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a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate
for Education and Training in Wales

Estyn's arrangements for assuring the quality of contracted out work in relation to school inspections

Policy and procedures

**November 2005
Revised September 2007**



**BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE**



The purpose of Estyn is to inspect quality and standards in education and training in Wales. Estyn is responsible for inspecting:

- ▲ nursery schools and settings that are maintained by, or receive funding from, local education authorities (LEAs);
- ▲ primary schools;
- ▲ secondary schools;
- ▲ special schools;
- ▲ pupil referral units;
- ▲ independent schools;
- ▲ further education;
- ▲ adult community-based learning;
- ▲ youth support services;
- ▲ youth and community work training;
- ▲ LEAs;
- ▲ teacher education and training;
- ▲ work-based learning;
- ▲ careers companies;
- ▲ offender learning; and
- ▲ the education, guidance and training elements of The Department for Work and Pensions funded training programmes.

Estyn also:

- ▲ provides advice on quality and standards in education and training in Wales to the National Assembly for Wales and others; and
- ▲ makes public good practice based on inspection evidence.

Every possible care has been taken to ensure that the information in this document is accurate at the time of going to press. Any enquiries or comments regarding this document/publication should be addressed to:

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Estyn's arrangements for assuring the quality of contracted out work in relation to school inspections

This document represents Estyn's policy and procedures for assuring the quality of contracted out work in relation to school inspections.

Background

We carried out a consultation exercise on these arrangements from July to the end of September 2005. The vast majority of respondents agreed that our proposals were fair, open, and transparent and that the approach that we are recommending will help to improve the quality of school inspections.

The policy has been in place since January 2006 and was reviewed in September 2007.

Susan Lewis
Her Majesty's Chief Inspector of
Education and Training in Wales

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1 Context

- 1.1 Estyn has a statutory duty to ensure that inspectors carry out good quality inspections. The provisions of the Education Act 2005 and subsequent regulations enable us to monitor and evaluate the work of independent inspectors.
- 1.2 We have a range of activities and requirements that help to assure good quality inspections. These include:
- an inspection framework and detailed guidance;
 - quality assurance requirements in contracts to ensure that inspections are carried out as specified, to time and by suitable inspectors;
 - the selection, initial training, assessment and endorsement of inspectors;
 - ongoing training and updating of inspectors about current inspection matters;
 - regularly updating guidance;
 - monitoring and evaluating a sample of inspections and reports;
 - feedback from providers inspected and other stakeholders;
 - requirements for inspectors to work according to a Code of Conduct, to the inspection guidance, in accordance with general conditions set by Her Majesty's Chief Inspector (HMCI); and
 - investigating complaints and concerns.
- 1.3 Currently, Estyn has:
- a system for assessing quality statements submitted by all contractors, including visiting contractors to audit the quality of their quality assurance procedures;
 - a recruitment and training strategy that ensures that we have enough suitable inspectors to work on our behalf;
 - a feedback and complaints procedure;
 - a process for receiving feedback from providers, in the form of post-inspection questionnaires; and
 - procedures for monitoring the quality of inspections and reports. We monitor the quality of a sample of inspections while they are taking place (QMI). We also monitor the quality of a sample of reports (QMR).
- 1.4 Any failure by teams to carry out good quality inspections could have a major, adverse impact on our reputation within schools and in education in Wales generally. This represents a significant risk to the credibility of inspection. If HMCI is concerned with aspects of performance of a particular inspector, relating either to the conduct of the inspection or the written report, she can require any inspector to abide by additional conditions that she may apply, subject to an appeals process.
- 1.5 This document sets out the role of contractors, team leaders or registered Inspectors, and Estyn in dealing with situations when the work of contracted out school inspections does not meet the required standards. Where such situations constitute a breach of contract, Estyn may pursue its contractual remedies under the contract. However, HMCI must also take action to ensure that all persons endorsed to be inspectors are "fit and proper" to carry out their functions competently and that they remain so. At the moment, it is only registered inspectors who formally sign up and agree to abide by the general conditions set by HMCI.

2 Role of contractors and registered inspectors in assuring quality

Contractors

- 2.1 As stated in the latest version of the conditions of contract; 'Quality Assurance and Audit Arrangements', it is the responsibility of the contractor to control quality in accordance with the requirements of the Guidance Handbooks and any further guidance or instructions issued by Estyn.
- 2.2 It is the responsibility of the contractor to notify each individual member of the inspection team of the results of any evaluation undertaken by Estyn in relation to the performance of that individual.
- 2.3 The contractor should ensure that it has a formal procedure for handling and responding to complaints that conforms to the principles and timescales found in Estyn's Feedback and Complaints Procedure or any subsequent guide issued to contractors. The first stage in the contractor's procedure should be an informal resolution whereby the contractor ensures that the registered inspector listens to and tries to resolve any complaints raised by the school inspection. If this procedure fails, the second stage in the procedure should be a formal investigation of the complaint by the contractor. The contractors' responsibilities are outlined in Appendix 2.

Registered inspectors

- 2.4 The registered inspector has the responsibility to manage and monitor all the work of team members, including the peer assessor, and to feedback to the contractor when any difficulties arise. The registered inspector must monitor the work of all team members, including the conduct at meetings and the completion of inspection evidence. He/she is also expected to deal with any issues that arise during the inspection itself, for example, concerns expressed by nominee about lesson coverage. The registered inspector should give feedback to the contractor on the work of the team.

3 Estyn's role in assuring quality

3.1 As shown in Appendix 1, Estyn gets information about the quality of individual inspectors' work in a number of different ways:

- direct monitoring and evaluation of inspections;
- feedback, including concerns from schools and others; and
- complaints.

