision.

530. If the registered person fails to make a referral, inspectors must investigate why they did not do so, and whether this failure has an impact on the

⁸⁷ As defined in the Safeguarding Vulnerable Groups Act 2006.

⁸⁸ Under section 35(2) of the Safeguarding of Vulnerable Groups Act 2006. A person to whom this subsection applies must provide [F2DBS] with the information if— (a) he withdraws permission for P to engage in the activity for a reason mentioned in subsection (3), or (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity (www.legislation.gov.uk/ukpga/2006/47/contents).

registered person's fitness to remain registered and/or their suitability to work with children, young people and adults.

531. It is an offence under the Safeguarding of Vulnerable Groups Act 2006 for an employer to fail to provide information to the DBS without reasonable excuse, when required by law to do so. Ofsted is not the prosecuting authority for this offence; the power to prosecute lies with the DBS.

Making the decision to refer to the DBS

532. The decision to refer a person to the DBS is made in line with our decision-making table.
533. The DBS considers each referral against the evidence available before deciding whether to include the individual on a barred list. In some cases, the DBS may seek additional information from us.
534. A supervisory authority may apply for information under this section only if the information is required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).
535. When we believe a registered person or someone applying to be a registered person is included on a barred list, we may make an application to the DBS to have this information confirmed in writing. The DBS will also inform the individual by letter. We may do this when we receive information to suggest that a registered person has become barred and when they have failed to inform us of this fact. Once it has been established that a person is barred, we will take steps to cancel or refuse their registration.

Making a referral

536. Once we make a decision to refer a person to the DBS, the decision-maker completes and signs the DBS referral form. The form is available on the DBS website.⁸⁹

4.4 Closing a compliance case

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

⁸⁹ DBS referral form; www.gov.uk/government/publications/dbs-referrals-form-and-guidance.

538. Sometimes, cases may be closed to merge concerns so that these relate to one compliance case only.
539. The decision to close a compliance case is made at a case review or in a discussion with the SCCI and RIM. The reasons for closing the case and a summary of the case are made on Cygnum by the inspector. We also make arrangements for the return of any evidence seized. The information stays on record and will be referred to as necessary for determining a person's fitness in respect of any ongoing registration, other registrations they hold or future applications for registration.

4.5 Children's homes without managers

540. Regulation 28 of Children's Homes Regulation (England) 2015 requires a registered provider to appoint a person to manage the children's home. RIMs and SHMI should keep under regular review all settings which do not have a registered manager in post.
541. When a provider has not appointed a manager within 28 days and has not taken reasonable steps to appoint a manager, the RIM should write to the registered provider to ask them explain why they have not been able to meet this timescale. The RIM should ensure that a copy of the letter is stored on Cygnum, along with a note on the chronology, to create a clear audit trail of action. Any response to the letter should also be recorded on Cygnum and the situation must be monitored. If after a further 28 days the provider has still not responded to the first letter or taken steps to appoint a manager, the RIM should consider opening a compliance case and serving a compliance notice requiring them to appoint a manager.
542. If a provider has not appointed a manager after 26 weeks, the RIM must open a compliance case to decide if it is appropriate to take further enforcement action. If the RIM decides that enforcement action is not required, this decision must be shared with the SHMI.

Annex A: Events that registered providers must tell us about

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
1	Death of a child	√ a resident accommodated	√	√	√	√	√	√
2	Serious accident or illness to a child and the action taken in respect of this	√ also applies to a resident accommodated			√	√ serious injury only	√	√

⁹⁰ The Secretary of State may set conditions of approval on a secure children's home under regulation 3 of the Children (Secure Accommodation) Regulations 1991, which include making certain notifications to Ofsted. These usually include: allegation that a child has committed a serious offence; perimeter breaches, including dangerous contraband; fire or serious disorder; serious child-on-child assault; serious incident or sustained episode of self-harm or attempted suicide (www.legislation.gov.uk/uksi/1991/1505/made).

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
3	Referral to the DBS of an individual working for the service or setting (previously a Protection of Children Act (POCA) referral) ⁹¹	√	√	√	√	√	√	√
4	Any incident relating to a child that the registered provider considers serious		√	√				
5	Outbreak of any infectious disease – and advised to notify by a registered medical practitioner	√		√	√			√

⁹¹ Please note that the regulations applying to adoption support agencies, residential family centres and voluntary adoption agencies refer to the POCA list. The regulations have not been updated to refer to the Safeguarding of Vulnerable Groups Act 2006. This does not affect the provider's responsibility to notify us of any referral to the DBS.

