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Guidance

Supported accommodation: Ofsted's interim enforcement policy

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Applies to England

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Purpose and principles of enforcement

The law gives Ofsted a range of powers to regulate children's social care provision. The enforcement action we take is set out in the [legislation](#).

We exercise our enforcement powers to:

- reduce the risk of harm to children who use regulated social care provision
- enforce compliance with the law
- improve the quality of services

The protection of children is paramount to our approach to enforcement.

We will:

- act immediately on any information that suggests that the welfare of children is not safeguarded or that they are at risk of harm or being harmed
- take appropriate and targeted action that:
 - reduces the risk of harm or actual harm to children
 - considers the circumstances of each case and is proportionate to the seriousness of the non-compliance
 - is agile and revises our approach as appropriate
 - secures compliance with the law and improves the quality of the service
 - implements fairly our statutory or non-statutory enforcement powers when a relevant threshold is met
 - is transparent
 - is accountable and complies with the [Regulators' Code](#)

Ofsted's powers of enforcement

Our enforcement powers are set out in the [Care Standards Act 2000](#) and associated regulations. They apply to the establishments, services and agencies that we regulate, including supported accommodation.

The law gives Ofsted a range of powers to deal with:

- persons carrying on or managing a service without the appropriate registration
- registered persons who fail to meet the legal requirements for supported accommodation services that are regulated under the Care Standards Act 2000

This policy sets out the principles and approach we will follow when exercising our enforcement powers. We exercise these powers to reduce the risk of harm to children who use services that we regulate, as well as to protect children from unregistered providers, to enforce compliance with the law and to improve the quality of services.

Legislation and related guidance

This policy should be read alongside:

- [our guidance](#), which describe our approach to registration
- [statutory guidance](#) and [regulations](#)

Statutory guidance and regulations

The main legislation/guidance is as follows:

- [Care Standards Act 2000](#)
- [The Care Standards Act 2000 \(Registration\)\(England\) Regulations 2010](#)
- [Supported accommodation \(England\) Regulations 2023](#)
- [Guide to the supported accommodation regulations including quality standards](#)
- [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Supported Accommodation\) \(England\) Regulations 2022](#)

How we respond to information we receive

This section covers the action we take when we receive information that may suggest that:

- children are, or may be, at risk of harm
- a registered person/provider is not meeting the relevant regulations or conditions of registration
- a registered person is no longer fit to carry on or manage
- an unregistered person is operating a supported accommodation service

Where information comes from

We may receive information from a variety of sources, including from:

- children or their representatives
- registered persons through notifications; the law requires registered persons to inform us of certain matters (notifications) 'without delay'
- local authorities
- other agencies, such as schools, environmental health, fire safety, safeguarding partners and local authority designated officers
- housing officers and housing associations
- other regulators/inspectionates, such as the Care Quality Commission and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
- parents and carers
- members of staff
- members of the public

Data protection

Ofsted will gather any personal information that is necessary for us to fulfil our regulatory role. Our

[privacy policies](#) set out what personal information we collect, what we do with it, how long we keep it and individuals' rights under data protection legislation.

If we are using any personal data in relation to law enforcement, including prosecuting individuals, we will, during that time, hold this data separately, in line with [the relevant law](#).

When we receive concerns from parents or other members of the public, we always try to keep their identities private, if that is their wish. However, a provider may be able to guess their identity from the information provided. Occasionally, we may have to reveal the identity of a complainant to allow a thorough review of the concern, or when action has resulted in a court or tribunal hearing. In these cases, we would always discuss this with the complainant before doing so.

In order to keep children safe, we may also have to share the information we have received with other organisations.

Whistle-blowing

Sometimes, a member of staff may tell us something that they reasonably believe shows wrongdoing or a cover up by that organisation. This is known as whistle-blowing. We have [whistle-blowing guidance](#) for these instances.

Safeguarding and child protection concerns

We follow our [safeguarding policy](#) and guidance in '[Working together to safeguard children](#)'. We will always carry out an immediate assessment of risk on receiving any information. This will determine whether any safeguarding or enforcement action is required. We liaise with other agencies as necessary.

Ofsted is not the statutory authority for enquiries into specific child protection concerns under [section 47 of the Children Act 1989](#). If we receive any concerns about safeguarding or allegations of abuse, we will refer them to the relevant local authority children's services and/or the police. It is for the local authority to determine how it responds to the concerns. We will escalate to the director of children's services if we remain concerned. We will also carry out our own assessment of whether the provider meets the requirements for continued registration and decide on the appropriate action to take. We will work closely with the local authority and the police when there is a section 47 investigation. If the information suggests risk of harm, we may use our urgent enforcement powers.

Local authority children's services arrange strategy discussions to assist them in deciding whether the information they hold about a child meets their threshold to investigate a child protection concern and, if so, the steps they need to take in response. We may attend strategy meetings if appropriate.

Ofsted's role at strategy meetings

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

We work with other agencies to:

- always share any information we have that is relevant to the concern being investigated
- identify any limitations on the information that we can share (which should be discussed and agreed with Ofsted's legal advisers before the strategy meeting)
- provide background details to our involvement with the setting, including any decisions or actions we have taken about the concern
- inform them 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 whether the provision continues to be fit to provide a service. This means we may initiate and complete our investigation before the child protection investigation is completed
- ask that we receive minutes from future meetings (if we intend to take no further action) so that we can assess whether we need to become involved again

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

We must also agree with the other organisations what information 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. However, they need to understand the constraints that this can place on our actions.

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. We will not be involved directly in these investigations. We do not carry out child protection investigations with, or on behalf of, children's services or the police.

At the close of an external agency investigation

When an external agency investigates concerns and makes decisions about the welfare of children, we continually reassess whether the registered person continues to meet the regulations and/or remains fit for registration.

When we close a case, we must consider the information from others' investigations. We must record this on our internal system, Cygnum. Some compliance cases will remain open until we know the outcome of any legal action.

How we act on information

When we receive information or allegations that suggest a breach of relevant regulations or legislation, we check whether children are at risk of harm and/or whether a provider is complying with the law.

We may choose to gather further information and evidence before we make a decision about what enforcement action, if any, we will take. When we are notified of an event, we may ask the provider notifying us to provide us with more information about what it has done in relation to the event.

We may choose to write to the registered person(s) asking them to provide us with a comprehensive report on the steps they have taken (which may be in the form of an action plan) in response to the concerns.

We assess all the information we receive against the details we already hold about the registered provider or service to decide on the appropriate action to take.

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 greater concern. From 28 October 2023, if we have information that suggests a provider may be operating without registration, and we have not accepted a completed application, we will deal with in accordance with [our guidance on unregistered services](#).

We may receive low-level concerns that do not suggest a risk to the safety or well-being of children. In this case, we note the information.

If information comes from an anonymous source, we encourage them to speak directly to the provider. If the information-giver gives us their name and contact details but wishes to remain anonymous from the provider, we will respect their wishes if we can, but the provider may still work out their identity.

Writing to the registered person

If we write to the registered person(s), they normally have 7 working days from the date of our letter to respond. When we receive their response, the inspector assesses the information and determines whether it adequately deals with the concern.

If we do not receive a response to our letter within 7 working days, we must decide on a course of action.

If the response or action plan is unsatisfactory, we will assess the risk and determine a course of action.