3.2 We use this information both to inform our overall work on training and guidance and also to help us support individual inspectors in improving their performance. This may include responding to unsatisfactory performance. These aspects are shown diagrammatically in Appendix 3.

Direct monitoring and evaluation of inspections

3.3 Monitoring inspections enables Estyn to:

- have first hand evidence of how the system is operating in schools;
- observe and evaluate the work of independent inspectors and give them feedback on their performance;
- learn lessons that will feed into our training programme to support those who inspect on our behalf; and
- help schools, local authorities and others to see that we are doing our best to ensure consistency and fairness in the process.

3.4 The programme of monitoring inspections and reports contributes to the delivery of high quality inspection of education in Wales.

Quality monitoring of inspections (QMI)

3.5 We sample a percentage (currently 30%) of all school inspections as they are taking place. This usually involves one HMI visiting the school to:

- talk to staff about the conduct of the inspection;
- evaluate the work of team members, particularly the registered inspector, including how well meetings are conducted and how the work of the team is managed;
- assess the quality of documentation including:
 - pre-inspection commentaries;
 - lesson and general evaluation forms; and
 - meeting notes;
- assess the balance of good features and shortcomings when arriving at overall grades; and
- challenge inspection evidence to check that judgements are well-founded.

3.6 As an outcome of this monitoring exercise, we award grades only to those team members whom we observe. We only comment on what we see during the inspection. However, we always award a grade to the registered inspector as an outcome of this monitoring exercise.

Quality monitoring of reports (QMR)

3.7 We evaluate a sample of inspection reports (currently 30%). We award a grade for each report for the quality of writing, coverage of aspects of the inspection framework and accurate completion of the Athene profiles. Only one grade is given for any report and this is attributable to the registered inspector. This reflects the fact that the registered inspector is responsible for the overall quality of the published report.

3.8 Grades from our monitoring of reports and inspections are fed back to contractors who, in turn, relay them as appropriate to the registered inspector and other team members.

3.9 A member of the relevant phase team at Estyn moderates all the monitoring work of HMI and is available to address concerns from independent inspectors and contractors who may have questions about the grades awarded. If there are further concerns, the relevant Managing HMI will review the grade awarded.

Feedback

3.10 Estyn and the contractor may also receive feedback from schools in the form of post-inspection questionnaires (PIQs). These surveys give schools the opportunity to evaluate aspects of the inspection process, including:

- preparation for inspection;
- pre-inspection communications with the school and parents;
- conduct of the inspection;
- the quality of the evidence and judgements; and
- inspection reporting, both oral and written.

3.11 Estyn operates an 'Alert System' for PIQs. Analysis of each PIQ identifies whether the inspection is considered by the school to be a positive or negative experience overall. If the school considers that some key areas of the inspection were carried out inappropriately this will 'trigger' our alert system into operation.

3.12 Estyn sends a standard letter to the schools that have indicated a very negative response to their inspection. This letter informs them that we will copy the PIQ and forward it to:

- Estyn's feedback and complaints manager;
- the contractor; and
- the registered inspector.

3.13 It is also important that we give feedback to inspectors and contractors where we receive positive comments from the school staff and local authorities either in the

post-inspection questionnaire or by letter. All quality monitoring feedback to inspectors includes positive comments as well as identifying shortcomings.

Complaints and/or Concerns

- 3.14 Complaints or concerns may come from school staff, governors, local authorities, contractors or others. The contractors' responsibilities are outlined in Appendix 2.
- 3.15 The registered inspector and contractor must give the provider every opportunity to raise any concerns, throughout the inspection. These must be dealt with sensitively and positively and, if possible, resolved at the time. If concerns cannot be settled, the complainant must be advised on how to make a complaint as soon as they can, and be given the contractor's and Estyn's complaints procedures. In partnership with contractors, we will keep a record of all complaints and regularly review the list of inspectors who have been the subject of an upheld complaint.

4 Tackling unsatisfactory performance

- 4.1 On a termly basis, we collate all monitoring data, post-inspection questionnaires, other feedback and upheld complaints for all registered and team inspectors. This enables us to identify any unsatisfactory performance. Different levels of unsatisfactory performance will elicit different actions on our part.
- 4.2 Estyn will try to reduce unsatisfactory performance by:
- ensuring that contractors, by working in line with their quality statements, are also addressing any aspect of unsatisfactory performance;
 - issuing additional guidance to support inspection teams in their work; and
 - training all inspectors on a regular basis.
- 4.3 There may be times when we need to take action by implementing the procedures in parts B, C and D of Appendix 3.

General concerns and minor shortcomings

- 4.4 Concerns and minor shortcomings regarding non-compliance with the Code of Conduct might relate to:
- a registered inspector arriving late for staff meetings;
 - the team misplacing school documentation; or
 - a request for a policy document already given to the team.
- 4.5 These examples, taken individually, may not be serious. However, if an individual inspector repeatedly displays the same shortcomings, then we will take action. The procedure outlined in Part B of Appendix 3 will be followed.
- 4.6 If concerns arise about a registered inspector or team inspector in relation to three out of five consecutive inspections, either through the quality monitoring of the inspection, the quality monitoring of the report, feedback or complaints, he or she will be asked to provide an explanation for these concerns in writing and/or to attend an interview with the relevant sector HMI. In respect of meetings, notes will be taken and shared and agreed with the inspector. In this context, concerns would include grade C evaluations.
- 4.7 In relation to quality monitoring, it is important to remember, however, that a grade C meets the minimum requirements and that this process is designed to be supportive of the inspector, in terms of helping them to improve their performance.
- 4.8 In relation to an inspection report, the registered inspector is responsible for the final report and he or she is expected to quality assure the contributions of other team members.