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
6	Involvement, or suspected involvement, of child in sexual exploitation ⁹²	√ including a parent under 18 years	√	√	√			√ involvement or suspected involvement in sexual exploitation
7	Serious incident necessitating calling the police	√	√ to the home	√ to the home	√ to the foster parent's home			√ to any address that the scheme is operational at
8	A serious complaint	√ about the centre or persons working there	√ an allegation of abuse against persons working in the home	√ an allegation of abuse against persons working in the home	√ about a foster carer approved by the agency		√ about any adopter approved by the agency	√ about the scheme or an employee

⁹² Please note that for residential family centres, adoption support agencies and voluntary adoption agencies, the regulations refer to 'child prostitution', which may be considered as a narrower definition than child sexual exploitation.

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
9	Instigation and outcome of any child protection enquiry	√ including a parent under 18 years	√	√	√		√	√
10	A child/young person goes missing			√ ⁹³				
11	Information relating to criminal convictions and cautions relating to a registered person or responsible individual	√	√ also applies to directors where provider is an organisation and partners where provider is a partnership	√ also applies to directors where provider is an organisation and partners where provider is a partnership	√	√	√	√

⁹³ 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/uksi/1991/1505/made.

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
12	Appointment of receiver, manager, liquidator or provisional liquidator, or a trustee in bankruptcy	√	√	√	√	√	√	
13	Where provider is an individual, that they have made an arrangement with their creditors from which they have not been discharged	√	√	√	√			
14	Absence of the registered person, registered manager, agency manager or branch manager for 28 days or more	√	√	√	√ registered manager only	√	√	

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
15	Appointment (including change) of a registered manager (including date of appointment) or responsible individual	√	√	√	√	√		√
16	Change to the name or address of the registered company	√	√	√		√	√	√
17	Change of membership of partnership (where registered provider is a partnership) or change in director, trustee, manager or officer where provider is an organisation or other entity		√	√	√	√	√	

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
18	Premises significantly altered/extended or additional premises acquired	√	√					
19	A person other than the registered provider or registered manager is carrying on or managing the establishment or agency	√	√	√	√	√	√	√
20	Change of manager						√	
21	Agency ceasing to act or exist					√	√	
22	The registered person ceases to carry on	√	√	√			√	
23	Death of the registered person, responsible individual, manager or branch manager	√	√		√ manager only	√	√	√ registered provider only

Type of information		Residential family centres	Children's homes	Secure children's homes ⁹⁰	Independent fostering services	Adoption support agencies	Voluntary adoption agencies (where the child is placed for adoption by the VAA)	Holiday schemes for disabled children
24	Creation of and subsequent review of the statement of purpose and children's guide – within 28 days	√ residents' guide, not children's guide	√		√	√	√	√
25	Review of behaviour management policy			√				√
26	Review of quality of care	√	√	√	√			√
27	Report as to financial viability when it is likely that the establishment or agency has become financially unviable or is likely to be so within the next six months	√	√	√	√	√	√	

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

In this table, wherever it refers to the senior HMI, social care, this includes the senior HMI, social care, or their nominated representative.

Decision-making table

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
1. Consideration of action to take following a failure by a registered person to complete requirements set in an inspection report, impacting on the welfare of children.	Social care inspector, taking advice from RIM	Case discussion
2. Compliance notice	RIM	Case review
3. Notice to refuse registration	RIM following discussion with senior HMI, social care Notification to regional director and deputy director, inspections (legal advice if required)	Case review
4. Notice to grant registration with conditions not previously agreed by the applicant	RIM Notification to senior HMI, social care	Case review
5. Notice to vary, impose or remove conditions of registration – other than at the provider's request	RIM Notification to senior HMI, social care	Case review
6. Notice to refuse request to vary, remove or impose conditions of registration – at provider's request	RIM Notification to senior HMI, social care	Case review

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
7. Decision to hold an interview and issuing of any letters after an interview under the PACE Act 1984	Decision taken by RIM and senior HMI following consultation with legal services to ensure that the evidence meets the threshold.	Case review
8. Issuing a notice restricting accommodation up to 12 weeks (applies only to children's homes, residential family centres and holiday schemes for disabled children)	Senior HMI, social care following discussion with RIM Notification to regional director and deputy director, inspections (discussion with legal services if required)	Case review
9. Issuing a notice restricting accommodation beyond 12 weeks (applies only to children's homes, residential family centres and holiday schemes for disabled children)	Senior HMI, social care following consultation with RIM. The option of cancellation or suspension should also be considered at this point.	Case review
10. Notice to cancel registration	Senior HMI, social care following discussion with RIM Notification to regional director and deputy director, inspections (discussion with legal services if required)	Case review
11. Suspension of a registration (by notice) or extension of a period of suspension by notice	Senior HMI, social care following discussion with RIM Notification to regional director and deputy director, inspections. The option of cancellation should also be considered at this point.	Case review
12. Prosecution	Decision by senior HMI, social care following discussion with legal services to ensure that the evidence meets the evidential test. Notification to regional director	Case review