Monitoring visits

If we receive concerns about a registered service, we may carry out a monitoring visit:

- if the specific nature of our concerns means a monitoring visit is the best tool to use (this decision rests with our regulatory inspection managers)
- to monitor compliance and enforcement

Monitoring visits will usually be carried out at the provider's office or at one (or more) of the premises where supported accommodation is provided.

If we need to carry out a monitoring visit at any of the premises, we will contact the registered persons to arrange to enter the premises.

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

We will share as much information about the concern as possible. We may not do so if there is an allegation about an individual linked to the setting or where sharing the information could compromise another agency's investigation. We will always follow our whistle-blowing policy.

If a registered person or other staff member employed at the setting refuses to cooperate, the inspector will explain our powers under section 31 of the Care Standards Act 2000 to enter the premises. We will do this in order to:

- inspect the premises
- seize and remove documents or items
- inspect and take copies (either by photocopying or taking a photo with an Ofsted mobile phone or tablet) of any records and any other documents containing information relating to that provision
- observe and speak to children
- interview in private any person working with children

We normally record evidence electronically using a range of devices, including laptops, mobile phones and tablets. All evidence, including any handwritten evidence, is securely transferred to Ofsted's systems for storage. It will not be retained by the inspector personally.

Inspectors will only take photographs using Ofsted mobile phones or an Ofsted tablet. Any photos will be deleted from these devices once they have been transferred to our systems.

Inspectors will not photograph children or children's personal possessions without their consent.

Inspectors are likely to take photos when it is difficult to record an aspect of inspection evidence and a photo is a more practical way of doing this. Photos are not a substitute for evidence-recording but may be used to supplement this where appropriate. Inspectors may also take photos of records as an alternative to photocopying them, and when a photo is preferable to summarising what is in a record.

We will always seek to obtain the child's consent before entering children's bedrooms or self-contained flats. We have the legal power to enter without having first obtained the child's consent, but we will usually only use this in circumstances where we have significant concerns and/or there is a risk of harm to children or others. Our inspectors always consider the child's need to feel safe and have their dignity and needs respected. We work sensitively with children, providers and potentially relevant local authorities or other agencies where appropriate. We will record any decisions to enter appropriately, including the reason for entering without the child's consent, efforts made to seek consent, any risk assessment and management oversight of the decision.

If the registered person is obstructing the inspector, this is a criminal offence. The inspector will consider whether it is appropriate to caution the person about their rights under the [Police and Criminal Evidence Act 1984](#) before asking them further questions.

Inspectors will summarise the information at appropriate times during the visit. They will share this with the registered person or person in charge. This allows the registered person to consider matters as they emerge. Inspectors will ensure that they fully understand and note any responses correctly. This also helps the registered person to consider any other evidence they wish us to know about.

We will use all the information we have gathered to determine whether the registered person/service:

- is complying with the relevant requirements
- is meeting statutory requirements and remains suitable for registration
- has committed an offence

We will write a report following a monitoring visit. The report will note that the visit was carried out to look at specific concerns or allegations that Ofsted had been notified of.

The report will provide clear details of actions the provider has taken. We publish the reports on our [reports website](#), unless publication would compromise another agency investigation and/or in other exceptional circumstances.

Reports will also indicate if there are any breaches of regulations and raise statutory requirements, where appropriate, or make recommendations to improve practice.

Our enforcement actions: registered persons, service managers and providers

The relevant regulations set out clear duties and responsibilities of the registered provider and registered service manager. If we identify that requirements of regulations are not being met, then we must consider who is responsible for the breach. The regulations state whether the 'registered person', 'registered provider' or 'registered service manager' is responsible. In the majority of cases, the regulations make the 'registered person' responsible, which includes both the registered provider and the registered service manager.

There are additional enforcement actions we can take against registered service managers, which are covered in the ['Our enforcement actions: managers' section](#).

We will consider whether our evidence suggests that the actions or omissions of either or both registered persons contributed to the breach.

The types of enforcement actions we can take against registered persons, providers or registered service managers include:

- refusing a registration
- imposing or varying conditions of registration
- making a recommendation or requirement after a monitoring visit
- serving compliance notices
- suspending a registration
- restricting accommodation
- cancelling a registration

The enforcement powers available to us do not have to be used consecutively or in any order. We can also use more than one type of enforcement action at the same time. We will use our enforcement powers proportionately, keep our enforcement action under review and adjust any steps we are taking where appropriate.

Some enforcement actions allow periods for written representations and appeals before the action takes effect. A registered person may be permitted to continue to provide or manage the provision while some of these actions are being affected. On occasion, it may be appropriate to combine these actions with shorter-term actions, such as urgent suspension or an urgent variation. For example, while issuing a notice of proposal (NOP) to cancel registration or to impose conditions on a registration, we may also restrict accommodation to provide additional protection to children.

We will only take urgent action when there is a reasonable belief that there may be a risk of harm.

Refusing a registration

We have [guidance on applying for registration](#), which details the process we use to determine an application.

On an application for registration, it is for the applicant to satisfy Ofsted that they meet the requirements and to provide all of the information needed so that we can make a decision on

registration. If we are satisfied that the requirements of the regulations are being met, and will continue to be met, we will grant the application.

Otherwise, we will refuse the application under the [Care Standards Act 2000](#).

If we make the decision to refuse registration, we will issue an [NOP](#). This will set out the reasons for refusal. The applicant may make [written representations](#) to Ofsted concerning any matter they wish to dispute. If these representations are not upheld, we will issue a [notice of decision](#) (NOD) against which the applicant may appeal to the First-tier Tribunal. On an appeal, the burden is on the applicant to satisfy the Tribunal that the requirements for registration are, or will be, met

If a provider that is already operating a supported accommodation service applies for registration before 27 October 2023, and we consider that the provision does not or will not meet the requirements, we will issue an NOP to refuse the registration and set out the reasons why. If the concerns are not resolved through the written representations process, then we will issue an NOD to refuse.

When we issue the NOD to refuse to grant registration to a supported accommodation setting, an individual applicant becomes disqualified from private fostering and cannot carry on, be concerned in the management of, or have a financial interest in a children's home in England without our written consent. The refusal decision takes effect immediately (see [section 19 of the Care Standards Act 2000](#)).

After 27 October 2023, a provider will be committing an offence if they continue to operate after their application has been refused. They must stop providing supported accommodation to looked after children and care leavers who are aged 16 and 17 years.

We will contact the placing authorities to share our concerns and inform them that we have refused the provider's application to register. We expect that the provider and placing authority will work together to develop a transition plan for any children who must move to another provision without delay.

If a 'refused' provider provides support and accommodation after 27 October 2023, they will be operating unregistered provision and our unregistered provision policy will apply.

If an existing provider (a provider that is already providing supported accommodation) withdraws their application to register before a decision is made, they must cease to provide supported accommodation by 27 October 2023 to looked after children who are aged 16 and 17 years and care leavers aged 16 and 17.

If we have already issued an NOP to refuse registration, we may still accept their withdrawal unless we have concerns about an applicant's ability to safeguard the welfare of children due to a lack of integrity, poor safeguarding practice or knowledge, any relevant offences or other relevant information.

We will notify the placing authorities of the withdrawal of the application and expect the provider and authority to develop a transition plan for any child who must move to another home.

If we have concerns about an applicant who withdraws their application before we have made a decision on registration, we will record our concerns, share them with the placing local authorities

and consider them further if the applicant applies to register as a provider or manager of a social care establishment or agency in the future.

If the provider provides support and accommodation after 27 October 2023 following the withdrawal of the application, they will be operating unregistered provision and our unregistered provision policy will apply.