4.9 Concerns about a registered inspector outlined in 4.6 above will usually result in an agreed agenda for action. This may include targets and training and will have a timescale of no longer than three months, or until the next two inspections undertaken by the inspector in question have been monitored.

4.10 After this monitoring:

- if the work of the inspector has improved, then no further action will be taken;
- if the work of the inspector has not improved, then the process will be repeated once; and
- if the work of the inspector has deteriorated, or if there has been no improvement after six months, or in the next two inspections undertaken by the inspector in question, then the procedures described for major concerns will be followed.

Major concerns

4.11 If there is a significant concern, chronic non-compliance with the Code of Conduct or an inspector receives a grade D, the procedure outlined in Part C of Appendix 3 will be followed. The inspector will be asked to provide a detailed explanation relating to the shortcomings identified and/or attend a formal interview with the relevant Managing HMI. In all circumstances, the relevant contractor will be invited to attend the formal interview alongside the registered inspector/team inspector. Notes will be taken at the meeting and agreed with the inspector.

4.12 There are two stages to this process.

Stage 1

4.13 In most cases, the outcome of the meeting will be a warning about the possible consequences of future poor performance and may include an agreed agenda for action including any further training. This will be confirmed in writing and sent to the inspector and contractor. The timescale for the agreed action shall take no longer than three months, or until two further inspections have been monitored. The work of the inspector will be monitored as soon as possible after the agreed action has been completed. If the work of the inspector **improves**, then no further action will be taken.

Stage 2

4.14 If there is **no improvement** after three months or the next two inspections, then the inspector and contractor will be told that there will need to be further action on the part of HMCI. This might include:

- subjecting inspectors to specific conditions such as not inspecting in a particular area;
- requiring inspectors to attend some compulsory training at their own or the contractor's cost and within a prescribed timescale, in order to ensure continued enrolment or registration;
- subjecting inspectors to future monitoring under our quality monitoring system; and
- possible removal from the list or register.

The monitoring period

- 4.15 Grades awarded to inspectors are accumulated for a period of 30 months only. Instances of non-compliance with Estyn's guidance or code of conduct will remain on record for a rolling period of 30 months.

Very serious failings

Identifying seriously misleading reports, seriously flawed inspections and unacceptable behaviour

- 4.16 Estyn receives a copy of the final report from the registered inspector. We then place a copy of the report on our website. In the following few weeks we monitor the report to check for compliance with our Common Inspection Framework and for grammatical accuracy.
- 4.17 Any seriously misleading report is likely to come to light following a review by HMI of an inspection report or the evidence base of an inspection. Such a review may be undertaken because a complaint has been made about the report, or because HMI have identified concerns about the report through the quality monitoring of the report.
- 4.18 Any seriously flawed inspection is likely to come to light as a result of a visit to an inspection to assess its quality or following a review by HMI of the evidence base of an inspection as the result of a complaint.
- 4.19 Any unacceptable behaviour is likely to come to light through monitoring an inspection or as a result of a complaint. Very rarely, the major concern will be so unusual, perhaps involving other agencies such as the Police or a Social Service department that exceptional action has to be taken.
- 4.20 Where we find that an inspection report is seriously misleading or an inspection is seriously flawed, or that there has been unacceptable behaviour by an inspector, we will take the following action:
- We will send either:
 - a QMI/QMR letter to the registered inspector, other members of the inspection team and the contractor, as appropriate. This will report the view that the inspection is seriously flawed or the report is seriously misleading; or
 - a letter regarding the inspector's behaviour.
 - We will then invite the registered inspector/team inspector and the contractor to offer an explanation.
 - On receipt of these explanations, we will reach a judgment about whether the explanations are reasonable or there are extenuating circumstances.
 - Where we accept that the explanation is reasonable or where there were extenuating circumstances, HMCI will not consider the de-registration of the registered inspector, nor the removal from the enrolled list of the team inspector, nor impose conditions. We will notify the registered inspector/team inspector and contractor of this decision and monitor the registered inspector's/team inspector's work on future inspections.

