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Guidance

# Social care enforcement policy

Updated 30 April 2024

## Applies to England

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## Introduction

Ofsted is the Office for Standards in Education, Children's Services and Skills. We inspect and regulate services that care for children and young people, and services providing education and skills for learners of all ages. Find out more about [what we do](#).

Our guiding principle is to be a force for improvement through intelligent, responsible and focused inspection and regulation.

Our values are:

- Children and students first – our focus is on improving outcomes for children and learners.
- Independent – we judge standards and report our findings to the public without fear or favour.
- Accountable and transparent – we report to Parliament on our work and our approach to regulation and inspection is open to scrutiny.
- Evidence-led – our policies, frameworks, judgements and insights are rooted in evidence.

Read [Ofsted's strategy](#).

## Purpose and principles of enforcement

The law gives Ofsted a range of powers to regulate children's social care settings. The enforcement action we can take is set out in the legislation.

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

- 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 setting
- 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 and agencies that we regulate. These are:

- children's homes, including secure children's homes
- independent fostering agencies
- voluntary adoption agencies
- adoption support agencies
- residential holiday schemes for disabled children
- residential family centres
- supported accommodation for looked after children and care leavers aged 16 and 17

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

- persons carrying on or managing a setting without the appropriate registration
- registered persons who fail to meet the legal requirements for social care settings 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 other guidance documents:

- our inspection handbooks, which describe our approach to registration and inspection
- statutory guidance and regulations

For supported accommodation providers, you should read this policy alongside:

- [Supported accommodation: registering with Ofsted](#)
- [Providing supported accommodation for children and young people statutory guidance](#)
- [The Supported Accommodation \(England\) Regulations 2023](#)

## Statutory guidance and regulations

The legal basis of our enforcement work is set out in the [Care Standards Act 2000](#) and its [associated regulations](#).

## 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 a setting or service
- an unregistered person is operating a 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/inspection bodies, such as the Care Quality Commission, the Food Standards Agency and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
- parents and carers
- members of staff
- members of the public
- Ofsted's inspections of social care, early years or other settings

## 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.

Any personal data used for the purpose of law enforcement, including the prosecution of individuals, will, during that time, be held separately in Ofsted 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, but we always carry out our own inspection where appropriate.

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 before the strategy meeting with Ofsted's legal advisers)
- 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, registered manager and/or registered service 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 in determining when to schedule our next inspection or whether we should carry out monitoring

inspections. We must record this decision 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 carry out an inspection or 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 setting 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. Information that suggests a provider may be operating without registration is dealt 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, and when the provider's inspection history does not give us cause for concern, we note the information so that it can be considered at the next visit or inspection.

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 we cannot guarantee that their identity will not be deduced by the provider.

### **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. This could be to contact the provider or carry out an immediate inspection or monitoring visit, depending on the urgency and severity of the concern.

If the response or action plan is unsatisfactory, we will assess the risk and determine when to complete an inspection or monitoring visit.

If the action plan or response is appropriate, the inspectors must check that the actions are

complete. They will make this a key line of enquiry when they next inspect or visit the setting.

## Monitoring visits and inspections

If we determine that we need to visit a provider, we will usually carry out an inspection in line with the [social care common inspection framework](#).

We may investigate a concern as part of a statutory inspection, for example by bringing forward the inspection or scheduling a second inspection (irrespective of whether it is a previously good children's home or outstanding provider). If we decide to respond to a concern as part of an inspection, we will usually comply with the notice periods set out in our [inspection guidance](#). The inspection report will mention that the inspection was brought forward to address concerns and report any findings.

We will usually carry out a monitoring visit to a setting:

- to monitor compliance and enforcement
- to monitor progress after an inspection judgement of inadequate
- if the specific nature of our concerns means a monitoring visit is the best tool to use, the decision rests with our regulatory inspection managers

There may be exceptional circumstances in which it is appropriate to give notice for a monitoring visit, for example if the home is closed temporarily or we need to see a particular person.