We may also make referrals to the Disclosure and Barring Service (DBS) or other agencies, if appropriate, in line with our safeguarding obligations.

Urgent conditions

There may be circumstances when we will impose, vary or remove a condition on an urgent basis, under [section 20B of the Care Standards Act 2000](#).

In this case, we will serve an urgent notice setting out the action that we are taking and why. The condition will be imposed/varied/removed immediately, and the registered person will be required to comply with it. A registered person may, however, appeal against this decision and the Tribunal will list the appeal on an expedited basis.

If we find concerns at supported accommodation premises and there is a risk of harm that applies in those premises but not necessarily across all premises run by the provider, we may impose a condition that supported accommodation cannot be provided at those premises.

We may impose other urgent conditions as necessary, such as a condition to limit which category (or categories) of supported accommodation a provider may operate if we have concerns about the quality of that category of supported accommodation and consider that it is not safe for children to live there.

We impose urgent conditions when we have reasonable cause to believe that, unless we do so, any person will or may be exposed to risk of harm. The overarching aim of imposing an urgent condition is to ensure the safety of children until the risk of harm is eliminated or sufficiently reduced.

The legal definition of 'harm' is as set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical.

Imposing an urgent condition is a serious step and, in some cases, may have the effect of immediately removing children from their home. We will only use it where we consider it to be the best way of responding to risk and securing the safety of children.

We recognise it is challenging for providers and placing authorities to find suitable accommodation urgently for children. We only impose the urgent condition not to operate from particular premises if

we consider that children or others may be at risk. For their safety, every effort should be made to ensure that children leave on the day the condition is imposed.

Urgent conditions allow us to:

- respond to instances where a setting is not operating according to the relevant requirements and where we are of the view that this gives rise to a risk of harm
- allow an investigation to be completed (including investigations by other agencies) into any potential or real risk of harm to children
- take action to reduce or eliminate the risk of actual harm to children

We impose urgent conditions by issuing a notice, which takes effect immediately. It is an offence to fail to comply once it has taken effect. This will be taken seriously and is also likely to lead to cancellation of the registration.

We try to communicate our decision to the provider as soon as possible, sometimes before drafting the notice. We will also notify the host local authority, and all placing local authorities, of our decision and of our reason behind it at the same time. This is to give the maximum amount of time available for them to find alternative and suitable accommodation for any children placed. We must also notify all local authorities in England and Wales.

A notice imposing an urgent condition sets out:

- the reasons for urgent condition
- the period the urgent condition is imposed
- our legal powers
- the provider's right to appeal

The notice will include as much information as possible about why we believe the continued operation of the premises exposes children to a risk of harm. However, if other agencies such as the police are involved, we may be limited in the information that we can give to providers, particularly if this may jeopardise their investigation.

We will normally impose an urgent condition for an initial period of 12 weeks. However, we will keep the need for the condition under review and monitor as appropriate.

We review the condition either before the period expires or earlier, when there is evidence that the relevant test is no longer being met

We will lift the condition if the risk of harm no longer exists. If, at the end of the initial 12-week period, the risk of harm remains, we may impose the condition further and/or may consider other enforcement options, such as permanent imposition of the condition or cancellation. We will always consider cancellation when we extend the period of the urgent condition.

A registered person who has had an urgent condition imposed may appeal to the First-tier Tribunal within 28 days. An expedited appeal process applies.

Application to a magistrate

We will usually follow the urgent notice route but we may also make an urgent application to a magistrate to impose, vary or remove conditions of registration, under [section 20 of the Care Standards Act 2000](#).

We may do this if it appears that, unless an order is made, there will be a serious risk to a person's life, health or well-being.

If an order is granted, it takes immediate effect. However, the registered person may appeal against the magistrate's order to the First-tier Tribunal.

Whichever urgent procedure we use, and notwithstanding any appeal against a condition imposed, varied or removed urgently, failure to comply with a condition is an offence.

Imposing or varying conditions of registration (non-urgent)

In some circumstances, we can impose, vary or remove conditions of registration. We can do this when a provider is first registered or at any time afterwards. It is an offence to fail, without reasonable excuse, to comply with a condition of registration.

We may impose, vary or remove a provider's conditions of registration under [section 13 of the Care Standards Act 2000](#).

We can impose [conditions](#) when we first register a provider or service manager. After registration, we can vary, remove or impose conditions at any time. There is no statutory threshold for where we will impose, vary or remove conditions. We do this where we feel it is appropriate and to promote the welfare and development of children or other service users.

Failure to comply with a condition of registration is an offence. We may consider [prosecution](#) if a condition is breached. We may also consider cancelling the registration.

We will impose or vary conditions by sending the person an NOP that sets out which conditions we want to impose, vary or remove (unless we use the urgent procedure set out below). A person can make written representations to Ofsted against an NOP. If this is not upheld, they can then appeal to the First-tier Tribunal against the NOD.

A registered person can also apply to Ofsted to vary or remove conditions of their registration under [section 15 of the Care Standards Act 2000](#).

We will consider the nature of the variation proposed or the condition the registered person wishes to remove.

If we intend to refuse the registered person's request, we do this through an NOP and NOD. A person may make [written representations](#) to Ofsted and/or appeal to the First-tier Tribunal against

this action.

Raising a requirement

Providers must meet the regulations. After a monitoring visit, we will consider raising a requirement if:

- the provider is not meeting one or more of the regulations
- the provider is not doing something it should be doing, or is doing something it should not be doing in accordance with the regulations
- there are concerns about the welfare, safety and quality of care for children

We may use other enforcement action instead of requirements.

When we raise a requirement, providers must respond with the action taken and we will monitor this at the next inspection or visit. If we find the requirement remains unmet, we may consider other enforcement action. This may include issuing a compliance notice or cancelling the registration.

We may use evidence of a breach of a requirement, even if the provider has subsequently met it, in future enforcement action if there have been further breaches.

Making a recommendation for action

After a monitoring visit, we may make a recommendation for action in the report. We make recommendations when it is necessary for settings to improve.

The recommendation will be against the relevant guidance.

Serving compliance notices

We may serve a compliance notice under [section 22A of the Care Standards Act 2000](#) if there is evidence that the registered person is failing, or has failed, to comply with regulations. We may serve a compliance notice after we have raised a requirement or as a freestanding enforcement action. We will do this only after considering factors such as the seriousness of the non-compliance, the impact on children, and other actions available to us.

We may issue a compliance notice against a registered provider or a registered service manager of supported accommodation.

The aim of a compliance notice is to direct a provider and/or manager to take immediate steps to meet a particular requirement. The notice sets out action(s) that a registered person must take within an appropriate timeframe.

If the registered person does not complete the action within the specified timeframe, this is a ground for cancellation and an offence for which the registered person could be prosecuted. We will consider the proportionate action to take in response. In exceptional circumstances, this may include re-issuing the notice to allow further time to comply, if appropriate

We will monitor a compliance notice by carrying a monitoring visit to either a particular address(s) or the registered office dependent on what the provider is required to do.

A registered person must fully comply with the requirement within the timeframe specified. Partial action will not be sufficient, although we may take it into account in deciding the next steps.

There is no mechanism to appeal against a compliance notice issued under section 22A of the Care Standards Act 2000.

Suspending a registration

Urgent suspension

We have the power to urgently suspend the registration of a provider or manager of registered social care service under section 20B of the Care Standards Act 2000. The overarching aim of suspending a registration is to ensure the safety of children so that the provider ceases operating until the risk of harm is eliminated.