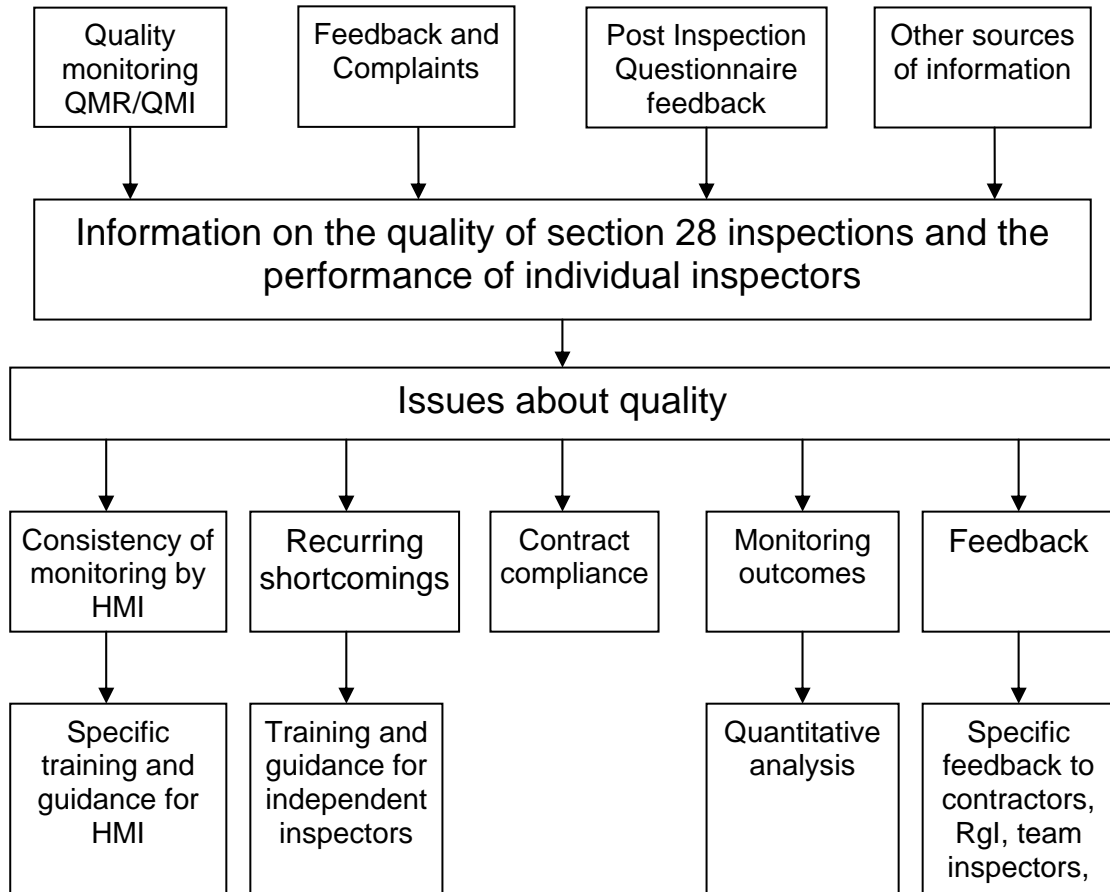
- Where we reach a judgement that a report is seriously misleading, whether or not we have accepted the explanation, we will write to the appropriate authority and the headteacher of the school to set out our concerns. We will also discuss with the school the possible withdrawal of the inspection report, if one has been issued. We will determine whether or not to withdraw the report after taking the school's views into account.
- After consulting with the school and in the light of any particular circumstances that prevail, we may offer the school a further inspection. Where a report is withdrawn, a further inspection will normally take place. Such an inspection will take place at a time determined by Estyn after consultation with the school.

5 Deregistration or removal from enrolled list or imposition of additional conditions

- 5.1 Where we do not find the explanation reasonable or accept the extenuating circumstances, an Estyn panel will then consider the status of and the additional conditions to be imposed upon, the registered inspector/team inspector. In determining whether to recommend to HMCI the de-registration of the registered inspector, or removal from the enrolled list of team inspectors, or the imposition of additional conditions, we will take account of:
- the extent of any unacceptable conduct;
 - the extent to which the inspection is seriously misleading or the report is seriously flawed;
 - the registered inspector's/team inspector's and contractor's explanations;
 - the registered inspector's/team inspector's previous inspections and reports; and
 - any other relevant factors.
- 5.2 This panel should consist of three people. Those eligible to sit on the panel are:
- Heads of Directorate;
 - Managing HMI;
 - inspectors responsible for quality monitoring; and
 - inspectors with experience of school inspection.
- 5.3 Each case involving de-registration or removal from the enrolled list or the imposition of additional conditions should be considered on its individual merits. The combined weight of all factors will be taken into account of in reaching a recommendation to de-register, remove from list or otherwise. The panel will recommend to HMCI the course of action to be followed regarding an individual inspector.
- 5.4 If action against an inspector is to be taken, HMCI will write to the inspector saying that she is minded to remove their name from the list/register or to impose conditions. We will give a period (21 days) in which they will be able to say why this should not be done, after which we will reconsider the evidence and finalise the decision. There is a right of appeal to an independent tribunal.
- 5.5 Information on the appeals process can be found in Appendix 5.