For some providers, such as supported accommodation providers, we may carry out inspections and/or monitoring visits at the provider's office or at one or more of the premises where supported accommodation is provided. We will do this with appropriate consent to enter the premises, where needed.

## During the visit or inspection

We will usually inform the registered person(s) or person in charge at the time of the inspection or 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 computer) 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 telephones 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 should only take photographs using Ofsted mobile telephones or an Ofsted tablet computer. Any photos taken with an Ofsted mobile phone, computer or tablet 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 the child's consent before entering their bedroom or self-contained accommodation. However, we do have the legal power to enter without having first obtained the child's consent. 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. We will always work sensitively, taking account of the child's need to feel safe and be respected. We will record any decisions to enter appropriately, including the reason for entering without the child's consent where relevant, efforts made to seek consent, any risk assessment and management oversight of the decision.

If the inspector believes the registered person is intentionally obstructing them from entering an area, from reviewing documents or from talking to someone, that person may be committing 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 (see section on ['Prosecution'](#)) before asking them further questions.

Inspectors will summarise the information at appropriate times during the inspection or 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/agency:

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

## Reporting

We will write a report following an inspection or monitoring visit. The report will note that the inspection was brought forward or 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. All inspection reports are published. Reports of monitoring visits are published 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. They will also make recommendations to improve practice.

### **Monitoring visits of secure children's homes**

We have a [memorandum of understanding \(MoU\) with the Department for Education \(DfE\) about secure children's homes \(SCH\)](#).

We carry out unannounced monitoring visits to SCHs, to monitor compliance and enforcement, to monitor progress after an inspection judgement of inadequate, or in other exceptional circumstances. Under this MoU, we can also carry out monitoring visits relating to building works or licence approval. These visits are announced.

On these visits, an Ofsted Inspector accompanies a specialist architect, commissioned by the DfE, to advise the Secretary of State on:

- the continuing approval of a SCH following a building inspection – this is supplemented by other information that we hold, such as inspection outcomes
- whether the building project meets the Children's Homes Regulations 2015

The report will include a short statement about the purpose of the visit.

## **Children's homes also registered by DfE as an independent school or approved by DfE as a non-maintained special school**

If a children's home is also registered by the DfE as an independent school or approved by the DfE as a non-maintained special school, we will tell the DfE if:

- we judge a home to be inadequate at a full inspection, or
- we identify serious and widespread weaknesses at an assurance inspection, or
- we are taking action to suspend the provision or restrict accommodation, or
- we have issued a notice to cancel the registration of the provision

We share this information under the Education and Inspections Act 2006, section 118(3) and paragraph 8 of Schedule 13, because we believe it is appropriate to do so to assist the DfE in discharging its functions as the registration authority for independent schools and approved non-maintained special schools.

We would usually share the pre-publication version of the report after the provider has had the chance to comment through the usual processes.

If any personal data is shared with the DfE, it will be shared in line with the requirements of the General Data Protection Regulation and the Data Protection Act 2018 and Ofsted's published

privacy notices.

## **Our enforcement actions: registered persons, providers, service managers and managers**

The relevant regulations set out clear duties and responsibilities of the registered provider and manager/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 manager/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 manager/service manager.

There are additional enforcement actions we can take against managers, which are covered in the ['Our enforcement actions: registered managers/service 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, managers/service managers breaching requirements include:

- refusing a registration
- making a recommendation for action
- raising a requirement
- imposing or varying conditions of registration
- 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 setting 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, and will continue to be, met, we will grant the application. Otherwise, the application will be refused 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.

An applicant may change their mind about registering. They must tell us in writing if this is what they decide so that we can stop the process. If we have concerns about an applicant who withdraws their application before we have made a decision on registration, we will record our concerns and consider them further if the applicant applies to register as a provider, manager or service manager of a social care establishment, service or agency in the future. We may also make referrals to the Disclosure and Barring Service (DBS) or other agencies, if appropriate, in line with our safeguarding obligations

If we have 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.