We suspend registration when we have reasonable cause to believe that, unless we do so, any person will or may be exposed to risk of harm.

The legal definition of 'harm' is as set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical.

Urgent suspension is a serious step and will likely have the effect of immediately removing children from their home. We will only use it where we consider it to be the best way of responding to risk and securing the safety of children. .

We recognise that it is challenging for providers and placing authorities to find suitable accommodation urgently for children. We only suspend the registration if we consider that children or others may be at risk. For their safety, every effort should be made to ensure that children leave

on the day of the suspension.

Urgent suspension allows us to:

- respond to instances where a setting is not operating according to the relevant requirements and where we are of the view that this gives rise to a risk of harm
- allow an investigation to be completed (including investigations by other agencies) into any potential or real risk of harm to children
- where necessary, take action to reduce or eliminate the risk of actual harm to children

We suspend registration by issuing a suspension notice, which takes effect immediately. It is an offence to fail to comply with a suspension once it has taken effect. This will be taken seriously and is also likely to lead to cancellation of the registration.

We try to communicate our decision to the provider as soon as possible, sometimes before drafting the suspension notice. This is so that the provider may begin to make arrangements for children living in the supported accommodation.

We will also notify the host local authority, and all placing local authorities, of our decision and of our reason for doing so at the same time. This is to give the maximum amount of time available for them to find alternative and suitable accommodation for any children placed. We must also notify all local authorities in England and Wales.

In some cases, the suspension may be lifted without any further action as the enquiries confirm that the provider continues to meet the requirements of registration.

A suspension notice sets out:

- the reasons for suspension
- the period of the suspension
- our legal powers
- the provider's right to appeal

The notice will include as much information as possible about why we believe the continued operation exposes children to a risk of harm. However, if other agencies such as the police are involved, we may be limited in the information that we can give to providers, particularly if this may jeopardise their investigation.

We will normally suspend registration for an initial period of 12 weeks. However, we will keep the need for suspension under review.

We review the suspension either:

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

A registered person may apply to Ofsted under section 15 of the Care Standards Act 2000 to lift or vary the suspension at any time.

We will lift suspension if the risk of harm no longer exists. If, at the end of the initial 12-week period, the risk of harm remains, we may suspend registration further and/or may consider other enforcement options, such as cancellation. We will always consider cancellation when we extend the period of suspension.

We will monitor suspensions as required and this may include a monitoring visit.

We may suspend the registration of a service manager under section 20B of the Care Standards Act 2000. We will take steps that are most likely to mitigate the risk and that are in the best interests of children. If we consider suspending the manager, we will look at the wider implications for the provider's registration (whether or not the provider's registration is also suspended).

A registered person who has been suspended may appeal against suspension to the First-tier Tribunal within 28 days. An expedited appeal process applies.

Non-urgent suspension

We have the power under section 14A of the Care Standards Act 2000 to suspend registration of an establishment or agency by issuing an NOP to the registered provider/service manager indicating our intention to suspend the registration for a specified period.

We may suspend registration using this non-urgent procedure when there is evidence that the setting is being, or has been, carried on otherwise than in accordance with the relevant requirements. The test for non-urgent suspension therefore differs from urgent suspension, which happens when we believe there may be a risk of harm.

The statutory threshold for a non-urgent suspension mirrors one of the grounds for cancellation of registration under section 14 of the Care Standards Act 2000. Therefore, we will also consider whether cancellation is more appropriate.

We may use non-urgent suspension to give a registered provider/service manager an opportunity to demonstrate their capacity to meet requirements over time, but while children are accommodated elsewhere until necessary improvements to the quality of care have been made. We are unlikely to consider non-urgent suspension if we are not confident that a provider/manager can meet, and sustain, compliance with requirements over time. In these cases, cancellation may be more appropriate.

We may also use non-urgent suspension where the registered person has been, or is, failing to comply with requirements and cancellation is not proportionate at that point.

A non-urgent suspension is not immediate. We issue an NOP to suspend a registered person for a specified period and set out the reasons for the proposed action. The registered person may make written representations against the suspension. If these are not upheld, we will issue an NOD. The person may appeal to the First-tier Tribunal against this action.

A non-urgent suspension will not take effect until either:

- the 28-day period for lodging an appeal against the NOD with the First-tier Tribunal has passed
- an appeal has been lodged and the Tribunal has heard and dismissed the appeal

It is an offence to carry on or manage an agency while suspended.

Restricting accommodation

We can issue a notice to restrict accommodation under [section 22B of the Care Standards Act 2000](#).

There is no statutory threshold for issuing a restriction of accommodation notice. However, we only do so where we reasonably believe that a child may be at risk of harm if we allow further admissions to the service as whole or to specific premises.

The effect of a notice restricting accommodation is to prevent a supported accommodation service, or specific premises, from accepting further placements for a specified period of time. Restriction of accommodation may apply to the whole of the supported accommodation service or to specific premises where the service provides supported accommodation. The notice takes immediate effect when served. Children already accommodated may continue to live there but cannot be discharged and readmitted while the notice is in place. We will notify all local authorities that a restriction has been put in place.

We will usually restrict accommodation for 12 weeks. If, at the end of that period, the risk of harm still exists, then we may issue another notice restricting accommodation and consider further enforcement action. We will keep the need for restriction under review. We will lift the notice if the risk of harm has been eliminated or adequately reduced. We will notify local authorities.

A registered person may appeal to the First-tier Tribunal against this action. An expedited appeals process will apply

If a registered person fails to comply with a notice restricting accommodation, we will consider additional enforcement action and will likely take steps to cancel the registration.

We may consider cancellation at any time. We should always consider whether to cancel if we are continuing to extend the period of restriction.

Cancelling a registration

We may cancel a person's registration in respect of a supported accommodation service by using the powers set out in [section 14 of the Care Standards Act 2000](#) and associated regulations.

The grounds for cancellation are:

- the registered person has been convicted of a relevant offence
- any other person has been convicted of a relevant offence in relation to the supported accommodation service
- the supported accommodation service is being, or has at any time been, carried on or managed without complying 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 varying/removing a condition of registration
- the supported accommodation service has ceased to be financially viable, or is likely to cease to be so within the next 6 months

The relevant requirements 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. This includes the [supported accommodation regulations](#) and the [registration regulations](#).

When we have grounds to cancel a registration, the decision to do so is at our discretion. We use this power reasonably and proportionately. When making our decision, we consider:

- the seriousness of the concerns
- whether a child has been exposed to, or suffered, harm or injury
- our evaluation of the ongoing risks to children
- whether any other compliance action is appropriate
- whether compliance action has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale
- whether the registered person is acting purposefully to resolve the matter within a reasonable timescale or, if given further time, they are likely to be able to make the necessary improvements and sustain compliance
- any information that calls into question the fitness of the registered person

When making our decision to cancel a registration, we are mindful of the consequences of children losing their home. Once we have made the decision to cancel, we will contact placing authorities to ensure that they have enough notice to make alternative plans for the children.

In most cases, when we cancel a registration, we will already have taken other enforcement steps to encourage the registered person to achieve compliance. We are likely to cancel their registration when they have failed to achieve compliance after this and/or we have lost confidence in their ability to make and sustain improvements.

In some cases, we may cancel a registration without taking any previous action. For example, we may do this when children are at risk of harm or have been harmed.