Appendix 1

How we collect information about the quality of contracted school inspections



Appendix 2: Contractual responsibilities for dealing with complaints

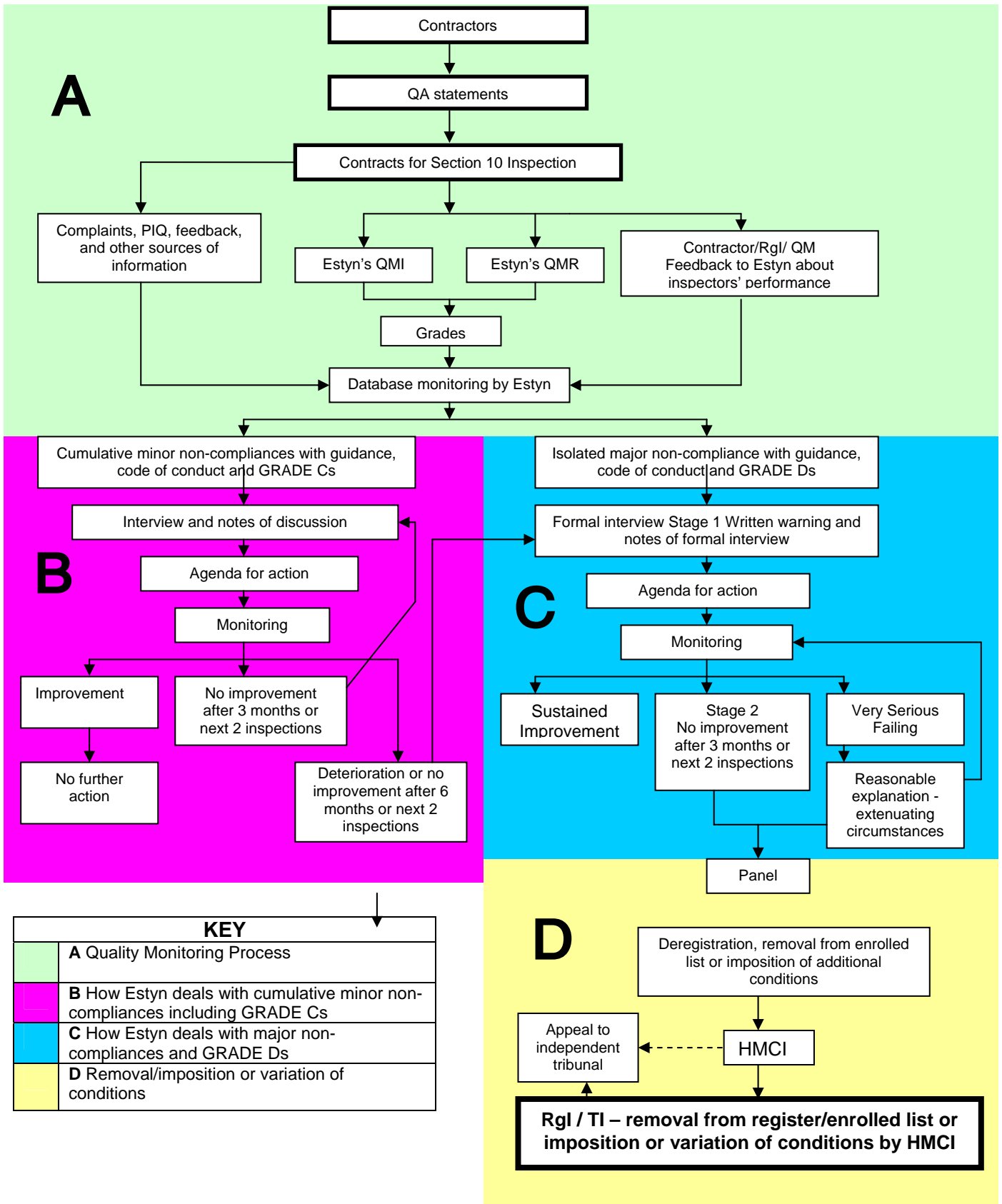
The latest version of the conditions of contract for the inspection of schools in Wales will apply, which outlines the contractors' responsibilities in dealing with complaints.

- 15.1 The Contractor shall put in place and deal with all complaints in accordance with a complaints procedure which mirrors stages one and two of the Complaints Procedure, the Complaints Guidance and the principles set out under the heading "Making a complaint" in the Complaints Procedure, including without limitation any timescales set out in such Complaints Procedure and Complaints Guidance, and:
- (a) if any complainant expresses dissatisfaction with the Contractor's response on completion of stage two of such procedure, the Contractor shall immediately refer such complaint to Estyn; and
 - (b) if stage two of such procedure has not been completed by the Contractor in respect of any complaint within the timescale therefore, the Contractor shall immediately notify Estyn giving details of the reason for the same, and Estyn may in its absolute discretion either grant the Contractor an extension of time for completion of stage two in respect of such complaint (in which case the provisions of this paragraph (b) shall apply upon expiry of such extension of time) or require the Contractor to and the Contractor shall immediately refer such complaint to Estyn.
- 15.2 At the same time as any complaint is referred to Estyn pursuant to paragraphs (a) or (b) above, the Contractor shall provide to Estyn full details of the complainant, the nature of such complaint and a copy of the Contractor's file relating to such complaint. The Contractor acknowledges and agrees that Estyn shall be solely responsible for managing any complaint so referred to Estyn following such referral.
- 15.3 If the Contractor is in breach of its obligations pursuant to condition 15.1 above to refer any complaint to Estyn and/or to notify Estyn of a failure to complete stage two in respect of any complaint within the timescale therefore and/or to provide Estyn with a copy of the Contractor's file relating to any complaint to be referred to Estyn pursuant to condition 15.1 above, Estyn shall be entitled to take over the management of such complaint from the Contractor in which event, without prejudice to the generality of the provisions of condition 15.5, the Contractor shall (at its own expense) provide such assistance and documentation in connection with such complaint as Estyn may require.
- 15.4 Estyn takes the view that in order to deal with complaints effectively and to ensure that all those involved are able to express their views freely, complaints should be handled confidentially and information obtained should remain confidential. Estyn will limit the people with whom details of the complaint are shared on an "as required" basis and will only routinely publish general details of complaints which do not reveal the identity of those involved. However, Estyn is subject to the Freedom of Information Act 2000 and other legal obligations which may mean that Estyn is not always able to comply with the general confidentiality obligations contained in its own

complaints procedures or information obtained on such a basis by the Contractor via its own procedures. The Contractor should take account of this in its own procedure and when conducting the first and second stages of the procedure. Estyn will always try to inform and consult any individuals who have provided information before Estyn releases such information.