When we issue the NOD to refuse to grant registration to a children's home or supported accommodation service, an individual applicant becomes disqualified and so 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. This is because a refusal decision takes effect immediately (see [section 19 of the Care Standards Act 2000](#)).

### **Refusing a registration when part or all of the refusal is based on the suitability of individuals**

If a provider is applying under multiple roles, we will assess their suitability for each of those roles. They will need to demonstrate they can meet the demands of the multiple roles.

If they are unable to meet the requirements of some or all of their roles, we are likely to issue an NOP to refuse their registration.

### **Changes to individuals after an NOP to refuse**

When we have issued an NOP to a provider and, as part of the written representations process, they want to propose a new responsible individual/nominated individual and/or new registered manager/service manager, we may allow them to do so under the same application and using the

same URN. The new personnel will need to submit their SC2 applications and pay the relevant application fees for us to progress the application further.

If we decide to process the applications for the new personnel, rather than proceeding to an NOD, this does not guarantee the registration will be successful. Those applications will still be subject to the usual checks and suitability assessments.

However, if our NOP to refuse was also based on safeguarding concerns and/or wider concerns about the application that have not been addressed through the written representations process, then we may instead proceed to an NOD to refuse.

### **Changes to individuals after an NOD to refuse**

After a NOD has been issued, the refusal of application takes immediate effect. Ofsted will not accept applications for a new responsible individual (RI)/nominated individual (NI) or new registered manager (RM)/registered service manager (RSM) under the application that was refused.

If providers wish to put forward new people in these roles after the NOD, they will need to submit a fresh application with a new URN and pay the relevant fees.

See [guidance on when a provider can withdraw their application](#).

### **Disqualification resulting from refusal**

Refusing the registration of a person in respect of a children's home or supported accommodation service may result in certain individuals becoming disqualified from fostering a child privately (see [section 68 of the Children Act 1989](#) and the Disqualification from Caring for Children (England) Regulations 2002). This has wide-ranging consequences, including the disqualification of individuals from carrying on, managing or 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 refusal or for involvement with, or employment in, children's homes.

Refusing registration in respect of children's homes or supported accommodation does not disqualify a person from carrying on, being concerned in the management of, having a financial interest or working in a supported accommodation undertaking or any other types of children's social care provision other than children's homes. However Ofsted may/will take account of the reasons why they became disqualified from private fostering as part of any application to register and the suitability decision.

On refusal of a children's home or supported accommodation service, disqualification attaches to an individual applicant for registration (unlike for cancellation where disqualification attaches to those who have been 'concerned in the management of, or had any financial interest in, a children's home or supported accommodation service 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](#)).

[Disqualification](#) will also have implications for any other children's homes registrations held by the individual. 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).

## Making a recommendation for action

After an inspection or 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 national minimum standards depending on the provision, or as relevant:

- the ['Guide to the children's homes regulations, including the quality standards'](#)
- the ['Guide to supported accommodation regulations including quality standards'](#)

## Raising a requirement

Providers must meet the regulations. After an inspection or 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 they should be or is doing something they 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 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 it is subsequently met by a provider, in future enforcement action if there have been further breaches.

## 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](#).

We will use this power when there is reasonable cause to believe that, unless we act urgently, any person will or may be exposed to the risk of harm.

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.



For supported accommodation providers, we may impose a condition that they cannot provide supported accommodation at individual premises if we have specific concerns.

We can also use urgent conditions to limit which category (or categories) of supported accommodation a provider may operate if we have concerns about the quality of that category.

Imposing an urgent condition is a serious step. In some cases, it 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 that 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.

### **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**

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 manager/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. We will take account of the provider's registration and inspection history and any enforcement action to decide whether it is appropriate.

We will not propose a condition that duplicates a requirement that a registered person must already comply with. Where there is an existing avenue to deal with non-compliance, we will follow

that rather than imposing a condition.