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
13. Offer a simple caution following an interview under the PACE Act 1984	Decision by original decision-maker following discussion with legal services to ensure this meet appropriate thresholds	Case review
14. Emergency action application to magistrate (emergency cancellation or emergency imposition, variation or removal of conditions of registration)	Senior HMI, social care following discussion with legal and RIM Notification to regional director and deputy director, inspections	Case review
15. Suspension of registration (emergency process) or extension of suspension by emergency process	Senior HMI, social care following discussion with RIM Notification to regional director and deputy director, inspections The option of cancellation should also be considered at this point	Case review
16. Give written consent to disqualified person	Senior HMI, social care in consultation with RIM	Written consent case review
17. Written representations against a notice of proposal	The original decision-maker chairs the panel and makes the decision in conjunction with other panel members. NB written representation to be the normal process	Representations panel
18. Referral to the DBS	RIM notifies senior HMI, social care	Case review
19. Closing a compliance case	RIM confirms on workflow that case can be closed	Case review/ case discussion

Action	Decision-maker and colleagues notified of decision	Forum: case review, case discussion or other process
20. Surveillance	Deputy director notifies HMCI, and confirms to regional director and senior HMI, social care that surveillance can take place. This is stated in the agreed protocol for use of surveillance	Case discussion and authorisation process
21. Inspection following a significant incident, for example death of a child	In situations in which the police object to the inspection, the senior HMI, social care makes the decision whether the inspection should go ahead	Case review

The regional director determines whether any of the actions should be discussed or notified to HMCI and/or the national director and informs the deputy director, inspections.

In there is any criminal law matter, legal services should be consulted at the earliest opportunity to ensure that the evidence meets the requirements.

In all cases, legal services are available for consultation and guidance.

Annex C: Roles and responsibilities in case reviews

Case review

See page 15 for what happens at a case review.

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

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

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

Annex D: Surveillance

1. Ofsted is authorised under the Regulation of Investigatory Powers Act 2000 to conduct surveillance as part of any investigation relating to its social care regulatory functions.
2. The Regulation of Investigatory Powers Act 2000 works with existing legislation, in particular the Intelligence Services Act 1994,⁹⁴ the Police Act 1997⁹⁵ and the Human Rights Act 1998.⁹⁶ In brief, we must conduct all surveillance according to the Human Rights Act 1998, and in particular Article 8, 'Right to respect for private and family life'.
3. The Regulation of Investigatory Powers Act 2000 ensures that any use of investigatory powers is compliant with human rights and sets out:
 - when we can carry out directed surveillance
 - who should authorise each use of the power
 - what use we can make of the material gained.
4. We only use directed surveillance in the regulation of social care providers when we need to provide evidence that a provider has committed or is committing an offence, and we have exhausted all other methods of gathering evidence, such as unannounced visits.
5. Section 26(2) of the Regulation of Investigatory Powers Act 2000 defines directed surveillance as surveillance 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 carried out:
 - for a specific investigation or specific operation
 - in a manner that is likely to result in obtaining private information about a person or people
 - in a way that is planned, rather than the chance observations of, for example, an inspector attending a setting to conduct an inspection.
6. We carry out a case review before seeking authorisation to carry out directed surveillance. Only staff who have received approved training carry out surveillance. Inspectors carrying out surveillance, as well as authorising officers,

⁹⁴ Intelligence Services Act 1994; www.legislation.gov.uk/ukpga/1994/13/contents.

⁹⁵ Police Act 1997; www.legislation.gov.uk/ukpga/1997/50/contents.

⁹⁶ Human Rights Act 1998; www.legislation.gov.uk/ukpga/1998/42/contents.

are familiar with the 'Covert surveillance and property interference code of practice'.⁹⁷

When is it necessary and proportionate to grant surveillance?

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

⁹⁷ 'Covert surveillance and property interference code of practice', Home Office, December 2014; www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice.

Application to conduct surveillance

12. We set out in the application:

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

13. Additionally, the application will set out:

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

Urgent cases

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

Authorising officer's duties

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

Granting authorisation

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

- surveillance is an appropriate and proportionate response

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

Reviewing authorisation

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

Renewing authorisation

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

Person responsible for the surveillance operation

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

Cancelling authorisation

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

Storage of information

28. In line with the 'Code of practice for covert surveillance and property interference', we hold a central record of all authorisations. This is held by the social care policy team. We make the record available to the relevant commissioner or inspector from the Surveillance Commission, on request. We hold a record for each authorisation for at least three years from the end of each authorisation.
29. We retain the following documentation:
 - a copy of the application and a copy of the authorisation or refusal from the authorising officer, together with any supplementary documentation
 - a record of the period during which we have undertaken the surveillance
 - the frequency of reviews prescribed by the authorising officer
 - a record of the result of each review of the authorisation
 - a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested
 - the date and time of any instruction given by the authorising officer
 - all the log books and personal issue books.
30. We store all information electronically and in hard copy, with access rights only available to the senior officer and authorising officer, in line with our retention policy.