- 15.5 Where the Registered Inspector or a Team Inspector for an Inspection is also the Contractor, or where there is an actual or perceived connection between the 2 (two), the Contractor should make additional or alternative arrangements to handle complaints. The Contractor shall be responsible for having procedures in place that ensure the impartial investigation of complaints. When the Contractor uses an independent third party to investigate complaints, the Contractor shall inform the complainant and Estyn of this person's name and correspondence address so the complainant may make contact directly. This should be done if the Contractor knows the connection, or once it is recognised, whether or not the complainant knows it.
- 15.6 The Contractor shall (at its own expense) co-operate fully with Estyn in any investigation carried out by Estyn into any complaints concerning the performance of the Services and/or any other obligation of the Contractor pursuant to the Contract and shall (at its own expense) secure the co-operation of the Inspection Team with any such investigation and the provision by them of any such information requested by Estyn and in such form as requested that may either be or have been in their possession. The Contractor shall use its best endeavours to respond in full to any correspondence and provide Estyn with any such information as requested by Estyn or that may be in its possession or in the possession of the Registered Inspector within 5 (five) Working Days of receiving Estyn's request.
- 15.7 The Contractor shall (at its own expense) provide details of complaints dealt with in accordance with the latest provided Estyn template. The Contractor will supply this information in quarterly reports to Estyn during the financial year. The Contractor shall be responsible for ensuring that the validity and accuracy of the information contained in the template has been sufficiently checked, and is correct.
- 15.8 Following the completion of the investigation of the relevant complaint by the Contractor, the Contractor shall retain all evidence relating to the complaint for twelve months or such other period as Estyn may specify from time to time.

Appendix 3: Responding to unsatisfactory performance



Appendix 4: Legislative Framework

This appendix sets out the role of HMCI in terms of the recruitment and retention of independent inspectors.

Section 25 of the Education Act 2005 gives HMCI the power to register suitable persons to act as Registered Inspectors.

In addition, Schedule 4 Paragraph 4 of the Education Act 2005 gives HMCI the power to keep a list of persons who may act as members of an inspection team.

HMCI shall not register any person unless that person:

- is a fit and proper person for discharging the functions of a registered Inspector; and
- will be capable of conducting inspections competently and effectively.

HMCI also approves each team inspector who is passed as being a fit and proper person and competent to carry out inspections on their behalf. This is the enrolled list.

There is a separate list for each group of inspectors, registered inspectors and team inspectors.

Registered Inspectors agree to adhere to the Code of Conduct in a formal way. Other team members are not presently required to sign up to the code.

Schedule 4 paragraph 4 gives HMCI the power to remove from the enrolled list or to vary the conditions of enrolment.

Section 26 of the same Act gives HMCI the power to remove any person from the register or to vary or impose conditions on the registration.

HMCI may remove a person's name from the register or list if that person:

- is no longer considered to be a fit and proper person to conduct a school/nursery inspection; or
- is no longer capable of carrying out school/nursery inspections competently or effectively; or
- has failed significantly to comply with the conditions of their registration; or
- has without reasonable explanation, produced an inspection report which is seriously misleading, in whole or in part.

Appendix 5: Appeals Process

REGISTERED INSPECTORS OF SCHOOLS APPEAL TRIBUNAL and REGISTERED NURSERY EDUCATION INSPECTORS APPEAL TRIBUNAL

Guidance Notes

These guidance notes are issued by the Welsh Assembly Government for Registered Inspectors or “enrolled persons” wishing to appeal to the Registered Inspectors of Schools Appeal Tribunal or Registered Nursery Education Inspectors Appeal Tribunal.

The address for the Tribunals is as follows:

Registered Inspectors of Schools Appeal Tribunal

Performance & Improvement Division 3
Department for Education, Culture and the Welsh Language
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Queries - Tel: 029 2082 6013
or E-mail: angela.powell@wales.gsi.gov.uk

or

Registered Nursery Education Inspectors Appeal Tribunal

Early Years & Safeguards Team
Department for Education, Culture and the Welsh Language
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Queries - Tel: 029 2082 6073
or E-mail: david.clayton@wales.gsi.gov.uk

The Registered Inspectors of Schools Appeal Tribunal is established by Welsh Ministers in accordance with Schedule 3 to the Education Act 2005 to hear appeals under section 27 of that Act. Paragraph 4 of Schedule 4 to the Education Act 2005 requires Her Majesty’s Chief Inspector of Education and Training in Wales (HMCI) to establish a list of “enrolled persons” who may act as members of an inspection team (this provision does not apply to registered nursery education inspectors who act alone); enrolled persons also have a right of appeal to the Tribunal against a decision taken by HMCI as detailed in section 27 of the 2005 Act.

The Registered Nursery Education Inspectors Appeal Tribunal is established by Welsh Ministers under paragraph 10(2) of Schedule 26 to the School Standards and Framework Act 1998 to hear appeals under sub-paragraph 10 (1) of Schedule 26.

The procedures of the Tribunals are governed by the Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors

Appeal Tribunal) (Procedure) Regulations 1999 (SI 1999 No. 265). These notes explain the provisions of the 1999 Regulations and give guidance to those wishing to appeal. The Regulations were made after consultation with the Council on Tribunals, in accordance with section 8 of the Tribunals and Inquiries Act 1992.

The Council on Tribunals was set up by the Tribunals and Inquiries Act 1958 and now operates under the Tribunals and Inquiries Act 1992. The Council's main task is to advise on, and supervise, the procedures and working of tribunals and enquiries. A member of the Council may attend a Registered Inspectors of School Appeal Tribunal or Registered Nursery Education Inspectors Appeal Tribunal hearing.

PART 1 – BACKGROUND INFORMATION

1.1 What is the legislative framework?

The Education Act 2005 and the School Standards and Framework Act 1998.

The Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) Procedure Regulations 1999 (Statutory Instrument 1999 No.265)

The Education (School Inspection) (Wales) Regulations 2006 (Statutory Instrument 2006 No. 1714)

Education (Inspection of Nursery Education) (Wales) Regulations 1999 (Statutory Instrument 1999 No. 1441)

The Tribunals and Inquiries Act 1992

Copies of the Acts and Statutory Instruments are available from the Office of Public Sector Information (website address - <http://www.opsi.gov.uk/>)

1.2 Who can appeal and under what circumstances?

All inspectors registered by HMCI to conduct school or nursery inspections and persons enrolled by HMCI to act as a member of a school inspection team can appeal to a tribunal set up in accordance with Schedule 3 to the Education Act 2005, if HMCI:

- refuses to renew his/her registration/enrolment;
- removes his/her name from the register/enrolment list; and
- imposes or varies any conditions upon his/her registration/enrolment.

There is no right of appeal against an initial decision by HMCI to refuse to enter a name on the register of inspectors or enrolled persons list.

1.3 What is the legal position about de-registration of inspectors or “enrolled persons”?

The Education Act 2005 places a duty on HMCI to establish and maintain a register of persons who may conduct school or nursery inspections. HMCI is empowered to make registration subject to conditions. Paragraph 4 of Schedule 4 to the Education Act 2005 also requires HMCI to establish a list of “enrolled persons” who may act as members of an inspection team. Registration must be for a period specified by HMCI and, on expiry of that period, a registered inspector or enrolled person may apply for a further period of registration.

HMCI may in certain circumstances remove an inspector or enrolled person from the register/list or vary the conditions of their registration if satisfied that inspector or enrolled person:

- is no longer considered to be a fit and proper person to conduct a school/nursery inspection; or
- is no longer capable of carrying out school/nursery inspections competently or effectively; or
- has failed significantly to comply with the conditions of their registration; or
- has without reasonable explanation, produced an inspection report which is seriously misleading, in whole or in part.

1.4 Who appoints the Tribunal?

The Tribunals are independent bodies sponsored by Welsh Assembly Government; the Tribunals are independent of Estyn. The Tribunals will consist of a Chair appointed by the Lord Chancellor and two lay members appointed by Welsh Ministers. The role of Welsh Assembly Government in the Tribunals is limited to the provision of a 'Proper Officer' to provide administrative support. The Proper Officer deals only with the arrangements for hearings and will be pleased to offer any help or guidance about matters referred to in these notes, but cannot enter into correspondence about the merits of individual cases or give advice about evidence.

1.5 How much will it cost me to appeal?

The Tribunal does not charge a fee for dealing with appeals. Your own costs in preparing your appeal will depend upon the circumstances of your case and whether you handle the appeal yourself or appoint a representative to act on your behalf. Legal aid is not available for appeals to tribunals. Advice about the award of costs is set out in Part 3 of these Guidance Notes.

PART 2 – HOW TO APPEAL

2.1 How do I appeal?

You may use the Notice of Appeal form, which is available from Estyn, or from the Proper Officer at the Welsh Assembly Government (address on the front of this leaflet). If you prefer, your notice of appeal may take the form of a letter. You or your representative must sign the Notice of Appeal and send it to the Proper Officer at the Welsh Assembly Government. The Notice of Appeal and any supporting documents may be submitted in English or Welsh.

2.2 Is there a time-limit for me to appeal?

Yes – an appeal must normally be made within 28 days of receiving notification of the decision which you are disputing. If the appeal is received later than this, it will be accepted only if the Tribunal agrees to extend the time-limit after considering any special reasons you put forward in writing.

2.3 What information must I provide?

The Tribunal may give a “direction” (direction is a legal term requiring action from a person/ party) requiring you to provide to the Tribunal, within such time as it decides to allow, any document or other material which the Tribunal requires and which is in your power to deliver. But in the first instance, you must include the following details:

- your name, address and any other contact details as the appellant;
- the date and any reference number of the disputed decision;
- the grounds for making the appeal;
- if you have not submitted the appeal within the time-limit (see above), any special reasons for the delay;
- if you are using a representative, that person’s name and address and (where applicable) their profession (if any) – if you do not name a representative at this stage you may nevertheless decide later to do so;
- the address to which the Tribunal should send correspondence; and
- a copy of the disputed decision – together with any supporting documents you wish the Tribunal to have in advance of the hearing (although you may choose to bring this with you as evidence on the day of the hearing).

You should advise the Tribunal of any change of address etc during the course of your appeal. If you wish your Tribunal hearing to be conducted in Welsh this should be indicated so that translation facilities can be arranged.

2.4 Can I change my notice of appeal?

Until a date for the hearing has been fixed, you can amend your notice of appeal or submit a supplementary statement of the grounds for appeal. After the date for the hearing has been fixed, and at the hearing itself, you can amend your notice of appeal or provide further details, provided that the Tribunal agrees and subject to any conditions they may lay down. You must let the Proper Officer have a copy of every amendment and supplementary statement.

2.5 What response will I get after submitting my notice of appeal?

The Proper Officer will acknowledge receipt of your notice of appeal. Unless you write again, for example to amend your notice of appeal, the next communication you receive from the Proper Officer will be written notice of the date, time and venue of the appeal hearing. You will have at least 21 days’ notice of the hearing, unless either you or HMCI request an earlier hearing and that is acceptable to the other party. On receiving notice of the appeal hearing, you must notify the Proper Officer whether you or your representative will attend the hearing and whether you intend to call witnesses. At that stage, you may submit any additional written representations on your behalf.