We may also impose a condition when a children's home is intending to close for a period of time. In deciding whether to impose this condition, we will take account of the history of the provider and any compliance concerns. Such a condition will state that the registered person must inform Ofsted of their intention to accommodate children at the home at least 3 months before any child is accommodated. We will take steps to ensure that requirements for registration are still met before children are accommodated. Such a condition would not usually be appropriate if we have compliance concerns.

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, as well as the provider's inspection and compliance history. We may carry out a visit/inspection.

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.

## 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 or a requirement made at a previous inspection or visit.

We will do this only after considering factors such as the seriousness of the non-compliance, the impact on children, the history of the registered person's compliance, and other actions available to us.

We may issue a compliance notice against a registered provider, a registered manager or a registered service 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 residential holiday scheme for disabled children
- a voluntary adoption agency



- supported accommodation

The aim of a compliance notice is to direct a provider 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 do not have to issue requirements before issuing a compliance notice. There will be circumstances in which it is appropriate for us to serve a compliance notice immediately. This may include situations where the breach is sufficiently serious and/or the history of compliance by the registered person is of concern.

We will always consider whether to issue a compliance notice if a provider is judged inadequate, irrespective of whether the provider is newly registered or has been established for some time.

When we have issued a compliance notice, we will carry out a monitoring visit or inspection to assess compliance with the notice. This will be within 5 working days of the date set in the notice for compliance with the requirement. 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 s22A.

## Suspending a registration

### Urgent suspension

We have the power to urgently suspend the registration of a provider or manager/service manager of registered social care services 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, in some settings, will 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 and adult service users.

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 at the setting.

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, or earlier when there is evidence that the relevant test is no longer being met
- when we receive an application from the person whose registration is suspended to vary or remove the suspension

A registered person may also 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. When we lift a suspension, the provider must inform us when they begin to accommodate children.

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

We may suspend the registration of a manager/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 them, 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.

### **Urgent suspension of an independent fostering agency**

We only urgently suspend independent fostering agencies where there is no alternative action that can address the risks of harm to children placed with the agency's carers or any other person. This is the same threshold for suspension of other providers.

Regulation 33 of [The Fostering Services \(England\) Regulations 2011](#) does not specifically address the urgent suspension of independent fostering agencies. However, it sets out the steps to be taken when an agency ceases to operate. To ensure support for foster carers, we use a similar process on suspension.

We inform all local authorities of the suspension notice. We inform local authorities with children placed with the agency's carers as soon as possible and set out the reasons for the urgent suspension. It is for the placing local authorities to decide whether children's placements can continue. As a minimum, placing authorities should take immediate action to assure themselves that their children are not at immediate risk.

Placing authorities can choose to take responsibility for the carers of an agency that is being suspended, as they would if an agency ceased trading without transferring its carers to another agency. This arrangement prevents disruption to children's living arrangements. A foster carer, however, may not wish to be assessed and supported by the placing authority. In these circumstances, the authority should arrange for the assessment and support to be provided by an alternative agency or local authority.

Depending on the nature of the concerns leading to the suspension, it may not be necessary for children to move from their existing carers. However, local authorities or agencies that take on the responsibility for carers should satisfy themselves that these carers are suitable to continue to care for the children living with them. In these circumstances, it is for the placing authorities to consider and agree the ongoing financial payments to carers as soon as possible.

If the suspension is removed, the agency and the local authorities/alternative agencies and

individual carers should discuss whether carers should return to the previously suspended agency. If they decide that is the right course of action, they should also agree the timing of the return.

During the period of suspension, an agency will not be able to carry out key fostering functions, for example:

- recruitment, assessment or approval of carers
- operation of the fostering panel
- decision-making
- supervision and support for carers
- reviews of suitability of carers
- placement planning and support
- receiving referrals for children or accepting enquiries from prospective carers

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

However, a suspended agency will retain some limited functions so that it can address the failings identified in a suspension notice, and to assist in any immediate arrangements for children who need to move to new carers as a result. It may also be appropriate for the suspended agency to contribute to any safeguarding investigations during the period of suspension or to be involved in planning for children who may need to move as a result of the suspension. The welfare of children should always be the paramount consideration.