Retention and destruction of surveillance material

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

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

Annex E: Naming and storing protocol

Legal notices		
	Name of document	Storage of document
Compliance notices	Date, case number compliance notice (20170117 C55434 compliance notice)	All to be uploaded to the compliance record screen.
Restriction	Date, case number restriction	
Suspension	Date, case number suspension (or emergency suspension)	
Cancellation NoP	Date, case number cancellation NoP	
Cancellation NoD	Date, case number cancellation NoD	
Imposed variation	Date, case number imposed variation	
Refuse NoP	Date, case number refuse NoP	
Refuse NoD	Date, case number refuse NoD	
Arrangements legal reps panel letters	Date, case number legal rep panel letter	
Provider responses same re appeals	Date, case number provider response to appeal	
Simple caution	Date, case number simple caution	
Legal advice	Date, case number legal advice (more than one please number each one e.g. no 1, no 2 and so on)	
Warning letter	Date, case number warning letter	

Case progression type documents		
	Name of document	Storage of document
Provider-led investigation (PLI) letters	Date, case number, PLI investigation letter	All to be uploaded to the compliance record screen.
Provider-led investigation response (PIR)	Date, case number, PLI provider response	
Case closure letters	Date, case number, PLI closure letter	
Case progression letters (e.g. more information etc. requested)	Date, case number, case progress letter	
Supporting documents relating to PIR/PLI response review	Date, case number, PIR or PLI additional document Label each one with a number. For example, 'PIR additional doc 1', followed by the date	
Email responses from any party	Date, case number, correspondence internal, correspondence external, email no 1 (more emails should be recorded as no 2 and so on)	
General submissions e.g. staff rotas etc.	Additional evidence, type of evidence, title, date, for example staff rota	
Monitoring visits – for discussion re compliance or inspection Cygnum threads for saving	This will be already held in Cygnum	NA
Volunteer cancellation (VC) applications if associated with case	Date, case number, VC application	To be uploaded to the compliance record screen ARC will also sometimes receive a copy and will put this in documents

Safeguarding response documents		
	Name of document	Storage of document
Strategy meeting minutes and updates	Date, case number, strategy meetings, no 1, name of local authority (LA) (more meetings should be recorded as no 2 and so on)	To be uploaded to the compliance record screen
Referral LADO and responses	Date, case number, LADO R, name of LA, no 1 (more responses should be numbered as no 2, no 3, and so on)	To be uploaded to the compliance record screen
Additional DBS and police-type checks not included as part of a registration process	Date, case number, additional (type)	To be uploaded to the compliance record screen DBS certificates must not be uploaded on Cygnum Record the name, date, DBS number and outcome only
Information shared by police	Date, case number, police sharing	To be uploaded to the compliance record screen
Serious Incident Briefings here for now but can also be associated with case review or case progression-type docs	Date, case number, SIB	To be uploaded to the compliance record screen

PACE		
	Name of document	Storage of document
Invitations	Date, case number, PACE invite	All to be uploaded to the compliance record screen.
Confirmation	Date, case number, PACE confirmation	
All notices used in interview e.g. at start of interview and conclusion	Date, case number, PACE notice (number when required)	
Ref to transcripts/CDs	Date, case number, PACE transcript	
Transcribed interviews	Date, case number, PACE transcribed	
Summary docs e.g. by SCCI/SCRI to inform case review	Date, case number, PACE document (type)	
Witness statements	Date, case number, PACE witness statement (number if more than one)	
Evidence docs	Date, case number, PACE additional (type) (number no 1, no 2 and so on)	
Submissions	Date, case number, PACE submission no 1	

Case reviews		
	Name of document	Storage of document
Case review proforma final	Date, case number, case review proforma	All to be uploaded to the compliance record screen
RIM/SCRI initial inadequate review docs (prior to case review)	Date, case number, case review doc (number no 1)	
SCRI evidence	Date, case number, case review evidence (number no 1)	
Provider action plans and submissions	Date, case number, action plan	
Legal advice request and responses (LARF)	Date, case number, legal advice	

Other agencies' communication		
	Name of document	Storage of document
Police documents	Date, case number, communication from – state where from e.g. police, fire, health	To be uploaded to the compliance record screen If the details are general, then this should be stored in documents
Social work responses/information	Date, case number, communication from social work	To be uploaded to the compliance record screen



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Piccadilly Gate
Store Street
Manchester
M1 2WD

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.gov.uk/ofsted

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