If we make the decision to cancel a registration, we will issue an NOP setting out the reasons. The applicant may make written representations to Ofsted concerning any matter they wish to dispute. If these representations are not upheld, we will issue an NOD, against which the applicant may appeal to the First-tier Tribunal.

A person remains registered until 28 calendar days after we have served the NOD or, if there is an appeal, until the appeal is determined.

Unless we have also suspended the registration, the provider can continue to operate until cancellation takes effect. 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 NOP and the cancellation taking effect.

We will keep the decision to cancel under review, taking into account any evidence gathered during the interim period. If there is a deterioration in the standard of care meaning there may be a risk of harm, we may consider urgent action such as suspending the registration. Conversely, if there is evidence of significant improvement, and there is reason to believe it can be sustained, we may review the decision.

From 28 October 2023, it is an offence if any person carries on or manages a supported accommodation service without registration or where the provider has not submitted a completed application. When a provider's registration in respect of a supported accommodation service is cancelled, the service must cease to operate. If it is the service manager's registration that is cancelled, then the service may continue to operate, but the provider must appoint a new service manager without delay.

When cancelling a registration, we will also consider any risks to children if the supported accommodation service continues to operate pending the cancellation taking effect. If the threshold is met, we may suspend the registration and notify local authorities accordingly. It is an offence contrary to [section 24A of the Care Standards Act 2000](#) to carry on or manage a supported accommodation service while registration is suspended.

Disqualification resulting from cancellation

Cancelling the registration of a supported accommodation service may result in certain individuals becoming disqualified from fostering a child privately (see [section 68 of the Children Act 1989](#)). This has wide-ranging consequences, including the disqualification of individuals from carrying on, managing, having a financial interest in, or being employed in children's homes in future unless we give [written consent](#) to waive the disqualification and therefore may have implications for any children's homes registrations held by the individual at the point of cancellation or for involvement with, or employment in, children's homes.

On cancellation of a supported accommodation service, disqualification attaches to those who have 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' (see [Regulation 2\(7\) of The Disqualification from Caring for Children \(England\) Regulations 2002](#)). This means that cancellation does not just impact on the registered person(s) themselves. It is an offence for a disqualified person to carry on, be concerned in the management of or have a financial interest in a children's home without first obtaining Ofsted's consent. It is also an offence to employ a disqualified person in a children's home without Ofsted's consent (section 65 Children Act 1989).

Urgent cancellation

We may apply to a magistrate to cancel the registration in respect of a service under [section 20 of the Care Standards Act 2000](#).

We may seek an emergency order from a magistrate if we have evidence that, unless an order is made, there will be a serious risk to a person's life, health or well-being.

Urgent cancellation is a very significant step. We use it when we consider it unlikely that any other action would reduce the risk to a child's life, health or well-being and when the immediate risk outweighs any other detrimental effects on children.

Where possible, we will put the registered person on notice of the urgent application and give reasons so that they may attend the hearing and make representations.

There are some circumstances, however, where we need to make the application without notice to the registered person. For example, we will do this when:

- notifying them might place children at risk of harm
- the risk is so serious there is no time to notify them
- notifying them would risk that they would destroy evidence
- it has not been possible to notify the registered person despite efforts to do so

If granted, the order to cancel takes immediate effect. The person may appeal to the First-tier Tribunal. However, the order remains in place until the appeal (which will be dealt with on an expedited basis) is determined. It is an offence for the person to continue to provide or manage the service.

Voluntary cancellation

We carry out voluntary cancellation under [section 15\(1\)\(b\) of the Care Standards Act 2000](#). This states that a registered person may apply to Ofsted for the cancellation of their registration.

This process is an application that brings a registered person's Ofsted registration to an end. It is separate to any employment resignation a registered person may give.

[Section 15\(2\) of the Care Standards Act](#) states that a person may not make an application if Ofsted has [issued an NOP or an NOD to cancel](#). If we receive an application/request for voluntary cancellation after an NOP to cancel, we will return it, unless we are not proceeding to issue an NOD.

We may decide not to proceed to an NOD in certain situations, such as where there has been a change of circumstances or where we have upheld [written representations](#) made by a registered

person.

There may also be circumstances where we take the view that voluntary cancellation is a proportionate and expedient way to bring the registration to an end.

A registered person should send an application for voluntary cancellation to Ofsted at least 3 months before the proposed effective date. We may agree a shorter date in exceptional circumstances.

It may be that shorter periods, or immediate voluntary cancellation, may be appropriate for registered service managers who have left the provider's employment. More notice is necessary for registered providers to arrange alternative placements for children. If the period proposed is less than 3 months, then we are not obliged to agree this. The registered person will remain registered until a period 3 months ahead of the application, which will be the agreed voluntary cancellation date.

We will carefully consider a request for cancellation at a future date where there have been compliance concerns leading to an NOP to cancel. We will weigh whether it is appropriate to continue to expose children to sub-standard care against whether voluntary cancellation would bring the registration to an end more quickly and efficiently than through the NOP process.

Voluntary cancellation does not result in disqualification for children's homes registration. Therefore, it is unlikely that we would accept an application to cancel in circumstances when we have issued an NOP and there are safeguarding concerns about the registered person, or anyone involved in the management of, or who has a financial interest in, a children's home.

A registered person may not make an application for voluntary cancellation after we have issued an NOD. If a registered person attempts to do so, we will return their application and we will direct them to the appeals process. We are unable to withdraw an NOD once it is issued.

If we have concerns about a registered person who is voluntarily cancelling their registration, we may take certain steps. This includes retaining those concerns about individuals involved should the person apply for registration again in the future and considering a referral to the DBS.

We will ensure that we carry out the administrative cancellation of the registration as soon as possible after the voluntary cancellation takes effect.

If we agree an immediate voluntary cancellation, the registration will end immediately. This cannot be retracted.

If, however, the voluntary cancellation is to take effect at a future date, then the registration continues until that date and the registered persons remain legally responsible for the service. For 'future date' voluntary cancellations, the cancellation may be retracted in exceptional circumstances.

We can exercise our enforcement powers throughout the voluntary cancellation process. If we wish to take steps to cancel the registration after the application to cancel, but before the voluntary cancellation takes effect, we can do so if we have concerns and the voluntary cancellation will not take place for several months.

We can issue an NOP to cancel. A registered person would then have a period in which to make representations should they choose to do so. If these are not upheld, we may issue an NOD to cancel.

Any NOD to cancel would not take effect for 28 days or, if the registered person appeals, until the appeal is determined.

Our enforcement actions: registered service managers

We can use enforcement actions against managers during and after the registration process. This section should be read alongside our [registration guidance](#).

What happens when a registered service manager leaves

Registered providers are required by legislation to appoint a service manager. Any departing service manager must submit a voluntary cancellation form to Ofsted to bring their registration to an end.

When a registered service manager leaves, we appreciate that there may be a gap until the provider can appoint a suitable replacement. Therefore, we are unlikely to take any action immediately. We will risk-assess the [interim management arrangements](#). We expect providers to take reasonable steps to appoint a new service manager within 6 weeks.

If after 6 weeks the provider has not yet informed us of the appointment of a new service manager or it has told us of a delay in appointing a new service manager, we will contact the provider to review what recruitment steps it has taken. We will also require information about how the service is being managed in the interim period.

We will consider the impact of not having a service manager on children, and decide whether any enforcement action, including urgent action, is appropriate. Providers must have appropriate interim management arrangements in place if the registered service manager leaves or is absent, to limit any disruption to the service in place.