### **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/manager/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/manager/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 they 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](#) but only for children's homes, residential family centres, supported accommodation or residential holiday schemes for disabled children.

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. For supported accommodation, this may be admissions to the service as a whole or to specific premises.

The effect of a notice restricting accommodation is to prevent a setting, service or specific premises (in the case of supported accommodation) from accepting further placements for a specified period of time. The notice takes immediate effect when served. Children already accommodated at the setting 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 usually monitor compliance with the notice within 12 weeks and 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 the setting if we are continuing to extend the period of restriction.

## Short-break settings

Children's homes that are registered for short breaks are slightly different from other children's homes in that children stay at the home on rotation for a specified number of sessions. Some

homes that offer short breaks also provide care and accommodation for children who live there permanently.

If we suspend a children's home, all children accommodated must leave immediately. This would include any children on a short break. If we restrict accommodation, any children accommodated or on a short break can remain. However, when those children leave, they cannot be readmitted while the notice remains in place.

## Canceling a registration

We may cancel a person's registration in respect of an establishment or agency 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 establishment, service or agency
- the establishment, service or agency 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 establishment, service or agency 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 setting-specific 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
- their inspection history
- any information that calls into question the fitness of the provider

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.

We will also 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 its last 2 full inspections.

If we judge a supported accommodation service to have serious and/or widespread weakness, we will always consider cancelling the registration of the service manager.

If we make the decision to cancel 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 consider whether it is in the best interests of service users for us to carry out monitoring visits and/or inspections using our powers of entry during the interim period. It is likely that we will do so.

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.

It is an offence if any person carries on or manages an establishment or agency without registration. When a provider's registration in respect of an establishment/agency is cancelled, the setting must cease to operate. If it is the manager's/service manager's registration that is cancelled, then the setting may continue to operate.

## Disqualification resulting from cancellation

Cancelling the registration of a children's home or supported accommodation service may result in certain individuals becoming disqualified from fostering a child privately (see [section 68 of the Children Act 1989](#)) and the [Disqualification from Caring for Children \(England\) Regulations 2002](#).

This has wide-ranging consequences, including the disqualification of individuals from carrying on, managing or having a financial interest in, or being employed in children's homes in future unless we give [written consent](#) to waive the disqualification. It may therefore have implications for any children's homes registrations that the individual holds at the point of cancellation, or any that they are involved with or employed by.

Cancelling a children's home or supported accommodation registration does not disqualify a person from: carrying on, being concerned in the management of, having a financial interest or working in a supported accommodation undertaking or other types of children's social care provision, as it only applies to children's homes. However, we will take account of the reasons why they became disqualified from private fostering if they make any future application to register.

On cancellation of a children's home or supported accommodation service, disqualification attaches to persons who have had their registration cancelled and persons who have been 'concerned in the management of or had any financial interest in, a children's home or supported accommodation undertaking 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.

[Disqualification](#) will also have implications for any other children's homes registrations held. 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 or supported accommodation without first getting Ofsted's written 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 an establishment or agency 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 the other party might place children at risk of harm
- the risk is so serious there is no time to notify the other party



- notifying the other party 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 managers/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 to cancel, which will be the agreed voluntary cancellation date.

We will carefully consider any request for cancellation at a future date where there have been compliance concerns leading to an NOP to cancel. We will determine whether it is in the best interests of children to allow the registration to continue for longer while arrangements are made for them, or 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. Therefore, it is unlikely that we would accept an application to cancel in circumstances where 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 or supported accommodation service.

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 DBS.

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 establishment or agency. 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 managers/service managers**

We can use enforcement actions against registered managers/service managers before, during and after the registration process. This section should be read alongside the ['Our enforcement actions: registered persons, providers, service managers and managers' section](#) and alongside [our registration guidance](#).

### **What happens when a registered manager/service manager leaves**

Registered providers are required by legislation to appoint a registered manager/service manager.