2.6 What if I want to apply for a direction?

The Tribunal may make directions about any matter relating to the hearing of your appeal, whether or not the Tribunal receives an application from you or HMCI. There may be occasions when you want to apply to the Tribunal for a direction – for

example, to apply for further particulars or supplementary statements relating to the other party's case to help prepare for the hearing or for the proceedings to be suspended for a period. If you wish to make such an application, you should write to the Proper Officer giving the following details:

- your name and address;
- the direction which you are seeking; and
- reasons for your application.

Note: *you must enclose a second copy of your application for a direction so that the Proper Officer can serve your application on HMCI. If HMCI objects to the application, the Tribunal may decide that it is necessary to arrange a preliminary hearing to deal with the application for a direction. The Proper Officer will inform you of the outcome of your application.*

2.7 What if there is information which should not be publicly disclosed?

You may ask the Tribunal, giving your reasons, to restrict the disclosure of any documents which contain details relating to intimate personal or financial matters, or were communicated or obtained in confidence, or are commercially sensitive.

Appeal hearings will normally be open to the public but the Tribunal may direct, having regard to all the circumstances, that the hearing or any part of it shall take place in private. In exercising this power, the Tribunal will take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, or contains information obtained or communicated in confidence. Where a hearing is held in private, a member of the Council on Tribunals may attend, as may any other person with the leave of the Tribunal and consent of the parties present. The member of the Council on Tribunals may remain with the Chair and members during their deliberations, even if other persons have been asked to withdraw.

2.8 What happens if the Tribunal issues a direction?

You will be expected to comply with any direction made by the Tribunal. If you do not do so, the Tribunal may dismiss your appeal in whole or in part, but it will give you 21 days notice to argue why it should not do this.

2.9 Can I withdraw my appeal?

Yes. You can withdraw your appeal at any time before the appeal by written notification to the Proper Officer. You can withdraw your appeal at the hearing provided that the Tribunal agrees. If you withdraw your appeal, you cannot submit a fresh appeal against the same decision unless the Tribunal agrees.

PART 3 – THE HEARING

3.1 When and where will the appeal hearing be held?

The Proper Officer will let you know the date, time and place of the hearing at least 21 days in advance of the hearing (unless you and HMCI have both agreed to an earlier hearing). The Tribunal may change the time and place of a hearing but must give you at least seven days' notice. Hearings are normally open to the public. It is anticipated that the Tribunal will usually be held in Cardiff, but may be arranged at other appropriate locations in Wales.

3.2 Who conducts my case?

At the hearing, you may either conduct your case yourself, with the help of any person you wish, or you may ask a representative to do so for you. The Tribunal does not need to know the identity of your representative before the hearing.

3.3 What if I fail to attend the hearing?

If for any reason you or your representatives do not attend the hearing on the date which has been arranged, the Tribunal may adjourn the hearing if it is satisfied that there is sufficient reason for your absence, or it may hear and determine the case in your absence. In certain circumstances, you may be required to pay costs. If the Tribunal determines the case, you may, within 14 days of the date of the written decision, apply to have the Tribunal's decision set aside and your case reinstated. Your application must explain why you or your representative did not attend the hearing. The Tribunal will consider your application and, if necessary, will arrange a hearing to decide the issue.

3.4 What documents will I need?

You will need to put evidence before the Tribunal to support your opinion that HMCI's decision (i.e. to remove your name from the register of inspectors, not to renew your registration/enrolment, or to vary your conditions of registration) is wrong. If you need to call witnesses or produce documents, you must ensure that they are available at the hearing. If you are in any doubt about whether a document will be needed, your best course of action is to bring it with you.

3.5 Is a hearing always necessary?

If HMCI withdraws or does not resist the appeal, the Tribunal can determine your case without a hearing. A hearing will not be necessary if you and HMCI reach an agreement beforehand.

3.6 What happens at the hearing?

Appeals are normally heard in public but the Tribunal may decide that all or part of the hearing should take place in private. A member of the Council on Tribunals may attend the hearing.

The Tribunal will decide which party should be heard first. You should explain what your case is about, giving a summary of the facts. You will need to explain what evidence you are putting forward and the basic points you are making. It is important to bring out the essential facts. You should state clearly why you believe HMCI's decision to be wrong. Both parties will present their case, give evidence, and be able to call and question their own witnesses and question any witnesses called by the other party. The Tribunal may require any witness to give evidence on oath or affirmation.

3.7 What happens at the end of the hearing?

The Tribunal will either give its decision orally at the end of the hearing or reserve it to be given in writing at a later date. In either case, reasons for the decision will be given and a copy of the written decision, signed by the Chair, will be sent to you. A decision is reached by majority or, if one lay member is absent, by the Chair.

3.8 Can I ask for costs if my appeal is successful? Do I have to pay my opponent's costs if I lose?

If your appeal is successful and you want to be compensated for your costs, you must ask for this. If you lose your appeal, the Tribunal may require you to pay for all or part of the costs incurred by the other party but you will be given an opportunity to make representations about costs to the Tribunal.

3.9 Can I ask for the Tribunal's decision to be reviewed?

Yes – but an application for review must be made within 14 days of the decision, stating the grounds in full. The Tribunal will only review its decision if satisfied that:

- an error was made by its staff; or
- a party was prevented from attending the hearing for a good reason; or
- new evidence has become available since the decision was made that could not have been known or foreseen at the time of the decision; or
- the interests of justice require it.

3.10 Can I appeal against the decision of the Tribunal?

Yes – you can appeal to the High Court against the Tribunal's decision on a point of law in accordance with section 11 of the Tribunals and Inquiries Act 1992.