All providers should write to us as soon as possible after they have appointed a service manager. They should include their name and address and the date on which their appointment as the manager takes effect.

Withdrawing an application for registration

A service manager may withdraw their application at any point in the process up to when we issue

an NOP to refuse, and we will accept it.

We may also accept a withdrawal after an NOP to refuse has been issued. However, we are unable to accept a withdrawal after the NOD to refuse has been issued.

Refusing registration of a service manager

In considering an application for registration, we must be satisfied that the requirements of regulations are being, and will continue to be, met in order to grant the registration. Otherwise, we will refuse it under [section 13 of the Care Standards Act 2000](#).

We will always take action to promote children's welfare and safety. This means that if we are not satisfied about the applicant's ability to safeguard children's welfare, we will refuse registration.

If we propose to refuse, we will [issue an NOP](#) setting out the reasons for this. Reasons may include insufficient skills and experience for the role or to meet the demands of the specific supported accommodation service, issues about an applicant's integrity or concerns about their knowledge and practice in relation to safeguarding children. The applicant may make [written representations](#) to Ofsted about the proposed decision.

If no representations are made, or they are made and not upheld, we will [issue an NOD](#) to refuse registration. When an NOD to refuse registration is issued, the decision takes effect.

An applicant may appeal to the First-tier Tribunal against the NOD to refuse registration.

We will tell the provider of the refusal to register the applicant. We will do this 3 days after issuing the NOP. We will not set out the detail of the concern.

Suspending registered service managers

There may be occasions when it is necessary to suspend a registered service manager's registration. We may suspend them in isolation or alongside suspending the provider's registration. For example, a registered service manager may have been arrested and/or charged with an offence that suggests children may be at risk of harm. We will take steps that are most likely to mitigate the risk. We expect the registered provider to take appropriate steps when there are concerns about the manager.

If we use our urgent suspension powers, it will normally be for an initial period of 12 weeks. We follow similar review processes as set out in the ['Suspending a registration' section](#). If we need to extend the period of suspension, then we will always consider cancellation. We may consider cancellation at any time.

We may suspend using emergency procedures under [section 20B of the Care Standards Act 2000](#). This means the notice to suspend takes immediate effect.

We may also suspend the registration using the non-urgent procedure through issuing an [NOP](#). The registered service manager can make [written representations](#) against this. If these are not upheld, we issue an NOD. A person may appeal to the First-tier Tribunal against this action. They may also apply to us to lift or vary the suspension.

It is an offence for a registered person to carry on or manage a service while suspended.

Cancelling a registered service manager's registration

When considering cancellation, we must consider which person registered in respect of the service we should be cancelling. We may cancel the registration of the registered provider, the registered service manager or both.

In making this decision, we will consider the regulations and on whom the legislation places responsibility to meet that regulation or requirement. The regulations will often make the 'registered person' responsible. This is both the registered provider and the registered service manager. We will carefully consider the regulatory breaches, the role of both persons and how this may affect their overall fitness for registration.

As with [cancelling a provider](#), we have 2 ways to cancel a manager's registration: with notice or by urgent procedure.

If we receive information that a registered service manager is no longer employed at the service in respect of which they are registered, and we have concerns about them, then we may still issue an NOP to cancel the manager's registration. The manager may make [representations](#) in the usual way.

Where we issue an NOD to cancel a manager's registration, we will always notify Social Work England if the person is also registered with them.

The impact of cancelling a provider on a registered service manager's registration

When a provider's registration is cancelled, a service manager's registration also ends at the same time. A manager is registered in respect of the supported accommodation service. They do not have their own registration certificate; they are named on the provider's certificate.

We will always consider a referral to the DBS if we have safeguarding concerns.

However, if we have already issued an NOD to refuse or cancel registration to the manager, this will take effect unless there is an appeal. In these instances, the matter will be decided by the First-tier Tribunal.

There are numerous scenarios regarding the registration and cancellation of a provider and/or

manager. We will consider each situation on its merits and in line with the legislative framework.

Surveillance

Ofsted is authorised under the [Regulation of Investigatory Powers Act 2000](#) to carry out directed surveillance to prevent or detect a crime.

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.

See our [directed surveillance policy](#) for more information.

Referrals to the DBS

We have a statutory power to refer individuals to the DBS under [section 45 of The Safeguarding Vulnerable Groups Act 2006](#). We will do this when the conditions set out in legislation are satisfied. The DBS can decide whether to include the individual on its lists of people who are barred from working with children and/or vulnerable adults (known as 'barred lists').

The DBS is responsible for deciding whether to include a person on a barred list. The DBS has [guidance about the referral process](#).

We can use our power to refer where we think a person has either:

- harmed or poses a risk of harm to a child or vulnerable adult
- satisfied the 'harm test' (see definition below)

We can also use it where:

- the person has received a caution or conviction for a relevant offence
- the person is, or might in future be, working in a regulated activity
- we think the DBS may consider it appropriate for the person to be added to a barred list

The 'harm test' is set out in [section 45\(3\) of the Safeguarding Vulnerable Groups Act 2006](#). It is that the person may:

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

incite another to harm a child or vulnerable adult

'Harm' is not defined in the legislation. However, the DBS states that it views harm as 'its common understanding or the definition you may find in a dictionary'. Its guidance goes on to state that harm is considered in its widest context and may include:

- sexual harm
- physical harm
- financial harm
- neglect
- emotional harm
- psychological harm
- verbal harm

In some cases, we may decide to refer an individual to the DBS 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, we may do this when a registered early years provider applies for voluntary cancellation before we complete our assessment and we have not issued an NOD to cancel but we have concerns about that person.

Under the same Act, providers have a legal duty to refer to the DBS when the conditions are met and it is an [offence under the Act](#) to fail to provide relevant information to the DBS without a reasonable excuse. Registered persons, therefore, must understand and act on their obligations to refer an individual to the DBS in the appropriate circumstances.

If we become aware that the registered person has not taken this step, we will:

- make the referral ourselves
- let the DBS know that the registered person failed to make the appropriate referral
- consider why they did not do so, and whether this failure affects their fitness or suitability to remain registered and/or their suitability to work with children and/or vulnerable adults

Notices of proposal and decision

Some enforcement steps can only be taken through the NOP and NOD process. Throughout this process, we continue to monitor the registered person's compliance with the relevant requirements and, importantly, any risk to children.

We serve these notices when taking certain steps, including:

- refusing a registration application
- imposing, varying or removing conditions imposed on a registration, other than by way of the urgent procedure to impose a condition
- refusing to grant an application to vary or remove conditions

- cancelling a registration

The steps involved in this process are:

1. Serving the NOP: we must lawfully serve the notice on the correct registered person or applicant for registration.
2. Written representations: a person has 28 days from the time when we serve the NOP to make written representations to us.
3. The NOD: if we decide not to uphold a person's written representations, or the person does not make written representations, we write an NOD telling the person why we have decided to take this action and detailing our evidence.
4. Appeals to the First-tier Tribunal: in most cases, a person has 28 days after we serve the NOD to appeal to the First-tier Tribunal.
5. The NOD takes effect: an NOD to refuse takes effect immediately. Other NODs take effect once the 28-day appeal window has lapsed and the person has not lodged an appeal, or their appeal is dismissed. We write to the person to inform them that the action has now taken effect.