We will always keep under review all settings that do not have a registered manager/service manager in post. The departing person must submit a voluntary cancellation form unless we have served an NOP to cancel their registration.

When a registered manager/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](#) to check that they are effective in keeping children safe and providing quality care. We expect providers to take reasonable steps to appoint a new registered manager/service manager within 6 weeks.

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

We will consider the impact of not having a manager/service manager on children. We will decide whether any enforcement action, including urgent action, is appropriate. Providers must have appropriate interim management arrangements in place in order to limit any disruption. We will also consider the position at the next inspection. The absence of a manager/service manager is likely to impact on the inspection judgement.

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

### **Withdrawing an application for registration**

A manager/service manager may withdraw their application at any point in the process up to the issuing of the NOP and we will accept it.

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

### **Refusing registration of a manager/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 issue a notice of refusal.

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 setting or 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 managers/service managers

There may be occasions when it is necessary to suspend a registration. We may suspend the manager/service manager in isolation or alongside suspending the provider's registration. For example, a registered 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/service 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 manager/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 an establishment or agency while suspended.

## Cancelling a manager/service manager's registration

When considering cancellation in respect of an establishment or agency, 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/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 manager/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 or service manager's registration: with notice or by urgent procedure.

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

in the usual way.

Where we issue an NOD to cancel a manager's/service 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 manager/service manager's registration

When a provider's registration in respect of an establishment or agency or supported accommodation service is cancelled, the manager/service manager's registration also ends at the same time.

Both types of manager are registered in respect of the establishment, agency or service. They do not have their own registration certificate; they are named on the provider's certificate.

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

However, if we have already issued an NOD to refuse or cancel registration to the manager/service 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/service 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, such as unannounced visits.

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 a notice of our decision 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

## Disqualification

There are circumstances where individuals are disqualified from privately fostering a child, which prevents them from carrying on or being involved in the management of, or having a financial interest in, a children's home in England without [written consent](#) from us to waive that disqualification.

The circumstances that cause disqualification from privately fostering a child are set out in [section 68 of the Children Act 1989](#)) and the [Disqualification from Caring for Children \(England\) Regulations 2002](#).

The circumstances where an individual may be disqualified include where the person is or has been:

- 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 or supported accommodation
- refused registration of a children's home or supported accommodation
- concerned in the management of, or had any financial interest in, a children's home or supported accommodation in respect of which the registration of any person has been cancelled
- prohibited from privately fostering under [section 69 of the Children Act 1989](#)
- subject to cancellation or refusal of registration relating to the provision of childcare
- convicted of an offence or offences specified in the [Disqualification from Caring for Children \(England\) Regulations 2002](#)
- convicted of any offence that involved bodily injury to, or death of, a child

[Section 65 of the Children Act 1989](#) prohibits a disqualified person from carrying on, or otherwise being concerned in the management of, having a financial interest in, or being employed in a children's home in England, without written consent from the appropriate authority.

Ofsted is the appropriate authority to grant written consent to disqualified persons, or those who wish to employ them, in certain circumstances. Although this disqualification relates only to children's homes, we will take the circumstances of the disqualification into account when assessing an applicant's suitability to provide any other type of children's social care establishment or agency.

Similarly, if a person has been refused registration or cancelled in respect of a children's social care establishment or agency that is not a children's home or supported accommodation, although



it will not lead to disqualification, we will take it into account if they try to register again in the future.

## **Written consent for disqualified individuals who wish to carry on, manage, or have a financial interest in a children's home**

A disqualified individual who wishes to carry on, manage or have a financial interest in a children's home must write to us for written consent. Any disqualified person who carries on, concerns themselves in the management of, or has a financial interest in a children's home without first obtaining written consent commits an offence.

We encourage the disqualified individual to provide us as much information as possible, including their job description, if they are applying for a specific role. They should set out what they are seeking our consent to do.

A disqualified person has 28 days from the date they became aware of the disqualification to notify us and apply for written consent.