Serving a notice

We serve a notice in accordance with [section 37 of the Care Standards Act 2000](#). This notice gives our reasons for taking the step and sets out the recipient's rights to object to our action.

We serve a notice:

- in person
- by courier
- by post, including in a registered letter or by the recorded delivery service

When we serve a notice, the notice takes effect on the day it is served. Any time periods in the notice (for example, the appeal period) will begin from the next day.

Notifying local authorities

We are required under [section 30A of the Care Standards Act 2000](#) and the [Care Standards Act 2000 \(Enforcement of Care Standards\) \(Notification\) \(England\) Regulations 2011](#) to notify all local authorities in England and Wales when we take the following enforcement action in respect of supported accommodation service providers or service managers:

- when we issue an NOD to cancel registration
- when we issue an NOD to suspend
- when we issue an urgent notice to suspend or to vary, remove or impose a condition

- when we issue a summons to prosecute for a relevant offence
- when we issue a notice to restrict accommodation

We will also update all local authorities when:

- we issue a further notice to extend a restriction of accommodation, or a further notice to suspend
- we lift a restriction of accommodation, a suspension or a condition
- the registered person appeals against a notice of restriction of accommodation, suspension, urgent condition or cancellation and the outcome of that appeal
- there is no appeal made by the registered person against a notice of a (non-urgent) suspension or cancellation
- criminal proceedings are withdrawn or discontinued
- there is a decision of the court in relation to a prosecution and if there is any appeal against that decision and its outcome

Written representations

Certain enforcement actions require us to serve an NOP setting out the reasons for the proposed action. If a registered person/applicant wants to dispute anything in that NOP, they can make written representations (see [section 18 of the Care Standards Act 2000](#)).

A registered person/applicant can make written representations if they receive an NOP for:

- granting registration with conditions not previously agreed
- refusing an application to register
- refusing an application to vary or remove conditions of registration
- imposing or varying conditions of registration other than through urgent procedures
- suspending a registration (non-urgent)
- cancelling a person's registration

How to make written representations

A registered person/applicant must make written representations to us within 28 days of the date on which the NOP is served.

Written representations must be sent in writing (not by telephone) either by email or post to:

enquiries@ofsted.gov.uk

Applications, Regulatory and Contact Team
Ofsted

Piccadilly Gate
Store Street
Manchester
M1 2WD

The person should include any relevant information that supports their view that the proposed action should not be taken, including:

- information or evidence that they think we did not previously consider
- details of any action that they have taken since receiving the NOP
- any relevant legal arguments

Presenting written representations in person

As well as submitting their written representations by post or email, the registered person/applicant can also present those written representations in person, by telephone or by video call. They must request this in their written representations.

We will grant any reasonable request, depending on the impact of any delay.

The purpose of attendance is to present the written representations that they have already submitted. It is not a forum to cross-examine evidence. We will ask the registered person/applicant to read or give account of what is in their written representations. The decision-maker will only ask questions if they need any clarification and will not challenge the information given. Similarly, they or any representative will not be able to challenge the decision-maker.

The person can attend with a representative. Their role is to support the registered person/applicant and present any legal arguments in the submitted written representations. If the representatives are solicitors, they can advise on legal points that may affect the decision, but there will be no legal debate.

We will either uphold or not uphold the written representations. We may initially inform a person of our decision in person or by telephone, but we will always confirm this in writing.

If we uphold the written representations, we send a representations outcome letter confirming that we will not proceed with an NOD.

If we do not uphold the written representations, we issue an NOD. This includes details of the written representations made and of how we have considered them when making our decision. The NOD includes information about the right to appeal to the First-tier Tribunal.

Written representations received after we issue an NOD

If we have already served the NOD, we will return the written representations and explain that there is a right of appeal to the First-tier Tribunal. They can include any relevant information if they choose to lodge an appeal.

Appeals

A registered person or applicant can appeal to the [First-tier Tribunal \(Care Standards\)](#) 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 (by notice or on an urgent basis)
- refuse a request to vary or remove conditions of registration
- refuse to give written consent to waive disqualification
- suspend a registration (by notice or on an urgent basis)
- restrict accommodation

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

How to appeal

To appeal against most actions, a registered person or applicant has 28 days from the date that either:

- we serve an NOD
- the magistrate makes their order

However, if they are appealing against our decision not to grant written consent for a disqualification, they must appeal within 3 months after we serve the NOD. They must submit their appeal to the First-tier Tribunal by 5pm on the due date.

To appeal, they should write to cst@hmcts.gsi.gov.uk. They must include a copy of the NOD and an appeal application form. See [forms and other information for the First-tier Tribunal](#).

Expedited appeals

There is an [expedited appeals process](#) for certain cases:

- restriction of accommodation
- a magistrate's order to cancel registration
- a magistrate's order to impose, vary or remove conditions of registration
- urgent suspension, imposition or variation of conditions

Withdrawing an appeal

Either party may ask to withdraw their case by sending a written notice to the First-tier Tribunal or orally at a hearing. The Tribunal must consent to the withdrawal.

The party that requested the withdrawal can apply to have its case reinstated. They must do this in writing within 28 days of the written notice to withdraw or the oral hearing occurring.

Notice of the First-tier Tribunal hearing

The First-tier Tribunal will give at least 14 days' notice of the time and place of the hearing, or if this changes.

For expedited appeals, the Tribunal will give notice as soon as the hearing is set.

Burden of proof

For registered persons, the burden of proving the case rests with Ofsted. For example, in an appeal against a cancellation decision, it is our responsibility to establish the grounds for cancellation and that our decision is reasonable and proportionate in the circumstances.

However, for those applying to be registered, the law places the burden of proof on the applicant to demonstrate their suitability.

Legal advice or representation

Providers may wish to seek legal advice and/or representation for an appeal against a decision Ofsted has made. It is not unusual for parties who appeal to the First-tier Tribunal to represent themselves. If they do so, the Tribunal will usually try to ensure that the provider or applicant understands the process and what they need to do.

How the Tribunal makes a decision

The First-tier Tribunal will consider the case based on the evidence available on the date of the hearing. This means that the Tribunal may take account of evidence that has come to light since the original decision was made.

The outcome of the appeal

In oral hearings, the First-tier Tribunal may choose to tell both parties its decision verbally but more commonly will reserve its decision while considering the facts and submissions.

The Tribunal must provide each party with:

- a notice stating the Tribunal's decision
- written reasons for the decision
- details of how to ask it to review the decision, or how to appeal

Reviewing the decision

In certain circumstances, either party may apply to the principal judge of the Tribunal for a review of the decision. Neither party can apply for a review on the grounds that they do not agree with the decision. They can only apply for a review if they believe there is an error of law in the decision.

If the First-tier Tribunal decides not to review the decision, or reviews it and decides to take no action, the party can apply for permission to appeal. The Tribunal must send to both parties:

- a record of its decision
- a statement of its reasons
- 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

Either party may apply to the Upper Tribunal for permission to appeal. A party can only do this after they have first applied to appeal to the First-tier Tribunal and had this application refused. They

must apply in writing no later than 1 month after the First-tier Tribunal made the decision to refuse its permission to appeal.

Prosecution

If we suspect that a relevant criminal offence is being or has been committed, we may carry out a criminal investigation.

All investigations of criminal offences should have regard to any relevant principles contained in the [Police and Criminal Evidence Act 1984 \(PACE Act\)](#) and [codes of practice](#).

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 first. Prosecution for some offences can only be brought after we have taken certain procedural steps. For example, some require a suspect to have had an opportunity to make representations. Other offences do not need any steps before bringing a prosecution.

If an offence is committed by a registered provider, we will consider whether we should take regulatory enforcement action (such as cancellation of registration) instead of a criminal investigation. This will depend on the nature and seriousness of the offence. In certain cases, we may need to take both regulatory and criminal action.

Where a registered person or body is convicted of an offence that we have prosecuted, we will consider any conviction in determining their ongoing fitness for registration. We may also take this into account when determining any new application for registration. Some convictions also lead to a person becoming disqualified from certain activities involving the care of children.

Deciding who to prosecute

We will identify and prosecute any person (including, for example, individuals, bodies corporate or unincorporated associations), where we consider this is warranted.

For offences committed by bodies corporate, if the offence is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager or similar (or anyone acting in these capacities), that person is also guilty of the offence. This is in addition to the body corporate being guilty. The person is therefore liable to be proceeded against and punished accordingly.

In the Care Standards Act 2000, the reference to a director, manager or secretary of a body corporate includes a reference to any other similar officer of the body and, where the body is a local authority, to any officer or member of the authority. Therefore, we will consider the management arrangements and the role played by individual directors and managers in these cases. We will consider taking action against them where the investigation reveals that the offence was committed

with their consent or connivance or was attributable to their neglect, and where it would be appropriate to do so in accordance with this policy.

Deciding whether to prosecute

We will only prosecute when:

- there is sufficient evidence to provide a realistic prospect of conviction (this is called 'the evidential test')
- prosecution is in the public interest

Evidential test

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 test must not proceed, no matter how serious or sensitive it may be. Our view that there is a realistic prospect of conviction must be based on an objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or that they might rely on. It means that an objective, impartial and reasonable 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.

The evidential test 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.

When deciding whether there is sufficient evidence to prosecute, we may consider:

- whether the evidence can be used in court
- the likelihood of that evidence being held as inadmissible by the court
- the importance of that evidence in relation to the evidence as a whole
- the reliability of the evidence, including its accuracy and integrity
- whether the evidence is credible and whether there are any reasons to doubt this

Public interest test

In every case in which there is sufficient evidence to justify a prosecution, we will go on to consider whether a prosecution is required in the public interest. We will only consider this stage if the

evidential test is met. The list is not exhaustive, but some of the factors we may take into account are as follows.

a) How serious is the offence?

The more serious the offence, the more likely it is that a prosecution is required.

When assessing the seriousness of an offence, we will consider the suspect's culpability and the factors relating to harm. We will do this by asking ourselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by answering questions such as:

- what was the suspect's level of involvement?
- what was the period, or extent, of the offending?
- what was the role of the suspect in the offence (particularly where there are multiple suspects)?
- to what extent was the offending premeditated and/or planned?
- was there any deliberate or malicious intention to avoid compliance, or prevent the discovery of an offence and/or regulatory breach?
- has the suspect misled anyone as to their registration status?
- to what extent has the suspect benefited, or intended to benefit, from the offence?
- does the suspect have any previous convictions or cautions, or have they previously been sent warning letters, for similar offences?
- is the offending likely to be continued, repeated or escalated?
- has the suspect displayed genuine remorse and shown insight into the offending?
- how did the offending come to an end? For example, did it end voluntarily and before Ofsted discovered it, or on our discovery? Or did it continue even after the suspect was made aware they were under investigation or after they were served with a warning letter?

c) What are the circumstances of harm, or potential harm, caused by the offence, in particular to children?

The greater the harm caused by the offence, or the risk of harm created by the offence, the more likely it is that a prosecution is required.

Questions relevant to harm to ask include the following:

- has actual harm been caused or was there a risk of harm being caused?
- how serious was the harm (whether actual harm or potential harm)?
- has the suspect's registration been cancelled previously, or have they been refused registration, and what were the reasons for the cancellation or refusal; for example, did they relate to safeguarding concerns?
- has there been a failure to comply with a formal notice imposed by Ofsted to address a risk of harm, such as a notice of restriction, suspension or emergency condition?

- have the suspect's actions negatively impacted on a third party?

d) Is prosecution important in order to maintain public confidence in the system of regulation, with the overall aim of upholding standards and safeguarding children?

It is likely to be in the public interest to prosecute where a person commits an offence having previously been disqualified or served with an enforcement notice.

It is also likely to be in the public interest to prosecute where not holding the person to account is likely to undermine public confidence, or the confidence of registered providers, in the system of regulation.

e) Is prosecution a proportionate response?

To answer this, we may ask:

- where a suspect is a registered person, is it sufficient to take regulatory action in response to the offence?
- would an alternative disposal be appropriate in all of the circumstances and meet the needs and seriousness of the case?
- is the likely cost of bringing the prosecution a reasonable and effective use of resources, given the circumstances and merits of the case?

Discontinuing a prosecution

Ofsted will decide whether to discontinue a prosecution. This will be based on the evidential test and public interest factors set out above. If a case is discontinued, this decision can be reviewed if, for example, further evidence comes to our attention.

Releasing information about criminal prosecutions

Except where we think ongoing enforcement action may be compromised, we will normally release details of all criminal convictions, when requested.

It is important that media enquiries are directed to our press office. We do not routinely prepare press releases in advance of any prosecution, but we will respond to media enquiries through our press office about a prosecution or other matters.

Warning letters

Warning letters are non-statutory actions. We may issue a warning letter where we have a reasonable belief that an offence is being committed. We may send a warning letter without seeking to carry out a PACE interview under caution with the suspect.

A warning letter sets out the offence that we reasonably believe is being committed. It informs the person that if they are committing the offence, they should stop immediately.

If the offence involves carrying on a provision while not registered, we also inform the person that if they wish to operate provision that requires registration, they must apply for registration. We will also notify them that it is an offence to operate until they are registered, including while an application is in progress. We may also notify and/or share information with other relevant agencies that we have issued a warning letter.

We may issue a warning letter and go on to determine whether an offence has been and/or is continuing to be committed. If the evidence meets the test for prosecution, we may also instigate a prosecution.

Ofsted cautions

An Ofsted caution should not be confused with a caution or a conditional caution from the police. The Ofsted caution is non-statutory and not recorded on the Police National Computer. It may be used in cases where we have sufficient evidence to bring a prosecution and the offender has admitted the offence but there are public interest factors that weigh against prosecution.

There is no obligation on a provider to accept a caution. If a provider refuses a caution, we will usually proceed to prosecution.

We may issue a caution against any person, whether registered with us or not, who commits an offence for which we are the prosecuting authority.

If a person has previously received a caution, we would not normally consider issuing a further caution. However, if there is a sufficient lapse of time to suggest that a previous caution was a significant deterrent (2 years or more), or the subsequent offence is unrelated, we may consider a further caution.

We may take an Ofsted caution into account when making any judgements about the registration of a person or body, including their fitness to be registered. Also, if a person is prosecuted for an offence, we may apply to cite details of any Ofsted caution as evidence of the person's bad character.

An Ofsted caution is not disclosable as a part of any DBS check. However, we may share the information relating to the caution with other agencies in appropriate circumstances.

Unregistered supported accommodation

Existing providers must submit a completed application which has been accepted by Ofsted to Ofsted by the 27 October. If a provider fails to do this and continues to operate, it will be acting unregistered and committing an offence.

After this date, any new providers to supported accommodation must submit a complete application and have been granted registration before they start operating otherwise, they will be committing an offence.

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