We will carefully consider an application on its own merits, taking into account the circumstances of the disqualification. We will consider factors such as the length of time since the disqualification took effect and any risk to children.

If we are satisfied that written consent should be granted, we will write to the individual confirming the decision and the scope of the consent granted.

If we refuse to grant written consent, we will send the applicant a notice setting out our reasons for the refusal. There is a right to appeal against our decision to the First-tier Tribunal.

## **Written consent for those wishing to employ disqualified individuals**

A person must not employ a disqualified person in a children's home unless that person (the employer) gets our written consent to do so.

Anyone who knowingly employs a disqualified person in a children's home, without first getting our written consent, commits an offence (under section 65 of the Children Act 1989). A children's home provider that wishes to employ a disqualified person (including as a volunteer) in a children's home must apply to us for written consent to do so.

An employer has 28 days from when they became aware of the disqualification to notify us and apply for [written consent](#).

We encourage the employer to give us as much information as possible, including the job description or details of the role in which they want to employ the disqualified person in.

We will need contact details for the disqualified person. We will write to the individual to explain



what disqualification means for them and that, if we refuse written consent, we are obliged to send the applicant's employer a notice setting out our reasons for the refusal. The applicant's employer has a right to appeal against our decision to the First-tier Tribunal.

If we are satisfied that written consent should be granted, we will write to the applicant's employer confirming the decision and the scope of the consent granted.

## **Circumstances in which we will not give written consent**

We will not give written consent to anyone who:

- is included on the DBS list of individuals barred from working with children
- has been disqualified by a court from working with children because of an offence committed against a child

In this case, we will tell them that we cannot waive their disqualification and we will refuse registration.

## **Written consent and registration**

Some disqualified individuals will apply for written consent because they wish to go on to apply to register as a provider or manager of a children's home.

Our role as the appropriate authority to consider an application for written consent is distinct from our role as the authority that grants registration.

We will consider an application for written consent before the application for registration. If we give consent to apply to register as a provider or manager, this does not mean we will automatically then grant registration. Considering an application for written consent is not the same as considering an application for registration.

## **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 provider'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

- refusing to grant an application to vary or remove conditions
- cancelling a registration

The steps involved in this process are:

- serving the NOP: we must lawfully serve the notice on the correct registered person or applicant for registration
- written representations: a person has 28 days from the time when we serve the NOP to make written representations to us
- 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
- 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
- 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
- monitoring compliance: we must ensure that the person is complying with the notice

## 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 children's social care providers or managers/service managers:

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

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

We will also update all local authorities when:

- we issue a further notice to extend the 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, including the outcome of any appeal or where no appeal is brought
- 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
- 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](mailto: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
- 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 (for children's homes, residential family centres and residential holiday schemes for disabled children only)

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](mailto: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. This might be evidence from monitoring visits and/or an inspection, or other evidence that the person appealing wants to provide.

### **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 it has 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. Ordinarily, we will 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 social care providers

A person who carries on or manages an establishment, agency or supported accommodation service without being registered commits an offence under [section 11 of the Care Standards Act 2000](#), and we may prosecute.

You must register with Ofsted to open, run or manage:

- an adoption support agency
- a children's home or secure children's home
- an independent fostering agency
- a residential family centre
- a residential holiday scheme for disabled children
- a voluntary adoption agency
- supported accommodation for looked after children and care leavers aged 16 and 17

Our powers authorise us to visit settings that we believe to be operating without registration. Unregistered settings may pose a significant safeguarding risk to children. We may inspect the condition and management of the premises and treatment of children accommodated and/or cared for there. Inspectors can interview the manager/service manager and, in private, any child accommodated or cared for there who consents to be interviewed. We can inspect and take copies of documents.

We assess the information and decide which steps are appropriate. If there are any safeguarding concerns, we will make a referral to the local authority and police.

Whether we visit or not, if we believe that the provision requires registration, we will ordinarily send a warning letter. This letter makes it clear that we believe that the provider is operating unlawfully and must either:

- stop operating
- apply for registration and stop providing care and accommodation while the application is being considered

We will inform all local authorities in England and Wales of the warning letters that have been issued so that they are aware the setting is not registered. However, we will not inform other local authorities if the provider is also a local authority.

Sending a warning letter does not mean that we will not undertake a criminal investigation or seek to prosecute where the evidence meets the test for prosecution.

We may carry out further visits to the setting/services to ensure that it has ceased operating and/or to assess risks and gather evidence if it has not.

See the [social care registration guide](#) for more information about settings that require registration.

## Placing authorities

Decisions about where to place a child rest with those responsible for the child. This is usually a local authority. Any placement of a looked after child must be, in the opinion of the local authority, the most appropriate placement available and compliant with the care planning regulations.

We will make the placing authority aware that they have placed a child in a setting that we believe requires registration. We expect local authorities to do all they can to get the provision registered. The host local authority may also choose to visit the setting. However, if we have any concerns about the safety and/or welfare of children, this will take precedence in any next steps, including contacting the placing authority.

## Deciding what action to take

If the service does require registration, we will consider taking appropriate steps to ensure that the service is registered as quickly as possible. However, we will refuse the registration if we decide that the applicants are not suitable.

If they continue to operate, they would be operating an unregistered setting and be liable for prosecution.

If they have indicated to us that they will apply to register but have not done so within a reasonable timescale, we will update the relevant local authorities with this information.

Local authorities should take account of the [President of the Family Division practice guidance](#) when a child is placed in an unregistered setting where there is a deprivation of liberty authorised under the court's powers of inherent jurisdiction. Ofsted has also issued specific guidance in this respect.

## Unregistered supported accommodation

A person who carries on or manages a supported accommodation service without being registered with Ofsted commits an offence contrary to section 11 of the Care Standards Act 2000. We have the power to prosecute them.

Some existing unregistered providers applied to register with us between 28 April and 28 October 2023. If we accepted their application as complete before 28 October 2023, these providers are exempt from this offence until we have decided on the outcome of their registration.

Unregistered providers that did not submit a complete application to register by the 28 October

2023 and are still providing supported accommodation are not exempt. They are committing an offence, as explained above.

Our powers authorise us to visit services that we believe to be operating without registration. Unregistered services may pose a significant safeguarding risk to children.

We may inspect the condition and management of premises and treatment of children accommodated there. Inspectors can interview the provider, service manager and (in private) any child accommodated there who consents to be interviewed. We can inspect and take copies of documents. We then assess the information and decide which steps are appropriate. If there are any safeguarding concerns, we will make a referral to the local authority and police.

Whether we visit or not, if we believe that the provision requires registration, we will ordinarily send a warning letter. This letter makes it clear that we believe that the provider may be operating unlawfully. The warning letter:

- tells them to apply for registration, or to let us know if they believe they have already applied
- reminds them that even if they do not require registration now, should their situation change, they may be required to register

The warning letter asks the provider to reply as soon as possible if they have already applied, or if they no longer accommodate a child under sections 22C(6)(d) or 23B(8)(b) of the Care Standards Act.

We may seek further information or take action, including sending another warning letter.

We make decisions about unregistered supported accommodation on a case-by-case basis.

In all cases, we should inform the placing authority and/or host authority to explain that we have written to the provider and to confirm our next steps. We will make it clear that we expect the local authority to do all it can to encourage the provider to apply if registration is necessary.

See the [supported accommodation registration guide](#) for more information about services that require registration.

## Placing local authorities

Decisions about where to place a child rest with those responsible for the child. This is usually a local authority. Any placement of a looked after child or must be, in the opinion of the local authority, the most appropriate placement available.

We will make the placing authority aware if it has placed a child with a service that we believe requires registration. We expect local authorities to do all they can to ensure that the service is registered. The host local authority may also choose to visit the service and the relevant accommodation. However, if we have any concerns about the safety and/or welfare of children, our first response will be to contact the placing authority.



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